116th Session **Judgment No. 3290**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A. M. against the World Health Organization (WHO) on 8 November 2011 and corrected on 12 December 2011, WHO's reply of 15 March 2012, the complainant's rejoinder of 18 June and WHO's surrejoinder of 5 September 2012;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant was recruited in April 2001 on a temporary appointment as a Technical Officer at grade P-3 in Harare, Zimbabwe. In April 2002 he was reassigned to Brazzaville, Congo, as Building Management Officer. His post was upgraded to the P-4 level in March 2003, and his appointment was converted into a fixed-term appointment in January 2004.

The complainant's fixed-term appointment expired at the end of December 2007. By a memorandum of 10 January 2008 he was offered an extension of his appointment for six months, until 30 June

2008. The complainant signed this offer on 21 January, but added a written reservation regarding alternative employment. In the event, his appointment was extended for a three-month period until 31 March 2008.

On 17 March 2008 AFRO's Division of Administration and Finance informed the Regional Personnel Officer of the abolition of several posts, including the complainant's, for budgetary reasons. By a letter of 19 April the Regional Personnel Officer informed the complainant accordingly stating that this abolition was with immediate effect. The letter indicated that "reasonable efforts" would be made to identify an alternative post through a formal process coordinated by a reassignment committee. The letter also indicated that the reassignment period would last six months, but that it could exceptionally be extended for an additional six-month period. The complainant applied for a vacant post of Administrative Officer at grade P-4 in Bangladesh in May 2008, but he was not selected for the post.

The Global Reassignment Committee (GRC) recommended in a memorandum dated 24 November 2008 that the complainant's reassignment period be extended until 20 January 2009 to enable the Committee to complete its work and to submit its final report to the Director-General. However, the Committee was unable to make a recommendation for the complainant's reassignment in its report of 19 January 2009.

On 19 February 2009, the Regional Personnel Officer informed the complainant that the GRC's efforts to reassign him had proved unsuccessful and that the Director-General had decided to terminate his contract. The letter referred to the statutory notice period and indicated that his appointment would accordingly come to an end three months after he acknowledged receipt of it. The complainant acknowledged receipt on 20 February 2009 and thus separated from service on 20 May 2009.

In the meantime, on 1 April 2009 the complainant filed a notice of intention to appeal with the AFRO Regional Board of Appeal (RBA) against the decision to abolish his post as well as the decision

to separate him from the Organization. He contended that these decisions had been taken, not because of a lack of funds, but because of the prejudice harboured by his supervisor against him. He also submitted a notice of intention to appeal to the Headquarters Board of Appeal (HBA) on 16 April. However, the HBA suspended its proceedings until the RBA issued its recommendation to the Regional Director.

In its report of July 2009 the RBA noted that it was unclear that the abolition of the complainant's post was due to lack of funds. The RBA considered that the allegations of harassment and prejudice by his supervisor had been raised at an inappropriate time, as the complainant had never mentioned these matters beforehand and his recent performance evaluation reports did not suggest any problem with his supervisor. The RBA also found that the GRC's report demonstrated that sufficient efforts had been made to reassign the complainant to a suitable position in line with his profile. It recommended to the Regional Director that the complainant be provided with an "appropriate response" by his supervisor regarding the abolition of his post, failing which the Administration should reconsider its position. By a letter of 3 November 2009 the Regional Director informed the complainant of his decision to reject his internal appeal and provided him with further details on the reasons for the abolition of his post. The complainant then revised his notice of intention to appeal and resubmitted it to the HBA on 16 December 2009.

In its undated report the HBA found the complainant's appeal receivable only in part. It distinguished the decision to abolish the complainant's post, formally notified to him on 19 April 2008, from the decision of 19 February 2009 to separate him from the Organization and held that, as the former had not been appealed within the required time limit of 60 days, the appeal against that decision was irreceivable. It also found that the complainant's allegations of harassment were entirely linked to the decision to abolish his post. As he had not challenged that decision in due time, a referral of these allegations to Internal Oversight Services was found

unwarranted. The Board did not identify any flaws in the way the GRC had conducted the reassignment process and recommended rejecting in its entirety the appeal against the decision to separate the complainant from the Organization, together with all related claims for redress.

