

107th Session

Judgment No. 2848

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A. D'A. against the United Nations Industrial Development Organization (UNIDO) on 4 February 2008 and corrected on 2 April, the Organization's reply of 11 July, the complainant's rejoinder of 11 September and UNIDO's surrejoinder of 22 December 2008;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant is an Italian national born in 1948. He joined UNIDO in November 1996 under a two-year fixed-term appointment at level D-2 as Managing Director of the Industrial Sectors and Environment Division, which was subsequently renamed the Sectoral Support and Environmental Sustainability Division. His appointment was extended twice and was due to expire on 30 April 2002.

Director-General's bulletin UNIDO/DGB/(O).86/Add.9 of 15 February 2002 announced the restructuring of the Organization's

Secretariat into three major divisions, the Programme Development and Technical Cooperation Division (PTC), the Programme Coordination and Field Operations Division (PCF) and the Division of Administration (ADM), each to be led by a Managing Director at the D-2 level. It provided inter alia that the new structure would become effective on 1 March 2002 and that the positions of Managing Directors would be filled on the basis of open competition. Director-General's bulletin UNIDO/DGB/(O).86/Add.10 of 28 February 2002 outlined the modalities for the selection of Managing Directors for the newly established divisions and designated the complainant Officer-in-Charge ad interim of ADM. Accordingly, on 2 April 2002 the complainant was offered a fixed-term appointment for the period from 1 May to 31 December 2002, which he accepted. He subsequently applied for the position of Managing Director of PTC, but his application was unsuccessful.

The Director-General met with the complainant on 31 July and 1 August 2002. The parties give different accounts of these meetings. It is common ground that, after having informed the complainant of the outcome of the selection process for the position of Managing Director of PTC, the Director-General offered him the position of Chief of Cabinet and Director of his Office (ODG) at level D-2.

In a letter of 1 August 2002 the Director-General informed the Permanent Representative of Italy to UNIDO that the complainant was not in a position to accept the offer of the Chief of Cabinet and Director of ODG position, but that he might be a suitable candidate for the position of Managing Director of the International Centre for Science and High Technology (ICS) in Trieste, Italy. The Permanent Representative replied in an undated letter acknowledging receipt of the Director-General's letter, confirming the complainant's "unwillingness" to accept the above-mentioned position and expressing the view that the complainant could present his candidature for the post of Managing Director of ICS. On 2 August the position of Director of ODG was offered to another candidate, who accepted it on 12 August. In the meantime, Director-General's bulletin UNIDO/DGB/(O).86/Add.11 of 5 August 2002 announced the names

of the successful candidates for the positions of Managing Directors of PTC, PCF and ADM.

In a letter of 21 August 2002 the complainant asked the Director-General to review his decision on the appointment of the three new Managing Directors. Referring to their meeting on 1 August, he expressed his appreciation for the Director-General's willingness to "solve [the] problem by appointing [him] as Managing Director of ICS" with effect from 1 January 2003. The Director-General replied on 27 August that he maintained his decision on the appointment of the new Managing Directors. He indicated that the complainant had declined his offer of the position of Chief of Cabinet and Director of ODG and drew his attention to the fact that the Managing Director of ICS, who would be appointed on the basis of a list of candidates submitted by a Steering Committee, should enjoy his full confidence. With effect from 1 September 2002, when the new Managing Directors took up their functions, the complainant was reassigned to the position of Special Adviser in ODG.

By a letter to the Director-General dated 19 September 2002, the complainant explained that his preference for the position of Managing Director of ICS was due to the fact that it was at the rank of Assistant Director-General and entailed responsibilities of a technical nature in line with his background. He stated that he accepted his offer, noting that a misunderstanding might have led the Director-General to believe that he had turned it down. On 23 September the Director-General replied that, as more than seven weeks had passed since the complainant had declined the position of Chief of Cabinet and Director of ODG, he had made "alternative arrangements to cover that function". After a further meeting with the Director-General on 14 October, which was also attended by the President of the Staff Council and the Director of the Human Resource Management Branch (ADM/HRM), the complainant wrote to the latter on 18 October, reiterating his willingness to serve in either the position of Chief of Cabinet and Director of ODG or that of Managing Director of ICS, and enquiring about the Administration's follow-up in identifying possible alternative positions in line with his level and professional profile. In a memorandum of 24 October, the Director of ADM/HRM replied that

