

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

N. (No. 3)

v.

WHO

135th Session

Judgment No. 4599

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Ms S. C. N. against the World Health Organization (WHO) on 9 September 2019 and corrected on 11 October 2019, WHO's reply of 4 February 2020, the complainant's rejoinder of 12 May 2020 and WHO's surrejoinder of 14 August 2020;

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 may be summed up as follows:

The complainant challenges the decisions to abolish her post, reassign her, terminate her contract including the decision to defer the date of her termination, and to reject her claims of retaliation.

Facts relevant to this case may be found in Judgments 4240 and 4241, delivered in public on 10 February 2020, on the complainant's first and second complaints. In 2004, the complainant joined the United Nations Joint Programme on HIV/AIDS (UNAIDS), a joint and co-sponsored United Nations programme on HIV/AIDS administered by WHO. At the material time she worked in Geneva, Switzerland.

Abolition of post and reassignment

In the context of a wide restructuring, the complainant was notified on 3 November 2016 that her D.1 post of Senior Advisor on Innovative Strategic Information was abolished and that she was eligible to participate in the reassignment process. If no reassignment decision was made or if she should refuse a proposed reassignment, her appointment would be terminated in accordance with Staff Rule 1050.8.

Later that month, she applied to participate in the reassignment process and submitted the requested form. She identified five P.5 positions in the compendium of vacant positions for which she considered she met the essential requirements. These positions were all in Geneva and were her preferred ones because she was “constrained to staying in Switzerland as [her] family ha[d] applied for Swiss naturalization”. She added that her husband had invested a lot of time establishing a “Swiss Association” and that “his work [was] just taking off”, and that he had to be able to fly directly to Canada in case of emergency to take care of his father who had a serious health condition. In addition, her daughter would have to complete her school year in Switzerland. She was informed in December 2016 that she was reassigned to the D.1 post of Senior Advisor on Fast Track Innovation, in South Africa, and that the standard duration of assignment for that duty station was 4 years. Late January 2017, the complainant’s lawyer informed the Administration that she refused the reassignment. After having been informed that her reassignment date was 30 June 2017, she wrote herself to the Administration mid-February 2017, confirming her refusal to be reassigned as indicated earlier by her lawyer. She requested a review of the decisions to abolish her post and to reassign her, which was denied on 10 April 2017. She filed an appeal against that decision with the WHO Global Board of Appeal (GBA), which was registered as GBA case No. 14.

Retaliation and initial termination

In September 2016 the complainant wrote to the Office of the Internal Oversight Services (IOS) requesting protection from retaliation as she had filed, in January 2016, an internal harassment complaint against her supervisor, the Deputy Executive Director, Management

and Governance (DXD/MER). Pursuant to IOS advice, on 31 January 2017, she filed a request for protection against retaliation with the Senior Ethics Officer. As she claimed retaliation against the Senior Ethics Officer's direct supervisor, she alleged a possible conflict of interest on the part of the Senior Ethics Officer, which he denied. On 19 April 2017 the latter informed the complainant that her request for protection had been rejected by the Executive Director on the basis of his report.

In the meantime, on 20 March 2017, the complainant was notified that her appointment was terminated effective 30 June 2017 as she had refused the proposed reassignment. The following day, on 21 March 2017, she was placed on certified sick leave. In May 2017 she requested a review of the decision to reject her request for protection against retaliation of 19 April 2017 and of the decision to terminate her appointment. Her request was denied by a decision of 13 July 2017, which she appealed on 13 October 2017. This second appeal was registered as GBA case No. 23.

Extension of the date of termination

Early May 2017, the complainant asked that her "projected separation date" be extended beyond 30 June 2017 as she was on extended sick leave. Her request was granted and the termination date was postponed to 21 July 2017. On 19 July 2017 she was medically cleared to return to work full time as of 24 July 2017. On 20 July 2017 she was informed that her appointment was extended until 24 July 2017, which is the date on which she actually separated from service. In September she filed a request for review against the termination decision of 20 July 2017, which was rejected. She was nevertheless awarded 1,500 United States dollars in compensation in lieu of an adjustment in the effective date of separation, legal fees and "damages". Indeed, it was noted that 25 July 2017 may have been a more appropriate date of termination in light of Staff Rule 1090.2 and the fact that her place of residence was in Canada. She filed an appeal against that decision, which was registered as GBA case No. 54.