By a letter of 15 August 2011 the Director-General informed the complainant that she had decided to follow the HBA's recommendation and to reject his appeal in its entirety. That is the impugned decision.

B. The complainant contends that, contrary to the finding of the HBA, his appeal against the decision to abolish his post was receivable. He submits that the abolition of his post was not conveyed as a final decision in the letter of 19 April 2008 and that, as a result, he was not given an opportunity to challenge it. In his view, the letter in question should have contained a specific notice alerting him to the fact that the decision to abolish his post was final. Moreover, he submits that he has a right to challenge that decision as it is the very basis for the termination of his contract and his separation from service.

The complainant argues that the impugned decision is vitiated because of the non-disclosure of essential documents. In particular, the withholding of the document sent to the Director-General explaining the reasons for the abolition of his post, and of the GRC's report, deprived him of all the relevant evidence. In his view, the non-disclosure of such essential documents constitutes a breach of his due process rights as well as established principles of international civil service law. Referring to the case law of both this Tribunal and the United Nations Dispute Tribunal (UNDT), he submits that the Administration may not invoke the confidential nature of the reassignment process to withhold such documents.

The complainant contends that the impugned decision is tainted with errors of fact and law, as the Director-General failed to demonstrate an organisational need for the abolition of his post. He submits that there were no objective grounds to consider that a lack of

funds existed at the time of the decision and, in his view, the surrounding circumstances demonstrate that this was not the case, because during the same period the posts of several other staff members were upgraded.

The complainant further argues that the abolition of his post, which led to his separation from service, was motivated by personal prejudice on the part of his supervisor. He points out, inter alia, that his supervisor routinely disregarded him when assigning staff to interim appointments, that responsibilities requiring his architectural skills were removed from him, and that his role was compromised by the enlargement of his subordinate's role.

Lastly, the complainant submits that the reassignment process was tainted with procedural irregularities. He points to a lack of transparency and accountability, as the GRC did not communicate with him throughout the reassignment period. He also contends that, in breach of WHO's Staff Regulations and Staff Rules, he was not given preference over other candidates for the three posts for which he applied, and that the GRC did not follow the correct procedure as it failed to suspend the selection processes for those posts, nor was he offered training, which would have enhanced his profile.

The complainant asks the Tribunal to quash the impugned decision and the decision of 19 April 2008, and to reinstate him in his previous post, or a commensurate post, with full retroactive effect. In the alternative, he asks that he be reinstated and that his case be remitted to the GRC to be examined in accordance with correct rules and procedures and that the Tribunal make a recommendation to the effect that no retaliatory action be taken against him. He claims material damages in the amount of 400,000 United States dollars, moral damages in the amount of 100,000 dollars as well as 25,000 dollars in costs, with interest on all amounts awarded. He seeks any other relief the Tribunal deems just and equitable. He also asks for oral proceedings, and seeks the disclosure of numerous documents.

C. In its reply WHO submits that the complaint is irreceivable to the extent that it concerns the decision to abolish the complainant's post,

because he did not challenge that decision within the 60-day time limit provided for in Staff Rule 1230.8.3. While the letter informing him of the decision to abolish his post was dated 19 April 2008, the complainant did not file his notice of intention to appeal with the RBA until 1 April 2009, almost a year later. Contrary to his assertions, the letter of 19 April 2008 clearly stated that his post was being abolished "due to unavailability of funds". The language in the letter was clear and unambiguous and the absence of a specific notice regarding the final nature of the decision did not prevent the complainant from exercising his right to file an appeal within the applicable time limit. Consequently, the Director-General was correct in accepting the HBA's finding on this issue.