there were currently no available positions at the D-2 level and that, as there were no concrete alternatives for the complainant, his appointment would expire on 31 December 2002. On the same day, 24 October, the complainant submitted an appeal to the Joint Appeals Board against the decision of 27 August 2002. This first appeal was dismissed by the Director-General on 25 November 2005 in accordance with the recommendations of the Joint Appeals Board.

By a memorandum of 31 October 2002 from the Director of ADM/HRM the complainant was informed of his entitlements upon separation. He wrote to the Director-General on 12 December, asking him to review his decision not to extend his appointment beyond 31 December 2002. He reiterated his willingness to serve in the position of Chief of Cabinet and Director of ODG and requested permission to file a complaint directly with the Tribunal in the event that the Director-General maintained his decision. By a memorandum dated 16 December 2002, the Director-General maintained his decision and denied the complainant's request for permission to proceed directly to the Tribunal. The complainant challenged the decision rejecting his request for review by submitting a second appeal to the Joint Appeals Board on 12 February 2003, claiming reinstatement, material and moral damages and costs. In its report of 18 October 2007 on this second appeal, the Board recommended that offers of employment "be made, without exception, in writing with detailed conditions and a time limit for acceptance clearly stipulated". It also recommended that the complainant be awarded moral damages but that all other claims be dismissed. By a letter dated 16 November 2007 the complainant was notified that on 8 November 2007 the Director-General had decided to dismiss his second appeal in its entirety and to award him 8,000 euros on account of the delay in the internal appeal proceedings. That is the impugned decision.

B. The complainant submits that by not appointing him to the position of Chief of Cabinet and Director of ODG, the Organization breached the legally binding contract that was concluded between himself and UNIDO on 19 September 2002, when he expressly accepted the offer of the said position. He challenges the authenticity

of the undated letter allegedly addressed to the Director-General by the Permanent Representative of Italy and states that he did not decline the position of Chief of Cabinet and Director of ODG but that he was merely awaiting the outcome of the selection process for the position of Managing Director of ICS, for which the Director-General had promised to support his candidature. Furthermore, he was never informed that the Chief of Cabinet and Director of ODG position would be offered to another candidate or withdrawn if he did not accept it immediately. In his view, it is a general principle of contract law that an offer shall remain open for a reasonable period of time.

He contends that the Administration breached Staff Regulation 4.2 and Staff Rule 110.02(a) in that it failed to identify alternative positions for continued employment within UNIDO, notwithstanding his excellent record of service and the availability of positions corresponding to his level and profile. He rejects as unsubstantiated the allegation put forward in the internal appeal proceedings that he was only willing to accept an assignment at the D-2 level and points out that the Administration never asked him whether he would accept a lower-level post. He considers that he was not afforded equal treatment because, unlike all other former Managing Directors, who were ensured continued employment through reassignment to lower-level positions, he was never offered the opportunity to accept such a position.

The complainant asserts that he suffered retaliation and harassment after he had sought review of the Director-General's decision to appoint another candidate to the position of Managing Director of PTC. He states that by assigning him Officer-in-Charge of ADM rather than Acting Managing Director of that division, withdrawing its support for his candidature for the position of Managing Director of ICS, failing to negotiate honestly and to identify available positions, and thwarting his efforts to find employment elsewhere, the Administration caused him public humiliation. He alleges that the Director-General failed to respond to his requests for leave and that attempts to send him on a mission to Nigeria were a form of retaliation. He accuses UNIDO of breaching its duty of care

and of failing to act in good faith and to respect his dignity. Pointing to the excessive length of the internal appeal proceedings, he also accuses UNIDO of failing in its duty to provide efficient means of redress.

