111th Session **Judgment No. 3022**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr A. C. against the Food and Agriculture Organization of the United Nations (FAO) on 16 September 2009, the FAO's reply of 8 January 2010, the complainant's rejoinder of 21 April, the Organization's surrejoinder of 11 August, the complainant's additional submissions of 10 December 2010 and the FAO's final comments of 22 March 2011;

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, an Italian national born in 1952, joined the FAO in June 1977 as a Guard. He was promoted several times, attaining grade G-4 on 1 July 2004 as Assistant Security Supervisor within the Security Service.

On 11 October 2007, after the complainant had been on certified sick leave for several months, the Chief Medical Officer wrote to

the Assistant Director-General of the Department of Human, Financial and Physical Resources (AF) indicating that the complainant's medical condition put him at risk of serious complications when performing his duties as a security guard. Referring to Staff Rule 302.9.22 and Manual paragraphs 314.1.11 and 314.1.12, he stated that he was therefore initiating action to terminate the complainant's appointment for health reasons, and he requested that, in line with Manual paragraph 314.2.44, the Director of the Human Resources Management Division (AFH) ascertain whether there was a vacant position commensurate with the complainant's qualifications and medical condition. Staff Rule 302.9.22 reads as follows:

> "Physical or Mental Limitations. The appointment of staff members who have neither attained the mandatory age of retirement established in the Staff Regulations nor become incapacitated for further service, but who have physical or mental limitations which render them unable to perform the duties currently assigned to them, may be terminated at any time if no other post commensurate with their professional qualifications and current health condition is vacant within the Organization."

On 30 October the Director of AFH informed the Assistant Director-General, AF, that a suitable position had been identified, and sought his approval for an immediate transfer. On 23 November the complainant was notified that the Chief Medical Officer had informed the Director of AFH that he could not continue working as a security guard because of his state of health, but that a suitable alternative position had been identified. Consequently, on 1 December 2007 he would be transferred to the position of Stock Control Clerk, at grade G-4, within the Infrastructure and Facilities Management Service. On 30 November 2007 the complainant asked the Administration to postpone his transfer and to provide him with additional information, including a job description, so that he could submit his observations on that decision. He added that he would like to receive some clarification from the Medical Unit on the precise reasons for his transfer, and requested that the transfer be postponed. The complainant wrote to the Chief Medical Officer on 4 December requesting clarification as to the medical grounds warranting his transfer. On 10 December he received the job description of his new

position and was informed that his transfer would be effective on 12 December. The following day the Chief Medical Officer wrote to the complainant and provided him with the requested clarification.

On 17 December the complainant informed the Administration that he did not wish to be transferred given that he did not meet some of the essential requirements of the said position. The Director of AFH replied on 28 December 2007 that his observations had been carefully reviewed and that the Assistant Director-General, AF, had been consulted. However, it had been decided to proceed with his transfer, which was considered to be in his interest. The transfer would be effective on 7 January 2008 and he would receive appropriate training upon his return to the office.

By an e-mail of 15 January the complainant informed the Director of AFH that he had returned to work and asked to resume his duties in the Security Service. He asserted that recent medical certificates, which he had sent to the Medical Unit, indicated that his state of health had improved. The Director replied on 19 February that his new assignment was suitable for him from a medical point of view and that a period of gradual adaptation to the working environment was necessary, given that he had been medically unfit for work for an extended period and that his state of health had only recently improved. He added that his situation could be reassessed at a later point.

On 21 February 2008 the complainant filed an appeal with the Director-General contesting the transfer decision and asking to return to his former position as Assistant Security Supervisor. He was notified on 7 April that the Director-General had decided to dismiss the appeal. Consequently, he filed an appeal with the Appeals Committee on 7 May 2008 alleging, inter alia, that the transfer decision was not sufficiently substantiated, that the person who had taken the decision was not identified, that his medical condition had been incorrectly evaluated, that the new position was not vacant and not suitable for him, that he suffered from harassment, and that he is entitled to compensation as his depression was attributable to service.

In the Appeals Committee's report of 19 March 2009 the majority of the members held, in particular, that there was nothing to suggest that the Organization had not observed the prescribed procedures for transfer. They considered that the decision was motivated and that the concerns raised by the complainant had been taken into account. Indeed, the FAO had acted in the complainant's interest by identifying an alternative post for him instead of terminating his contract for health reasons. They therefore recommended that the appeal be rejected as unfounded on the merits, and that the claims relating to harassment and compensation be rejected as irreceivable. One member of the Committee expressed a dissenting opinion and recommended that the transfer decision be annulled and that the complainant be paid the service differential he would have received had he not been transferred.