Referring to the Tribunal's case law, WHO adds that, in the absence of any statutory provision requiring a reference to the means of redress and relevant time limit for filing an appeal, the absence of such indications in the letter of 19 April 2008 is not a flaw warranting restoration of the time limit.

WHO submits that there is no rule of procedure or general principle requiring a party to produce each and every document requested by an opponent in a proceeding before the Tribunal. Nor does the principle of due process inevitably oblige such production, and the Tribunal has consistently held that it will not order the production of documents on a speculative basis. In WHO's view, the complainant's request for "any and all" documents linked to the decision to abolish his post is a "fishing exercise" and, consequently, should not be entertained by the Tribunal. As regards the document sent by AFRO to the Director-General stating the reasons for the abolition of the complainant's post, WHO submits that there is no legal requirement that the staff member concerned be provided with a copy of the actual proposal for the abolition of his or her post, so long as sufficient information is provided to inform him or her of the relevant rights and obligations, and to enable him or her to challenge that decision. The complainant was fully aware of both the likely abolition of his post and the reasons for it and he was therefore in

possession of the material he needed to take action within the prescribed time limits.

As regards the request for the disclosure of the GRC's report, WHO argues that the GRC's records have a similar status to the records of a selection committee and, therefore, should be considered privileged and exempt from production to the complainant. The freedom of the Committee's members to discuss frankly the merits of the individual staff members whose cases they handle, without fear that their views may later be disclosed to the staff member concerned, is of paramount importance and warrants the preservation of confidentiality. WHO emphasises that the report was made available to the RBA and the HBA, and that both bodies concluded that it had fulfilled its responsibilities towards the complainant insofar as the reassignment process was concerned. In this regard, it considers his reliance on certain pronouncements by the UNDT to be misplaced.

On the merits, WHO insists that the abolition of the complainant's post stemmed from a need for cost-saving measures and asserts that it was based on objective grounds. It explains that the decision had the lasting effect of reducing both staff numbers and related costs by outsourcing any necessary architectural work on an ad hoc basis. Indeed, following the abolition of the complainant's post, AFRO did not establish a new P-4 post or upgrade any existing post to the P-4 level for the purpose of carrying out the same functions as the complainant's. His post became redundant as architectural work in the region was outsourced. WHO denies that there were any flaws in the procedures followed for the abolition of his post.

Further, WHO denies the complainant's allegations of harassment and considers that there is no justification for examining such claims any further. Not only have these claims been made outside the time limit established by the WHO Policy on the Prevention of Harassment, but they have also been made in the context of an appeal that has been found irreceivable; consequently, neither the RBA nor the HBA was under any obligation to refer them for investigation. In any case, they are entirely unfounded and unsubstantiated.

As regards the reassignment process, WHO submits that the record clearly demonstrates that it was diligent in its efforts to identify an appropriate position for the complainant. It stresses that there was only one P-4 post available during the complainant's reassignment period but that he did not possess the degree or the experience required for that post. The defendant points out that his references to other vacancies concern positions which were advertised after the closing of the reassignment period. WHO asserts that there is no obligation for the GRC to keep staff members under reassignment informed of every step taken, and it denies that he was entitled to preferential treatment, as the complainant did not meet the essential requirements of the posts for which he applied both during and following the reassignment period. For the same reason, it was unnecessary to suspend the selection process for the only post for which he applied during the reassignment period. Given the particular nature of the complainant's profile as an architect and in light of the limited number of such posts within WHO worldwide, the fact that he was not offered training does not constitute a procedural flaw, as it would not have had a material effect on the GRC's efforts to place the complainant in a suitable post. Lastly, WHO acknowledges the length of the internal appeal proceedings, but considers that the delays experienced are justified by objective reasons.

D. In his rejoinder the complainant presses his pleas. He contests WHO's argument that records of the GRC are akin to those of a selection committee. He adds that his period of reassignment should have been extended for the maximum duration allowed under the Staff Rules. In his view, the fact that his reassignment period was "intentionally terminated" three months earlier than required, despite the fact that the process had been unsuccessful, demonstrates that there was no real attempt to reassign him. The complainant considers that his supervisor's prejudice towards him can also be inferred from the circumstances surrounding the abolition of his post.