The complainant requests the setting aside of the impugned decision and reinstatement with effect from 1 January 2003 until retirement. He seeks an award of material damages equivalent to the salaries, emoluments and other entitlements he would have received from 1 January 2003 until the date of reinstatement together with interest. In the event that the Tribunal does not order reinstatement, he seeks an award of material damages equivalent to what he would have earned if his appointment had been extended from 1 January 2003 until the date of the Tribunal's judgment, and an additional award to cover the "loss of pension benefits" from 1 January 2003 to his retirement date, together with interest. He claims moral damages and legal costs for the internal appeal proceedings and the proceedings before the Tribunal.

C. In its reply UNIDO asserts that the decision not to extend the complainant's appointment was lawful, whilst emphasising that such decisions are at the discretion of the appointing authority and thus subject to limited review. It submits that the complainant's arguments which implicitly challenge the restructuring of the Secretariat, the selection process for the post of Managing Director of PTC and his appointment as Officer-in-Charge of ADM are irreceivable.

The Organization dismisses as unfounded the allegation of breach of contract. In its opinion, the Director-General's offer of the Chief of Cabinet and Director of ODG position ceased to be valid once the complainant rejected it or, at the latest, once he made a counter-offer – by expressing interest in the position of Managing Director of ICS – which, it argues, must legally be treated as a rejection of the earlier offer. In support of its assertion that the complainant rejected the offer, it points to the letter of the Permanent Representative of Italy to the Director-General which confirmed that he was unwilling to accept it. This being so, the complainant's letter of 19 September 2002 cannot be considered as a valid acceptance of the offer of the Chief of

Cabinet and Director of ODG position. Thus, the Director-General was entitled to treat his offer as having lapsed.

The Organization contests the view that it breached Staff Regulation 4.2 and observes that Staff Rule 110.02(a) did not apply to the complainant, since he did not hold a permanent appointment. It denies having failed to act in good faith or to fulfil its duty of care towards the complainant and recalls that his appointment was extended so that he could compete for the new Managing Director posts, that he was offered the post of Chief of Cabinet and Director of ODG and that he was also recommended as a suitable candidate for the post of Managing Director of ICS. It adds that the complainant insisted on obtaining a D-2 level post without ever enquiring about alternative lower-level posts. Unlike other officials who accepted to serve in lower-level posts, the complainant declined the Director-General's offer of continued employment, even though it concerned a post at the D-2 level. Therefore, he may not plead unequal treatment.

UNIDO submits that the allegation of retaliation was not raised in the internal appeal leading to the present complaint and that his claim based on this allegation is therefore irreceivable. In any event, it denies that retaliation or harassment ever took place. In its opinion, no intent on the part of the Administration to retaliate or harass can reasonably be inferred from the facts. With regard to the length of the internal appeal proceedings, it points out that the delay resulted from the need to replace a member of the Joint Appeals Board following the restructuring of the Secretariat. It holds that the complainant's claims are premised on an expectation of continuous employment until retirement that has no basis in law.

D. In his rejoinder the complainant elaborates on his pleas. He contends that the restructuring of the Secretariat and the selection process for the post of Managing Director of PTC provide the context within which the impugned decision was taken. He submits that, as the decision not to extend his appointment was based neither on unsatisfactory performance nor on budgetary considerations, it was taken in breach of Staff Rule 103.10(b), which relevantly provides that "[i]n the interest of the programme activities of the Organization and

subject to satisfactory performance and budgetary coverage, fixed-term appointments shall normally be extended for a period of three years”. Regarding the issue of retaliation, he points out that according to the Tribunal’s case law a complainant is free to raise any new pleas in support of his claims at any stage of the proceedings.

E. In its surrejoinder the Organization explains that the policy of not extending appointments at the D-2 level, other than those of Managing Directors, was prompted by financial considerations. It maintains that the complainant’s claim based on retaliation is irreceivable, as it was not raised in the internal appeal.

CONSIDERATIONS

1. On 15 February 2002 UNIDO announced the restructuring of the Secretariat into three major divisions, each to be led by a Managing Director at the D-2 level. That restructuring resulted in the abolition of the complainant’s post as of 1 March 2002. The complainant submitted his application for the post of Managing Director of PTC on 14 May, but on 31 July 2002 the Director-General informed him that he had not been selected.