The GBA joined the three appeals and issued a single report on 12 April 2019. It concluded that the decision to abolish the complainant's post was taken in accordance with the regulatory framework and based on objective grounds, noting in particular that it was substantiated with objective programmatic and budgetary justifications, and that there was a clear link between the aims of the restructuring and the proposed measures, which included the abolition of several posts. The GBA did not find any flaws or evidence of bad faith or personal prejudice. Regarding the reassignment process, the GBA considered that the organization undertook all reasonable efforts to reassign the complainant after her post was abolished. The number of staff whose posts were abolished exceeded the number of available posts, and she was offered a position matching her skills, experience and grade albeit in a location which she did not wish to move to for personal reasons. UNAIDS Executive Director had provided objective grounds to reassign her to the D.1 position in South Africa and not to follow the recommendation of the Mobility and Reassignment Committee (MRC) to assign her to a P.5 position in Switzerland. His decision was reasonable and took into consideration the best interests of the organization and the complainant. The GBA also considered that there was no evidence that the reassignment was made in retaliation for the complainant having filed a harassment complaint. On the date of the termination of the complainant's appointment, the GBA was satisfied that the Director of the Staff Health and Wellbeing Services had sufficient objective evidence to conclude that the complainant was capable of performing her duties as of 24 July 2017. Indeed, the Director had referred her to an external physician to obtain information on her health condition and her ability to perform her duties, and de facto confirm or not that she was unable to perform her duties until 21 August 2017 as indicated on the medical certificate she had provided. Lastly, the GBA found no evidence of a conflict of interest on the part of the Executive Director.

By a decision of 11 June 2019, the Executive Director *ad interim* notified the complainant that the contested decisions were taken in accordance with the regulatory framework and that she endorsed the GBA's finding that there was no evidence that the contested decisions were tainted by bad faith, bias or prejudice towards her, that essential facts

were overlooked, or that there was a mistake of fact or law. Consequently, her appeals were dismissed. That is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision. She also asks to be reinstated with full retroactive effect, to a D.1 post commensurate with her training, skills and experience or, in the alternative, that she be awarded material damages in an amount equivalent to all salary, pension, health insurance contributions, benefits, step increases, entitlements and other emoluments that she would have been paid from the date of her irregular separation (24 July 2017) through the end date of her contract, 31 July 2018, and that she be reimbursed the health insurance contributions she had to pay as an emergency measure for the six months following her abrupt termination. She seeks an award of “consequential, moral and exemplary damages” in an amount of not less than 1,241,000 United States dollars for the irregular and offensive treatment she suffered, for the wrongful separation and the reduction of her career prospects as well as with respect to retaliation. She claims costs and an award of interest on all amounts that she will be granted at the rate of 5 per cent per annum from 24 July 2017 through the date the remedies awarded by the Tribunal are implemented in full. Lastly, she seeks such other relief as the Tribunal deems necessary, just and fair.

WHO asks the Tribunal to dismiss the complaint as irreceivable insofar as the complainant makes allegations in relation to her earlier reassignment effective 1 February 2016, to the decision to dismiss her harassment complaint, to claims for recognition of medical leave as service-incurred, and to claims relating to a work-related illness. These allegations relate to issues that exceed the scope of the impugned decision, are “duplicitous”, are irrelevant, are *res judicata*, are time-barred and/or relate to proceedings in which internal means of redress were not exhausted at the time of filing the complaint. The complaint should otherwise be rejected as devoid of merit. WHO is opposed to her reinstatement, and states that she has provided no valid reasons to be granted costs. But, if costs are granted it requests that they should be conditional upon “the receipt of invoices, proof of payment, and upon the claimant not being eligible for reimbursement from other sources”.

CONSIDERATIONS

1. The complainant challenges the impugned decision, dated 11 June 2019, in which the Executive Director *ad interim* endorsed the GBA's conclusions concerning the decisions which the complainant had contested in her underlying internal appeals, as well as the GBA's recommendation to dismiss her appeals.