E. In its surrejoinder WHO maintains its position in full. It adds that the abolition of the complainant's post was necessary not only from a

cost-saving perspective, but also in light of the global restructuring process undertaken by WHO in recent years, including initiatives to outsource non-core functions such as architectural work due to funding constraints. It points out that the reassignment process does not represent a guarantee of placement and that the complainant has no right to be given reasons as to why posts other than the one he occupied were, or were not, abolished. WHO maintains that he has failed to prove his allegations of personal prejudice and submits that, while prejudice may be inferred from circumstances, it still requires specific factual support, rather than broad speculation that certain actions are improperly motivated.

CONSIDERATIONS

1. This complaint involves the abolition of the post held by the complainant under a fixed-term appointment and the subsequent termination of his appointment following a failed reassignment process. The complainant served as a Building Management Officer at WHO's Regional Office for Africa (AFRO).

2. On 1 January 2004 the complainant's temporary appointment was converted to a fixed-term appointment with an expiry date of 31 December 2007. In October 2007, he was verbally informed that his post would be abolished. In January 2008, the complainant accepted the offer to extend his appointment to the end of June 2008 "with reserve[,] with the understanding that alternative employment [should] be sought by AFRO before this deadline as indicated by AFRO hierarchy (late 2007)". A Personnel Action form dated 16 January 2008 received by the complainant in early February indicates that there was an interim extension of his fixed-term appointment to 31 March 2008.

3. On 19 April 2008 the Regional Personnel Officer informed the complainant of the decision to abolish his post "due to unavailability of funds […] with immediate effect". The Regional Personnel Officer added that the abolition of the post did not

automatically mean the "termination of [the complainant's] continuing appointment" and that all efforts were being taken to identify an alternative post through a formal reassignment process coordinated by a reassignment committee. During the following months, the complainant heard nothing further regarding the reassignment process.

4. On 10 June 2008 the Global Reassignment Committee (GRC) received information regarding the abolition of a number of posts including that of the complainant. For reasons not material to this discussion, the complainant's six-month reassignment period was extended to 20 January 2009. On 19 January 2009, the GRC reported to the Director-General that it was unable to make a recommendation for the complainant's reassignment.

5. By a letter of 19 February 2009 the complainant was advised that as a reassignment had not been found, his appointment would terminate three months from the date of his acknowledgement of receipt of the letter. The complainant's appointment terminated on 20 May 2009.

6. The complainant filed his Notice of Intention to Appeal with the Regional Board of Appeal (RBA) on 1 April 2009 against the final decisions to abolish his post and to separate him from service, which were notified to the complainant by memorandum from the Regional Personnel Officer dated 19 February 2009. On 3 November 2009 the Regional Director dismissed the appeal. On 16 December 2009 the complainant filed a revised notice of appeal with the HBA challenging the Regional Director's decision.

7. On 15 August 2011 the Director-General accepted the HBA's recommendations and rejected the appeal in its entirety.

8. The first issue arises from the Director-General's determination that the appeal against the decision to abolish the complainant's post was irreceivable because it had not been brought

within the 60-day time limit prescribed in Staff Rule 1230.8.3. The complainant disputes this finding for two reasons.

9. First, the complainant acknowledges that an appeal from a final decision must be brought within 60 days of the notification of the decision to the staff member. However, he submits that in addition to the requirements found in Staff Rule 1230.8.1 regarding when a decision will be considered as final, the Tribunal in Judgment 3041 under 8, added that the decision to abolish a post must also be communicated to the staff member occupying the post "in a manner that safeguards that individual's rights".

10. The complainant submits that the letter of 19 April 2008 did not indicate that the abolition of his post was a final decision and that it could be appealed. As well, inadequate reasons were given for the abolition of the post. The complainant claims that, in fact, a final decision had not been taken at that time. He points out that he remained in the same post for another year and the Regional Director did not approve the request to abolish the post until 7 June 2008.