2. The parties give conflicting accounts of their meetings of 31 July and 1 August 2002. They both agree however that at the meeting of 31 July the Director-General informed the complainant of his decision to appoint someone else to the position of Managing Director of PTC, that he offered him the position of Chief of Cabinet and Director of ODG and that they discussed the position of Managing Director of ICS in Trieste, Italy.

3. On 2 August 2002 the position of Director of ODG was offered to another candidate who accepted it on 12 August. In the meantime, on 5 August the names of the successful candidates for the three Managing Director positions, including that of Managing Director of PTC, were announced.

4. In a letter of 21 August 2002 to the Director-General, the complainant requested a review of the decision to appoint another candidate to the post of Managing Director of PTC. The complainant also referred to the Director-General's "offer" to appoint him to the post of Managing Director of ICS, and restated his "complete agreement with this offer" and that he was "looking forward" to the new assignment.

5. In his reply of 27 August the Director-General stated that he maintained his decision regarding the appointment to the position of Managing Director of PTC. He noted that the complainant had rejected the offer of appointment as Chief of Cabinet and Director of ODG and that the Managing Director of ICS would be appointed from a list of candidates submitted by a steering committee. The complainant was subsequently informed that he was being reassigned to the position of Special Adviser in ODG as of 1 September 2002.

6. On 19 September the complainant wrote to the Director-General accepting his offer to appoint him as Chief of Cabinet and Director of ODG. He added that a misunderstanding might have led to the correspondence of 27 August 2002.

The Director-General replied on 23 September recalling that the complainant had declined the offer of the Chief of Cabinet and Director of ODG post and that accordingly he had made "alternative arrangements to cover this function".

7. On 14 October the complainant, accompanied by the President of the Staff Council, met the Director-General and the Director of ADM/HRM. In a communication of 18 October to the latter, the complainant stated that, at the meeting, the Director-General had said that the Chief of Cabinet and Director of ODG post was still open and that no decision had been taken regarding the post of Managing Director of ICS. He wished to confirm, as expressed in his letter of 19 September, his willingness to serve in either position. He noted that the Director-General had instructed the Director of

ADM/HRM to identify possible alternative positions for him in accordance with his level and profile.

8. In a memorandum of 24 October the Director of ADM/HRM rebutted the complainant's assertions regarding the two posts, noting that the Director-General "did not indicate that the post of Director of his Office and Chief of Cabinet was open", given that another candidate had already been selected. He recalled the Director-General's explanation concerning the recruitment process for the post of Managing Director of ICS. Regarding alternative positions, the Director of ADM/HRM observed that the complainant's account was at variance with his own understanding of what had been said at the meeting and noted that there were no D-2 level posts available. He stated that, as no concrete alternatives were possible, the complainant's fixed-term appointment would expire at the end of December 2002, and the necessary formalities would be communicated to him shortly. This was done on 31 October and on 31 December 2002 the complainant's fixed-term appointment expired.

9. In the meantime, on 24 October, the complainant submitted an appeal to the Joint Appeals Board against the Director-General's decision of 27 August 2002 pertaining to his "non-reinstatement as Managing Director of PTC" (hereinafter "the first appeal").

10. On 12 February 2003 he submitted a second appeal to the Joint Appeals Board, this time against the Director-General's decision of 16 December 2002 not to extend his appointment (hereinafter "the second appeal").

11. In its report of 4 November 2005 on the complainant's first appeal the Board recommended that his claim for reinstatement as Managing Director of PTC should be dismissed. On 25 November 2005 the Director-General endorsed the Board's recommendation.

12. In its report of 18 October 2007 on the complainant's second appeal, the Board held in respect of the terms and conditions of the oral

offer of the position of Chief of Cabinet and Director of ODG that “UNIDO had the obligation to make the process more transparent”. It thus recommended that all future offers of employment within UNIDO “be made, without exception, in writing with detailed conditions and a time limit for acceptance clearly stipulated”. It also recommended that the complainant be awarded moral damages but that all other claims be dismissed.