2. In her appeals to the GBA, the complainant had centrally contested the decision to abolish the post of Senior Advisor on Innovative Strategic Information, which she held at the material time having been reassigned to it as of 1 February 2016 (her first reassignment). She was informed of that decision on 3 November 2016. She alleged that the decision was taken in bad faith and that the process leading to it was unfair and tainted by personal prejudice and bias. She had also contested the decision to reassign her to a position of Senior Advisor, Fast Track Innovation, in South Africa. She was informed of it on 22 December 2016 but she declined to accept it for family reasons leading to the termination of her employment. She alleged that the reassignment process was tainted with irregularities and unfairness and was tainted by conflict of interest and prejudice against her on the part of DXD/MER, whom she alleged took the decision in retaliation because she had filed a harassment complaint against her. As well, the complainant had contested the decision to terminate her appointment, which culminated in her separation from UNAIDS with effect from 24 July 2017. She alleged that that decision was unlawful and was taken out of ill-will and personal prejudice against her.

3. The GBA concluded that the repositioning exercise complied with the procedures set out in HRM/IN 2016-9bis on the 2016 Revised Repositioning and that the decision to abolish the complainant's post of Senior Advisor on Innovative Strategic Information was taken in accordance with the applicable regulatory framework. It found no flaws or evidence of personal prejudice or bad faith. Regarding the decision to reassign the complainant to the position in South Africa, the GBA centrally concluded that it was taken in accordance with the applicable

regulatory framework and was not tainted by conflict of interest, personal prejudice, bad faith or as a retaliatory measure on the part of DXD/MER. The GBA further concluded that the decision to terminate the complainant's appointment did not violate the applicable regulatory framework. It also concluded that the decision to terminate her appointment with effect from 24 July 2017 was lawful and was not taken in breach of UNAIDS's duty of care towards the complainant.

4. As a precursor to determining the merits of this complaint, two procedural matters will be considered. The first concerns UNAIDS's submission that all allegations in relation to three aspects of the complaint are irreceivable as they exceed the scope of the case, are "duplicitous", irrelevant, *res judicata*, time-barred and/or relate to proceedings in which internal means of redress were not exhausted at the time of filing the complaint. The irreceivable aspects, according to UNAIDS, relate to the decision concerning the complainant's first reassignment (the subject of Judgment 4240); the decision to dismiss her harassment complaint (the subject of Judgment 4241); allegations relating to claims for recognition of medical leave as service-incurred (the subject of her fourth complaint), and claims relating to work-related illness. The complainant however states that she is not contesting matters related to her first reassignment, her harassment complaint or her "service-incurred illness" for which she has initiated separate procedures. She merely mentions them to provide the Tribunal with the overall context of her employment situation at the time her post was abolished and she was reassigned to South Africa, and, ultimately, her contract was terminated. It is relatively clear that the allegations insofar as they may concern those other matters are intended to establish aspects of the unlawfulness of the decision to abolish the complainant's position, to reassign her to the position in South Africa and to terminate her appointment and the complainant's claims are cast no wider. It is open to her to follow this course (see, for example, Judgments 4241, under 7, and 4149, under 7).

5. In the second place, the complainant filled in the box signifying a request for an oral hearing pursuant to Article 12, paragraph 1, of the Tribunal's Rules. The Tribunal notes that the complainant named no witnesses and did not refer to an oral hearing in her pleadings. An oral hearing will not be ordered as the issues raised in the case before the Tribunal can be resolved having regard to the detailed pleas and the documentary evidence which the parties have provided.

6. The complainant disputes the lawfulness of the proceedings before the GBA. She argues, first, that the impugned decision should be set aside because the GBA failed to order UNAIDS to disclose some of the documents which she requested during the internal appeal process. The Tribunal's case law relevantly states, for example, in consideration 5 of Judgment 4023, that, as a general rule, a staff member must have access to all evidence on which the authority bases or intends to base its decision against her or him, and, under normal circumstances, such evidence cannot be withheld on grounds of confidentiality. It follows that a decision cannot be based on a material document that has unlawfully been withheld from the concerned staff member.

7. In her internal appeals, the complainant requested the GBA to order UNAIDS to disclose a number of documents. The GBA rejected the request on the basis that it was cast in general terms with no explanation as to the relevance of those documents to the appeal. The GBA eventually ordered UNAIDS to disclose information mirrored in the request for some of the documents. It requested UNAIDS to disclose information substantiating the reasons for the abolition of the complainant's post; information on the background of the creation of the position for her reassignment to South Africa; information on whether the position was included in the compendium for reassignment resulting from the repositioning exercise; and information as to why the complainant's position was abolished.