By a memorandum of 21 March 2009 the Chief Medical Officer informed the Director of AFH that he had reviewed the complainant's medical condition at the latter's request, and that he now considered him to be medically fit to resume work in the Security Service. The complainant wrote to the Director of AFH on 25 March indicating that he would like to return to his previous position and would appreciate discussing that possibility with him.

By a letter of 18 June 2009 the Director-General informed the complainant that he had decided to endorse the recommendation of the majority of the Appeals Committee. The complainant impugns that decision insofar as it rejects the request to set aside the transfer decision and to compensate him in that respect.

B. The complainant alleges that the impugned decision was taken in breach of applicable rules, that essential facts were overlooked and that it is self-contradictory. He contends that the "medical condition" on the basis of which the transfer decision was taken was never explained to him and that the Director-General did not provide a legal basis for maintaining the said decision. He stresses that the Chief Medical Officer did not examine him before initiating action to terminate his appointment for health reasons and that some medical certificates were not taken into consideration. He argues that as he

did not suffer from an "irreversible" disease, the FAO was mistaken in relying on Staff Rule 302.9.22, which applies only where a staff member's physical or mental limitations prevent him from performing his duties immediately and definitively. He adds that when the termination procedure was initiated he had not yet exhausted his entitlement to sick leave, as required by Staff Rule 302.9.21.

He submits that the decision to transfer him was notified to him by a Personnel Officer without any indication of the authority that had taken the decision. In his view, there is no evidence that the Assistant Director-General, AF, actually took the decision, as asserted by the Organization in the internal appeal proceedings. In any event, the decision is not signed by the competent authority and is therefore unlawful.

The complainant also contends that his right to be heard was infringed since he was not consulted before his transfer was decided. He alleges that the transfer violated his acquired rights because his duties had changed, which resulted in a financial loss for him. For instance, following the transfer he was no longer paid the service differential which he received for working extended hours on a regular basis in the Security Service which would affect his future pension. His dignity was also impaired, given that his responsibilities were reduced in his new position, which he found less prestigious. He adds that when he reported for duty in the Infrastructure and Facilities Management Service in January 2008 he was asked to go to another unit, the Mail and Pouch Unit, because the position of Stock Control Clerk to which he had been transferred was in fact not vacant. Thus, for more than a year he performed work completely different to that outlined in his job description.

According to the complainant, the transfer decision was tainted with misuse of authority in that it was a hidden disciplinary measure aimed at removing him from the Security Service because of interpersonal difficulties with the Chief of that Service. In support of this view, he points out that the decision was sudden and not properly substantiated, and that the position of Stock Control Clerk was really a grade G-3 position.

Lastly, he contends that, insofar as the impugned decision also constitutes an implied rejection of his request of 25 March 2009 to be transferred back to his former position, it suffers the same flaws.

The complainant asks the Tribunal to appoint an expert "to better quantify the damages [he] suffered" with respect to his salary and pension entitlements. He also asks the Tribunal to quash the impugned decision in that it confirmed his transfer, and to order that he be paid all the sums, including contributions to the United Nations Joint Staff Pension Fund (UNJSPF), to which he would have been entitled had he not been transferred. Alternatively, he asks the Tribunal to quash the impugned decision in that it rejects his request to return to the Security Service, and to order payment of the sums – including contributions to the UNJSPF – that he would have received had his request been accepted, plus interest. He also asks the Tribunal to order the FAO to publish the present judgment in the Organization's Newsletter and to order that his career be "reconstructed". He claims material and moral damages as well as costs for the internal appeal proceedings and for the proceedings before the Tribunal.

C. In its reply the FAO asserts that the transfer decision was taken with full authority by the Assistant Director-General, AF, after consulting the Chief Medical Officer and the Director of AFH. The Chief Medical Officer was merely responsible for initiating action to terminate the complainant's appointment for health reasons. It stresses that the handwritten approval and signature of the above-mentioned Assistant Director-General clearly appeared on the memorandum of 30 October 2007.