By memorandum of 16 November 2007 the complainant was notified that the Director-General had decided to dismiss his appeal in its entirety. He nevertheless awarded the complainant 8,000 euros because of the delay in examining the appeal. That is the decision the complainant impugns before the Tribunal.

13. The Organization submits that those aspects of the complainant’s arguments that implicitly challenge the restructuring of the Secretariat or the selection process for the post of Managing Director of PTC are irreceivable because the complainant has not lodged a complaint with the Tribunal against the decision from the first appeal. The Tribunal accepts the complainant’s position that the references to the restructuring and selection process provide the context within which the contested course of events in the complaint transpired. However, his argument that the Organization breached Staff Regulation 4.2 is a direct challenge to the selection process for the post of Managing Director of PTC and is, as such, irreceivable.

14. It also submits that the complainant’s challenge of the eight-month appointment is irreceivable since he was fully aware that his post had been abolished, that he was given the appointment to permit him to compete for one of the new positions, and that his loss of employment was one of the possible consequences of accepting an appointment of limited duration. The Tribunal rejects this argument. These are all matters that properly form part of a consideration of the Organization’s legal and good faith obligations owed to the complainant.

15. Lastly, the Organization argues that the complainant's allegation of retaliation for having appealed the appointment decision to the post of Managing Director of PTC did not form part of the second appeal and that his claim based on this allegation is therefore irreceivable. Given the close relationship between the substance of this allegation and the complainant's allegations of harassment, unequal treatment and breach of the duty to act in good faith, the Tribunal accepts the complainant's submission that the Organization has mischaracterised the allegation of retaliation as a new claim rather than a plea in support of the claims based on the alleged harassment, unequal treatment, and breach of the duty to act in good faith.

16. As indicated above, there are conflicting accounts regarding the communications between the parties at their meetings on 31 July and 1 August 2002. The Joint Appeals Board found that a verbal offer of appointment to the Chief of Cabinet and Director of ODG post was made on 31 July 2002 and that there was no evidence of a time limit within which the offer had to be accepted. It noted the Administration's evidence that the offer was refused by the complainant and that the position was offered to another candidate. The Board also noted that the complainant indicated his acceptance of the offer, in writing, albeit some 50 days later, when he informed the Director-General that he was "ready to accept [it], in case [the Director-General] believe[d] this solution [was] in the best interest of the Organization". Nevertheless, the Board did not make a finding as to whether the parties had entered into an enforceable contract.

17. The complainant alleges that the Director-General offered him both positions and that he expressed a preference for the post of Managing Director of ICS at that time, but did not, at any time, decline the post of Chief of Cabinet and Director of ODG. The Director-General never indicated that the post would be offered to another candidate if he did not respond immediately. Therefore, he presumed that the Director-General would keep the offer open for a reasonable period of time, while he pursued the post of Managing Director of ICS.

18. Additionally, he contends that the Chief of Cabinet and Director of ODG position remained open throughout the course of the proceedings. He alleges that the Director-General's refusal to appoint him to the post he later accepted constitutes a breach of contract. Alternatively, he alleges that the offer of appointment to the post made to another candidate also constituted a breach of contract in that the Director-General was obliged to keep the position open for a reasonable period of time.

19. Before turning to the contractual question, it is necessary to resolve an evidentiary dispute between the parties. In his submissions the complainant takes issue with an undated letter from the Permanent Representative of Italy to UNIDO in which the latter states that he, the complainant, confirmed his unwillingness to accept the post of Chief of Cabinet and Director of ODG. The complainant denies that he discussed the matter with the Permanent Representative. He maintains that the letter being undated is of dubious origin and was in all likelihood prepared after the commencement of the litigation. The Tribunal rejects this argument. In the light of the position taken by the complainant, the Organization contacted the Permanent Representation of Italy to UNIDO to confirm the date of the letter. It was confirmed that according to their records the letter was sent on 1 August 2002. The authenticity of the document has been verified and given the relevance of the contents of this letter to a central issue, it is therefore admissible evidence in this proceeding.