8. It is however clear that the complainant's request for documents was cast in such wide terms that the Tribunal must conclude that it was an impermissible "fishing expedition". Additionally, the complainant

did not explain the relevance of the documents to the case. Moreover, the Independent Expert Panel (IEP) report to which the complainant refers is irrelevant as it does not relate specifically to the complainant or to the decisions which she challenges. The GBA therefore correctly refused to order their disclosure. It follows that the complainant's argument that the impugned decision should be set aside, by reference to the case law stated in considerations 16 to 20 of Judgment 3586, on the basis that not ordering UNAIDS to disclose the requested documents led to the GBA's failure to consider all relevant facts concerning the challenged decisions, is unmeritorious.

9. The complainant argues that there was conflict of interest because the composition of the GBA was the same as the one that examined her previous appeal underlying her second complaint; hence, its members were influenced by their findings on that appeal, in particular the finding that her allegations of harassment were not supported by facts. However, the fact that some members of the GBA had sat in a prior appeal and arrived at conclusions adverse to the complainant did not prevent them from considering the appeal at issue in the instant case, as the complainant asserts. Her submission that, during the internal appeal proceedings, she was informed that a senior officer of the Human Resources Management (HRM) against whom she had made allegations of misconduct to IOS was involved in an exchange of emails with the GBA in March 2017 concerning the nature of the vacancy for the post to which she was reassigned, does not engage the case law regarding conflict of interest. Neither was there conflict of interest because, as the complainant argues, some of the job profiles advertised in the context of the reassignment process were signed by those whom the Tribunal has recognised as having harassed her. The claim concerning conflict of interest is therefore unfounded.

10. A convenient starting point in considering the claim that the abolition of the complainant's post was unlawful is to note Article 1.2 of WHO Staff Regulations – read in conjunction with the document entitled “Introduction to the Staff Regulations and Staff Rules for Staff Members of UNAIDS” – which provides that all staff members are

subject to the authority of the Executive Director. As well, Article 9.2 states that the Executive Director may terminate the employment of a staff member, *inter alia*, if the necessities of the service require the abolition of a post or the reduction of staff. It further relevantly states that a staff member's appointment may be terminated if she or he refuses or fails to take up a reasonable reassignment.

11. Additionally, the case law has it that a decision concerning the restructuring of an international organization, which leads to the abolition of a post, may be taken at the discretion of its executive head and is subject to review only on limited grounds by the Tribunal. The Tribunal will not supplant an organization's view with its own. Nevertheless, any decision to abolish a post must be based on objective grounds and its purpose may never be to remove a member of staff regarded as unwanted. Disguising such purposes as a restructuring measure would constitute abuse of authority (see, for example, Judgment 4353, under 6). It has also been stated that in order to achieve greater efficiency or to make budgetary savings international organizations may undertake restructuring entailing the redefinition of posts and staff reductions. However, each and every individual decision adopted in the context of such restructuring must respect all the pertinent legal rules, and, in particular the fundamental rights of the staff concerned (see, for example, Judgment 4353, under 7).

12. Following the decision to abolish a post, there must be proper institutional support mechanisms in place to assist the staff member concerned in finding a new assignment (see, for example, Judgment 4353, under 7).

13. The complainant's allegation that the decision to abolish her post was retaliatory and taken to get rid of her because of the proceedings she had initiated against DXD/MER and other staff members is speculative and accordingly unfounded. The complainant provides no persuasive evidence, even inferentially, of a causal link between the decision to abolish her post and the harassment procedures she had instituted. For similar reasons, her allegations that the decision to

abolish her post was tainted by prejudice against her, bias and malice are also unfounded.

14. The complainant contends that the GBA omitted to consider some facts and drew erroneous conclusions from others. She submits the GBA ignored her arguments that the post to which she was assigned in January 2016 was created specifically for her to reassign her away from a “toxic environment”. She further submits that the financial constraints given to justify the repositioning process, which resulted in her position being abolished, must have been known when her new post was created. She insists that either UNAIDS knew at the time that it did not have the funds to keep her in the post or it acted in bad faith in invoking financial constraints to justify abolishing her position. These submissions are unfounded.