The Organization submits that the transfer process was transparent and was conducted in compliance with applicable rules. The Administration replied to the complainant's queries in a thorough and rapid manner, and even accepted his request to have his transfer postponed to 7 January 2008. It denies any breach of the complainant's acquired rights, explaining that, according to his terms of employment, he had no right to payment of service differentials.

The FAO denies any misuse of authority. It contends that, considering the complainant’s state of health, the transfer decision was justified and was in the interest of both the Organization and the complainant. Moreover, it prevented him from having his contract terminated for health reasons, and was taken on the basis of several medical opinions, including that of the Chief Medical Officer who, according to the FAO, is best placed to assess the state of health of an employee, taking into account the Organization’s environment and the specific requirements of each post. It asserts that the latter examined the complainant on several occasions in 2007 and 2008. It adds that the position of Stock Control Clerk was classified at grade G-4 and was available on the effective date of transfer.

The Organization further indicates that on 2 October 2009 the Administration rejected the complainant’s request of 25 March 2009 to return to his previous position, and that on 5 November 2009 he filed an appeal against that decision. Since the appeal is still pending, he has not yet exhausted internal remedies and his claim in that respect is irreceivable.

D. In his rejoinder the complainant indicates that there had been some misunderstanding as to his state of health and provides clarifications. He adds that he had to resign on 7 January 2010 in order to avoid a substantial reduction in his pension.

E. In its surrejoinder the FAO reiterates that the complainant’s state of health was carefully assessed. It refers in particular to the explanations given by the Chief Medical Officer in a memorandum of 23 April 2009. In addition, it submits that the complainant has failed to exhaust internal remedies with regard to his claims for material damages, for “reconstruction” of his career and for publication of the Tribunal’s judgment in the Organization’s Newsletter; they are consequently irreceivable.

F. In his additional submissions the complainant indicates that the memorandum of 23 April 2009, which was mentioned for the first time in the surrejoinder, shows that the Chief Medical Officer initiated the

termination procedure despite the fact that his medical condition was not considered “irreversible”, and that he failed to take into consideration that there were some “non-operational” duties which could be performed in the Security Service by a staff member whose fitness was temporarily limited.

G. In its final comments the Organization stresses that for the purposes of Staff Rule 302.9.2 there is no need to show that a medical condition is “irreversible”; what matters is the inability to perform duties at a particular period of time.

CONSIDERATIONS

1. The Tribunal, having examined the written submissions and their annexes and having found them sufficient, disallows the complainant’s application for oral hearings.

2. On 1 June 2007 the complainant was granted sick leave on the basis of medical certificates submitted by him to the Organization’s Medical Unit (AFDM); he returned to work in January 2008.

On 11 October 2007 the Chief Medical Officer sent a memorandum to the Assistant Director-General, AF – with a copy to the Director of AFH – initiating action to terminate the complainant’s appointment for health reasons in accordance with Staff Rule 302.9.22, and Manual paragraphs 314.1.11 and 314.1.12. He stated inter alia that the complainant “ha[d] developed a medical condition that put him at high risk of serious complications when implementing his duties as security guard” and that “[t]his condition [was] not deemed to be reversible in a foreseeable future”. In accordance with Manual paragraph 314.2.44, the Director of AFH was asked “to investigate whether there [was] a vacant post […] commensurate with [the complainant’s] qualifications and [his] medical condition”.

Staff Rule 302.9.22, under the title “Termination for Health Reasons”, provides:

> "Physical or Mental Limitations. The appointment of staff members who have neither attained the mandatory age of retirement established in the Staff Regulations nor become incapacitated for further service, but who have physical or mental limitations which render them unable to perform the duties currently assigned to them, may be terminated at any time if no other post commensurate with their professional qualifications and current health condition is vacant within the Organization."

The G-4 post of Stock Control Clerk in the Infrastructure and Facilities Management Service was identified as a vacant post commensurate with the complainant's qualifications and state of health. By a memorandum of 23 November 2007 the complainant was notified by a Personnel Officer of the decision to transfer him from the post of Assistant Security Supervisor in the Security Service to the post of Stock Control Clerk in the Infrastructure and Facilities Management Service, effective 1 December 2007.