20. As the Tribunal reiterated in Judgment 2592, under 14, it is well established in the case law that “[t]here is a binding contract if there is manifest on both sides an intention to contract and if all the essential terms have been settled and if all that remains to be done is a formality which requires no further agreement”.

It may be recalled that there is no dispute between the parties that an offer of appointment to the post of Chief of Cabinet and Director of ODG was made on 31 July 2002. The key question is whether the complainant rejected the offer on 1 August 2002, as the Organization alleges.

21. A review of the contemporaneous communications and actions reveals that on 1 August 2002 the Director-General informed the Permanent Representative of Italy that the complainant told him on that date that he was not in a position to accept his offer of the Chief of Cabinet and Director of ODG post. In his reply of that same day, the Permanent Representative stated that the complainant “confirmed to [him] his unwillingness to accept such a post”. On 2 August 2002 the post was offered to another candidate who accepted it on 12 August.

The communications between the Director-General and the Permanent Representative of Italy, coupled with the offer of the post to another person one day later, support the Organization’s assertion that the complainant rejected the Chief of Cabinet and Director of ODG post on 1 August. Further, the absence of any mention of that post and the complainant’s expression of complete agreement with the “offer” of the Managing Director of the ICS post in his letter of 21 August 2002 lends further support for UNIDO’s account.

22. The Tribunal is also of the view that the complainant’s subsequent communications and actions undermine his credibility. In relation to his letter of 19 September 2002, it was disingenuous on his part to reformulate a very clear statement from the Director-General regarding his rejection of the Chief of Cabinet and Director of ODG post to a reconfirmation of the offer of appointment to that post. It would also be expected, given the significance of the alleged “misunderstanding”, that the complainant would have drawn the Director-General’s attention in a far more timely fashion to what might have been a misunderstanding.

23. In a similar vein, in his communication of 18 October 2002 to the Director of ADM/HRM the complainant set out the matters discussed at the meeting of 14 October 2002. Despite having been informed earlier that the Chief of Cabinet and Director of ODG post had been filled, the complainant stated that the post was still open. In addition, despite repeated explanations regarding the selection process for the post of Managing Director of ICS, in particular that the list of

candidates for the post would be prepared by a Steering Committee, he continued to refer to the Director-General's offer to appoint him to the post. In these circumstances, the Tribunal accepts the Director of ADM/HMR's account as to what transpired at the meeting over that of the complainant. Further, in the absence of proof that any D-2 level posts were available at the material time, the Tribunal also accepts the Director of ADM/HMR's rebuttal of the complainant's statement regarding the instructions given by the Director-General to find alternative positions for the complainant in accordance with his level and profile.

24. Having regard to the complainant's actions and his persistent, disingenuous attempts to reformulate the contents of communications, the Tribunal finds that the complainant's assertion that he did not reject the offer of the appointment as Chief of Cabinet and Director of ODG is not credible, and that he indeed rejected that offer on 1 August 2002. In the circumstances, the Organization was under no obligation to keep the offer open for any further period. Since it was not kept open, its purported acceptance did not give rise to a binding contract.

25. The complainant alleges that the Director-General retaliated against him for having appealed the decision to appoint another candidate to the post of Managing Director of PTC. He characterises the Director-General's letter of 27 August 2002 as "a sternly worded reply" from which he concluded that "suddenly the Chief of Cabinet and Director of ODG post was no longer available (although in fact it was)" and that the Director-General no longer supported his candidacy for the Managing Director of ICS post. He asserts that this caused him further public humiliation as evidenced by the fact that at a meeting of 17 September 2002 with the Permanent Representative of Italy the Director-General "did not recommend [him] or even mention his interest in the post".

The complainant also cites the Organization's failure to determine whether he would only accept an assignment at the D-2 level, its failure to identify alternative posts at other levels, and to grant him

leave to search for new employment during the months of November and December 2002 as further evidence of retaliation.

Further he alleges that the Organization admitted that the Director-General “harboured animosity since [he] had challenged the appointment of his successor”. In support of this allegation, he points to the statement made on behalf of the Director-General to the Joint Appeals Board.