11. Second, the complainant contends that he is entitled to challenge the abolition of his post in the context of the decision to terminate his contract as the abolition of the post was the primary cause of the termination.

12. Staff Rule 1230.8.1 limits internal appeals to actions that have become final. It provides that an action is considered to be final "when it has been taken by a duly authorized official and the staff member has received written notification of the action". The complainant's assertion that at the time he received the letter of 19 April 2008, a final decision to abolish his post had not been taken is rejected.

13. In a memorandum of 17 March 2008, the Division of Administration and Finance informed the Regional Personnel Officer

that the Regional Director had decided to abolish a number of posts including the complainant's post. The memorandum directed that all necessary administrative actions be taken immediately including informing the concerned staff members. It is also observed that the letter of 19 April advised the complainant that in accordance with the Staff Regulations and Staff Rules and paragraphs 250-350 of Section 9 of Part II of the WHO Manual then in force, efforts would be made to reassign him through the formal reassignment process. According to the version of Manual, paragraph II.9.250 then in force, the reassignment process is initiated when a post is abolished and a staff member has received official notification of the Regional Director's decision to abolish the post. Therefore, the initiation of the reassignment process further confirms the finality of the decision.

14. As to the adequacy of the notification to the complainant of the decision to abolish his post in Judgment 3041, under 8, the Tribunal held that an organisation must give proper notice of the decision, reasons for the decision and an opportunity to contest the decision. While it is true that the letter did not expressly state that the decision was a final decision, it clearly communicated that a final decision had been taken to abolish the complainant's post with immediate effect. The fact that the complainant remained in the post during the reassignment process is a matter of the implementation of the decision and does not detract from the finality of the decision.

15. Regarding the reason given for the decision, in Judgment 2124, under 4, the Tribunal explained that reasons in support of adverse administrative decisions are necessary so that the affected staff member knows the reason for the decision and can assess whether it should be challenged. The letter of 19 April 2008 stated that the abolition of the post was "due to unavailability of funds". This clearly conveyed that the post was being abolished for budgetary reasons leaving it open to the complainant to challenge the reason for the decision.

16. As the decision to abolish the complainant's post was a final decision within the meaning of Staff Rule 1230.8.1 and an appeal was not brought within the statutory time limit, the complaint in relation to this decision is irreceivable.

17. The next issue arises from the complainant's assertion that the non-disclosure of the document abolishing his post, including the reasons for that decision and the report of the GRC, constitutes a violation of his due process rights. In light of the above conclusion that the decision to abolish the post is irreceivable, a consideration of whether the non-disclosure of the document in relation to that decision constitutes a violation of the complainant's due process rights is unnecessary.

18. On the question of the non-disclosure of the GRC's report, the Director-General disagreed with the HBA's recommendation that the report should be disclosed to the complainant. She reasoned that the reassignment process must be kept confidential so that members of the committee can discuss the suitability of possible reassignments independently and freely. She concluded that the GRC's advice is for the Administration's use only and is privileged.

19. WHO submits that due to the GRC's role, it is essential that its members are able to openly and candidly discuss the merits of the individual staff members whose cases they handle. As such, the status of the GRC's records is akin to those of selection committees. WHO notes that in the context of selection committees, the Tribunal has held that a complainant is not entitled to consult records that may have been made of discussions by a selection committee because the members of such committees would not feel free to discuss the merits of the individual candidates in the future.

20. WHO also points out that in Judgment 2933, under 24, the Tribunal considered a similar request for access to the GRC's files

and found that WHO correctly refused the request. WHO notes that the GRC report was provided to the RBA and the HBA and that it will be made available to the Tribunal upon request. As well, both the RBA and the HBA concluded that the Administration had fulfilled its responsibilities to the complainant. Lastly, WHO maintains that the detailed summary of the GRC's report in the HBA's report should be sufficient for the complainant to be aware of its contents.