15. According to the GBA’s conclusion, endorsed in the impugned decision, UNAIDS did embark upon the repositioning exercise in 2016 to address serious financial constraints which it then experienced. The GBA concluded, in effect, that the exercise was justifiable based on the need to enhance the effectiveness of UNAIDS programmes in regions of the world most affected by the spread of AIDS, including Africa. The Tribunal sees no objective reason why the creation of the complainant’s post in January 2016 should have excluded it from the consequences of the repositioning exercise. UNAIDS staff were first informed on 24 March 2016 that the Executive Director had initiated a restructuring exercise to reposition the organization to deliver targets set by the UNAIDS 2016-2021 strategy. Subsequently, beginning in April 2016, staff members were regularly updated by written communications and in town hall meetings on the status of the restructuring, including by the Executive Director in an all-staff email of 31 August 2016 and communication at a town hall meeting on 28 September 2016. The complainant’s email of 4 October 2016 to the Chair of UNAIDS’s Secretariat Staff Association, following a town hall meeting, raising questions about the possible consequences of the exercise on her position, shows that she was aware of the consequences that exercise may have had. On 3 November 2016, the Director, HRM, notified the complainant that her position was

abolished as a consequence of the exercise providing the reasons therefor in terms that satisfy the Tribunal's case law for reasons to be given for a decision to abolish a post.

16. The complainant's argument that the Administration's failure to consult her, as a D.1 official, on the abolition of her post or any posts in her Branch shows evidence of malice and bad faith is unfounded. Neither malice or bad faith is proved on the evidence which she provides. Moreover, her argument, in effect, that the GBA should have taken into consideration information about the lack of objective justification for abolishing several posts does not further advance her case. The complainant's argument that the abolition decisions were not subjected to any fair, documented or transparent process, for example, because no committee review was established in breach of eManual III.10.11, paragraph 50, is unfounded as the provision does not require that such a committee review be established.

17. In addition to notifying the complainant of the Executive Director's decision to abolish her position, in keeping with the requirement of Staff Rule 1050.6, the Director, HRM's 3 November 2016 letter, also informed her that she was eligible to participate in the consequent reassignment process in which reasonable efforts would be made to appoint her to a vacant position for a reassignment period of up to six months from the date she received that letter. The letter also provided basic information concerning the reassignment process to be administered by the MRC serving in accordance with Staff Rule 1050.5 and HRM/IN 2013-10. In the Tribunal's view, in the circumstances of this case, the GBA correctly concluded that the decision to abolish the position which the complainant held was taken in accordance with the regulatory framework, was based on objective grounds and was not tainted by bad faith or personal prejudice. Accordingly, in the impugned decision, the Executive Secretary did not err by accepting the GBA's conclusion and recommendation on this ground.

18. The complainant contends that the termination of her appointment with effect from 24 July 2017 was unlawful because of a flawed reassignment process and because it was terminated while she was on sick leave. The last-mentioned contention is unfounded, as the Executive Secretary, accepting the GBA's conclusion, correctly determined in the impugned decision. The notice of termination of the complainant's appointment is dated 20 March 2017. The Staff Physician informed the Director, HRM, that the complainant was medically cleared to return to work effective 24 July 2017 and the latter thereupon informed the complainant that her appointment would terminate on that date. This decision did not violate one of the excepting provisions in eManual III.10.5.10 which provides that if a Staff Physician determines that a staff member is incapable of performing her or his duties on a scheduled date of separation the appointment is extended for the duration of the illness. Moreover, there is no rule or principle which prohibited UNAIDS from notifying the complainant of the date of termination of her appointment while she was on sick leave.

19. Regarding the reassignment of staff, the Tribunal has recognized the wide discretion of an executive head of an international organization to reassign staff in the interest of the organization. The discretion is enshrined in Article 1.2 of the Staff Regulations which states that all staff members are subject to the authority of the executive head of the organization and to assignment by her or him to any of the activities or offices of the organization. The Tribunal has therefore stated that it may interfere with a decision to reassign a staff member only on the limited grounds that the decision was taken *ultra vires* or shows a formal or procedural flaw or mistake of fact or law, if some material fact was overlooked, if there was misuse of authority or an obviously wrong inference was drawn from the evidence. The Tribunal has however emphasised that the organization must show due regard, in both form and substance, for the dignity of the official concerned, particularly by providing her or him with work of the same level of responsibilities as she or he performed in the previous post and matching her or his qualifications (Judgment 4240, under 5).

Additionally, Staff Rule 1050.4 states that the paramount consideration for reassignment shall be the necessity of securing the highest standards of efficiency, competence and integrity with due regard given to the performance, qualifications and experience of the staff member concerned and that the Executive Director may establish priorities for reassigning staff members. Staff Rule 1050.5.2 states that staff members shall be given due preference for vacancies during the reassignment period, within the context of Staff Rule 1050.4. Staff Rule 1050.5.3 states that staff members may be reassigned to vacant posts at the same grade as the post to be abolished, or one grade lower. Under Staff Rule 1050.6, the reassignment period will end within six months from its commencement. Staff Rule 1050.9 states that termination under this Rule shall require giving at least three months' notice to a staff member holding a fixed-term appointment.