26. These allegations are unfounded. Although the complainant says that retaliation stemmed from his decision to appeal the appointment of another candidate to the post of Managing Director of PTC, some of the incidents upon which he relies pre-date the filing of his first appeal on 24 October 2002, for example, the fact that on 27 August 2002 the post of Chief of Cabinet and Director of ODG was “suddenly [...] not available”. Furthermore, despite his continued allegations that the Chief of Cabinet and Director of ODG post remained open throughout the relevant time frame, the evidence conclusively shows that the position had been offered to and accepted by another person by 12 August 2002. Additionally, it cannot possibly be said that the alleged failure on the part of the Director-General to remind the Permanent Representative of the complainant’s suitability for the post of Managing Director of ICS at their meeting of 17 September 2002 constitutes in any way a form of public humiliation. In any case, there is no evidence that the Organization withdrew its support of the complainant for the latter post.

27. Concerning the allegations of retaliation in relation to the Organization’s failure to determine whether he would only accept an assignment at the D-2 level, and the failure to identify alternative posts at a lower level, a review of the complainant’s communications of 19 September and 18 October 2002 shows an insistence on a D-2 level post on his part. In the light of that fact, these allegations of retaliation fail.

28. Further, while the complainant's requests for leave could arguably have been answered in a timelier manner, there is nothing in the record from which it could be inferred that the lack of timeliness was improperly motivated. Equally, beyond the complainant's allegation that the mission to Nigeria was a form of retaliation, there is no evidence to support the allegation. In particular, there is no evidence that this assignment was not one within the duties of a Special Adviser nor is there any evidence about the nature of this type of assignment from which retaliation could be inferred. The Tribunal observes that the position taken by the complainant in relation to the mission to Nigeria contradicts his statement before the Joint Appeals Board where he described it as being an acknowledgement that his expertise was still of value to the Organization.

29. As to the allegations of harassment, unequal treatment, and breach of the duty of care and good faith, the Tribunal finds that they are devoid of merit and do not warrant consideration.

30. The complainant pleads a breach of Staff Rules 110.02(a) and 103.10(b). The former relevantly reads:

"If the necessities of the service require abolition of a post or reduction of staff, and subject to the availability of suitable posts in which their services can be effectively utilized, staff members with permanent appointments shall be retained in preference to those on fixed-term appointments, provided that due regard shall be paid in all cases to relative competence, to integrity and to length of service."

31. The complainant relies on this provision in support of his allegation of a breach of the statutory duty to identify other posts for staff members affected by restructuring. His reliance on this rule is misplaced as it is not applicable to staff members with fixed-term appointments: it relates to staff members with permanent appointments (see Judgment 1782, under 11).

32. The complainant also relies on Staff Rule 103.10(b) in support of his assertion that his fixed-term appointment should have been extended. Staff Rule 103.10(b) reads:

“The fixed-term appointment does not carry any expectancy of renewal or conversion to another type of appointment. In the interest of the programme activities of the Organization and subject to satisfactory performance and budgetary coverage, fixed-term appointments shall normally be extended for a period of three years. Extensions of fixed-term appointments exceeding the normal three-year period up to a maximum of five years may exceptionally be granted under conditions established by the Director-General.”

He argues that there was no issue regarding his satisfactory performance, that there was at least one budgeted post as Special Adviser available, that “an extension of contract was ‘in the interest of the programme activities of the Organization’ since [he] was given a very substantial and substantive assignment” in relation to his mission to Nigeria and that UNIDO’s “general financial situation” was “healthy”.

33. The Tribunal reiterates that the complainant was offered the post of Chief of Cabinet and Director of ODG at level D-2 and that he rejected it. As there is no evidence of any other D-2 post to which he could have been appointed, this argument must be rejected.

34. Lastly, in relation to the delay in the internal appeal proceedings, the Tribunal observes that the complainant has been reasonably compensated for this delay with the Director-General’s award of 8,000 euros.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 15 May 2009, Ms Mary G. Gaudron, Vice-President of the Tribunal, Mr Agustín Gordillo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 2009.

Mary G. Gaudron
Agustín Gordillo
Dolores M. Hansen
Catherine Comtet