21. As the Tribunal observed in Judgment 3264, also delivered this day:

> "It is well established in the Tribunal's case law that a "staff member must, as a general rule, have access to all evidence on which the authority bases (or intends to base) its decision against him". Additionally, "[u]nder normal circumstances, such evidence cannot be withheld on grounds of confidentiality [citation omitted]" (Judgment 2700, under 6). It also follows that a decision cannot be based on a material document that has been withheld from the concerned staff member (see for example, Judgment 2899, under 23)."

22. As to the Director-General's finding that the document was privileged, at the material time, WHO Manual paragraph II.4.230.1 provided that privileged material "includes papers concerned with pre-recruitment references, reports of pre-employment interviews, references sought by outside potential employers and confidential communications from governments; it is classified 'privileged' as it is received or originated by the Organization under terms of confidentiality". It is clear that the GRC report does not fall within any of these categories of materials. The question remains whether it is a confidential document that should not be disclosed as WHO asserts.

23. In Judgment 2315, under 29, the Tribunal held that the need for a personnel advisory panel to be free to discuss relevant matters is not an acceptable basis for a claim of confidentiality "[i]n a decision-making process which is subject to internal review and the jurisdiction of this Tribunal […]". This is equally applicable to a reassignment process that is also subject to internal review and the jurisdiction of the Tribunal. If there are aspects of the report pertaining to

confidential third party information, the report can be redacted to exclude this information.

24. With respect to WHO's argument that the GRC's report should be treated in the same manner as the records of a selection committee, it is observed that while the Tribunal has previously affirmed the confidentiality of the records of discussions of a selection committee, it has not affirmed the confidentiality of the report of a selection committee. The GRC's report is not analogous to the records of the discussions of a selection committee that occur prior to the issuance of its final report. It is analogous to a selection committee's final report that may be disclosed to the concerned staff member with redactions to ensure the confidentiality of third parties.

25. WHO's assertion that the HBA report sufficiently summarises the work of the GRC for the complainant fails to address the complainant's right to challenge the report's findings in a timely manner at both of the internal appeals.

26. The non-disclosure of the GRC report to the complainant has another consequence. It is not disputed that the Staff Rules in relation to the reassignment process on the abolition of a post applied to the complainant. At the material time, Staff Rule 1050.2 provided that "reasonable efforts shall be made to reassign the staff member occupying [the abolished post]". In summary, the complainant claims that WHO has not produced evidence that it made efforts to find a suitable post for him. Despite being entitled to participate in the reassignment process, the complainant had no meaningful opportunity to participate because the GRC did not communicate with him at any time during the reassignment period. He claims that in violation of the version of Staff Rule 1050.2.7 then in force, he was not given preference for three posts to which he applied. The selection processes for the three posts to which he applied were not suspended as required by the version of Manual paragraph II.9.315 in force at the material time; he received no response to his 23 March 2009 request for information regarding the steps that had been taken to reassign

him, and WHO failed to provide or recommend him for training in violation of the version of Staff Rule 1050.2.5 then in force.

27. As WHO points out there is no obligation to keep a staff member informed of the steps being taken to find her or him a suitable new post. In fact, the letter of 19 April 2008 only indicates that the complainant would be informed in due course if no decision was taken regarding his reassignment. However, an organisation does have a duty to treat its staff members with dignity and respect. Between April 2008 and 19 February 2009 when the complainant was told that the reassignment process had failed, there was no communication from the Administration to the complainant. In particular, the Administration did not inform the complainant of the extension to the reassignment period. Also, there was no response to the complainant's memorandum of 23 March 2009 to the Regional Personnel Officer requesting information concerning the steps that had been taken to reassign him. At a minimum, as the extension of the reassignment period had a direct impact on the complainant's rights under Staff Rule 1050, the complainant should have been told about the extension of the period. Additionally, a timely response to his letter should have been given so that he could assess whether reasonable steps had been taken to reassign him as contemplated in the Staff Rules. In these circumstances, the absence of any communication reflects a failure on the part of the Administration to treat the complainant with dignity and respect.