20. The GBA, whose reasoning and conclusions the Executive Director endorsed in the impugned decision, correctly rejected the complainant's argument that there were procedural or substantive flaws in the reassignment process because the job profiles in the compendium were updated between 4 and 18 November 2016. The GBA observed that the South African position to which the complainant was reassigned was published in the compendium as of 4 November 2016 with the corresponding job profile. The GBA noted that the complainant provided evidence of change in only one profile during the period prior to her application for reassignment on 25 November 2016. It correctly concluded, contrary to the complainant's contention, that the change in the title of the authorized official in the job profile did not amount to a violation of due process.

21. The GBA concluded that the Executive Director provided objective grounds for his decision aiming to reassign the complainant to the position in South Africa that served the best interest of UNAIDS. The GBA further stated that notwithstanding that the MRC recommended that she be reassigned to the P.5 position in Geneva retaining her personal D.1 grade, given her experience and qualifications in innovation strategies, the decision to reassign her to the South African position,

retaining her D.1 grade, satisfied UNAIDS obligation to make reasonable efforts to reassign the complainant pursuant to Article 9.2 of the Staff Regulations. The GBA also stated that the available positions to which the complainant could have been reassigned which were not filled by other staff members participating in the 2016 repositioning exercise were limited. However, the GBA's ultimate conclusion that the complainant's reassignment to the South African position as a reasonable reassignment "bearing in mind the mandatory nature of the Mobility Policy, HRM/IN, 2014-4" was wrong.

22. As the complainant's reassignment resulted from the abolition of her position in the 2016 repositioning exercise, she was subject to be reassigned pursuant to HRM/IN 2016-8 and not under the mandatory Mobility Policy. This is borne out in the Executive Directive, issued on 2 November 2016, in which the Executive Director informed staff members whose positions had been abolished in the repositioning exercise that they would have had preference "over equally qualified candidates participating in Mobility and those exceptionally authorized to apply for positions in the compendium". The Director, HRM's letter of 30 January 2015 to the complainant merely informed her of the Executive Director's decision to modify her post "to rotational subject to the Executive Director's discretion on timing". There was no subsequent decision that subjected the complainant to the Mobility Policy. It was therefore in error that the GBA, in effect, viewed the complainant's reassignment as being under the mandatory Mobility Policy and for the Executive Director to endorse it in the impugned decision. Accordingly, the reassignment process was flawed and the complainant's failure to accept the appointment in South Africa arising from that flawed process could not have justified the termination of her appointment. The impugned decision will be set aside to the extent that it accepted the GBA's conclusions that the reassignment process and the decision to terminate the complainant's appointment were lawful.

23. The flaw in the reassignment process caused the complainant to lose the opportunity to secure another position within UNAIDS. Her appointment was unlawfully terminated on 24 July 2017 as a consequence

of the flawed reassignment process when her subsisting contract was due to expire on 31 July 2018. Given the circumstances and the effluxion of time, it is inappropriate to make an order reinstating the complainant. However, as the complainant lost a valuable opportunity to secure another position within UNAIDS and to maintain ongoing employment, she is entitled to material damages, which the Tribunal assesses in the sum of 80,000 United States dollars.

24. The Tribunal accepts the complainant's claim for moral damages which she seeks for the stress, distress, physical exhaustion, humiliation, the adverse effects the unlawful decision regarding her reassignment and the termination of her employment had on her career. For these she will be awarded moral damages in the amount of 20,000 United States dollars. She will also be awarded 8,000 Swiss francs in costs. However, as the complainant provides no evidence that the unlawful decisions were based on malice, ill-will, discrimination or prejudice towards her or retaliation against her, her claim for exemplary damages is rejected (see, for example, Judgment 4240, under 8).

DECISION

For the above reasons,

1. The impugned decision is set aside to the extent stated in consideration 22 of this judgment.
2. WHO shall pay the complainant material damages in accordance with consideration 23 of this judgment.
3. WHO shall also pay the complainant moral damages in accordance with consideration 24 of this judgment.
4. It shall also pay the complainant 8,000 Swiss francs in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 24 October 2022, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 1 February 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

DRAŽEN PETROVIĆ