28. With regard to being given preference, at the material time, Staff Rule 1050.2.7 provided that staff members whose posts would be abolished must receive "due preference" for posts for which they are qualified during the reassignment period. It is noted that only one of the applications was made during the reassignment period, the SEARO Administrative Officer position at grade P-4. However, the complainant has not shown that he was in fact qualified for that position. One of the post requirements was a "degree in public or business administration, economics, social development, allied health

sciences or other relevant degrees". The complainant's degrees are in architecture, town and regional planning and urban renewal and renovation. With respect to the other vacant posts the complainant identified in May 2009, leaving aside the question of qualifications, this was after the close of the reassignment period and there was no obligation to give preference to the complainant.

29. Regarding WHO's alleged failure to suspend the selection procedures as required under the version of Manual paragraph II.9.315 then in force, in Judgment 2933, under 20, the Tribunal held that this was not a compulsory provision. Similarly, in the same judgment under 21, the Tribunal held that the provision of further training pursuant to the version of Staff Rule 1050.2.5 then in force was a discretionary option available to the GRC.

30. However, with respect to the reassignment process itself, as part of its obligation to make reasonable efforts to find a suitable post for the complainant, WHO ought to have enquired whether the complainant was willing to accept a post at a lower grade than the one he held (see Judgment 2830, under 9).

31. The complainant also alleges undue delay in the internal appeals process. He claims that the time taken for the HBA to formulate its opinion, one year after the Administration filed its surrejoinder, and the overall time taken for the appeals process, over three years after the termination of his appointment, demonstrates an inexplicable delay, requiring an award of exemplary damages.

32. WHO contends that the period of seven months for the completion of the RBA process was reasonable and that the delays in the HBA process were objectively justified. WHO notes that following the HBA's meeting in mid-February 2011 and the finalisation of its report in mid-July 2011, the HBA's Executive Secretary and Assistant were on extended sick leave that delayed the finalisation of the HBA's report.

33. The Tribunal notes that in mid-March 2010, immediately after the complainant filed his statement of appeal with the HBA, the HBA asked the Administration to provide its complete documentation in relation to the appeal. Although WHO's surrejoinder was filed in mid-July 2010, the Administration did not provide all of the requested information until early November 2010. No explanation has been provided for the failure to submit the requested documentation in a timely manner and at least by the date on which WHO filed its surrejoinder. This failure had a cascade effect of unduly delaying the completion of the HBA proceeding.

34. The complainant also claims that oral proceedings are necessary to provide a deeper understanding and appreciation of the details regarding the process that violated the norms of the international civil service. The parties' submissions and the evidence they adduced are sufficient to permit the Tribunal to reach an informed decision. Accordingly, the application for oral proceedings is rejected.

35. In conclusion, as the Director-General's decision of 15 August 2011 confirming the termination of the complainant's appointment was based on relevant evidence not disclosed to the complainant as was the Regional Director's earlier decision of 3 November 2009, they must be set aside, the latter to the extent that it relates to the complainant's separation from service. In view of the passage of time, reinstatement is not a viable option. However, the complainant is entitled to an award of damages for the flawed internal appeals process, the failure to treat the complainant with dignity and respect and the delay in the internal appeals process in the amount of 30,000 United States dollars and costs in the amount of 6,000 dollars.

DECISION

For the above reasons,

1. The Director-General's decision of 15 August 2011, and the Regional Director's decision of 3 November 2009 to the extent that it relates to the complainant's separation from service, are set aside.

2. WHO shall pay the complainant damages in the amount of 30,000 United States dollars.

3. It shall also pay him costs in the amount of 6,000 dollars.

4. All other claims are dismissed.

In witness of this judgment, adopted on 1 November 2013, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 5 February 2014.

Giuseppe Barbagallo
Dolores M. Hansen
Michael F. Moore
Catherine Comtet