3. The complainant contested the transfer decision, which was subsequently confirmed on 28 December 2007 with an effective date of transfer of 7 January 2008. After further contestations and requests for reconsideration of his situation, the complainant was informed on 19 February 2008 that the Organization maintained the transfer decision but that his situation could be reassessed at a later point. He appealed against that decision to the Director-General and received a response on 7 April 2008 from the Assistant Director-General, AF, dismissing his appeal on behalf of the Director-General as being without merit. The complainant then filed an appeal with the Appeals Committee. By a letter of 18 June 2009 he was notified of the Director-General's decision to accept the recommendations made by the majority of the members of the Appeals Committee and to reject the recommendations made in the dissenting opinion. Therefore the appeal was rejected as unfounded, and his allegation of harassment

and claim for compensation were rejected as irreceivable. This is the decision impugned in this complaint, except to the extent of the irreceivability of the claims relating to harassment and compensation.

4. By a memorandum of 21 March 2009 the Chief Medical Officer informed the Director of AFH that he considered the complainant now “medically fit for duties as a guard”. The latter wrote an e-mail to the Director of AFH on 25 March 2009, asking to be transferred back to his previous position. Having received no response to this request prior to the Director-General’s decision of 18 June 2009, the complainant also impugns in this complaint what he considers to be the implicit decision to reject his request to be transferred back to his previous position. The Director of AFH rejected his request on 2 October 2009 and the complainant appealed to the Director-General on 5 November 2009. The Tribunal is of the opinion that the claim against the alleged implicit decision is irreceivable by reason of the failure to exhaust internal remedies.

5. The complainant argues that the impugned decision was taken in breach of the applicable rules without considering essential facts and in absence of factual prerequisites, and that it is self-contradictory. The Tribunal finds these claims to be unfounded. The complainant’s interpretation of Staff Rule 302.9.22 is mistaken. He interprets it to mean that it cannot apply to cases in which recovery from the illness or injury can be obtained. This interpretation is incorrect. Staff Rule 302.9.22 expressly states that “[t]he appointment of staff members who have neither attained the mandatory age of retirement […] **nor become incapacitated for further service,** but who have physical or mental limitations which render them unable to perform the duties **currently** assigned to them, may be terminated at any time” (emphasis added). It is clear from the wording that the rule was properly applied to the complainant who, for over seven consecutive months, was unable to perform the duties that were assigned to him.

6. The medical certificates submitted to the Organization by the complainant prior to the decision of the Chief Medical Officer of 11 October 2007 to initiate a termination procedure and to explore the possibility for a transfer, were sufficiently serious to support the latter's decision. In the certificate of 1 June 2007 the physician indicated that the complainant was suffering from a condition which required a period of absolute rest in order to avoid stress. In the certificate of 2 July another physician stated inter alia that the complainant's condition "appear[ed] to be attributable to work related facts" and he recommended a period of rest until 10 August 2007. In a certificate of 11 August the same practitioner reiterated the diagnosis he made in the previous certificate and recommended a further period of rest until 10 September, as he did in the certificate of 9 October extending the rest period until 9 November. The certificate of 10 November supports the reasonableness of the decision to transfer the complainant, as his physician noted a deterioration of his condition and prescribed a further period of rest until 20 December 2007.

7. The complainant argues that the subsequent medical certificates were not taken into consideration in reaching the decision to transfer him to the position of Stock Control Clerk. According to the certificate of 21 December 2007 he was still under treatment but the treatment was leading to clinical improvement. It is also stated therein that a further short period of treatment until 10 January 2008 was necessary. While the possibility of a future recovery is mentioned in this certificate, the Tribunal notes that it does not certify that an actual full clinical recovery had then been reached. Thus, it is not sufficient to overturn the decision based on the previous certificates which declared the complainant unable to perform his duties.

8. In the medical certificate of 9 January 2008 the physician stated that the complainant could easily resume his usual duties without risk. Likewise, the physician who wrote the certificate of 11 January 2008 stated that there was no bar to his resuming work.

9. The complainant contends that the Organization did not properly consider the medical certificates which he submitted,

especially those of 21 December 2007 and 11 January 2008. He adds that he was not properly examined by an FAO Medical Officer prior to the Organization initiating the termination procedure. It is the view of the Tribunal that the complainant has not shown that the decision to transfer him for health reasons could not be taken on the basis of the medical certificates that he had submitted from the physicians treating him. Indeed, it must be considered reasonable that the Organization would rely on the up-to-date medical information contained in the certificates submitted by the staff member for the medical assessment. It must also be considered reasonable that it would rely on the Chief Medical Officer's competence in evaluating whether, based on those medical assessments and on his expertise in assessing the health risks and requirements of the particular posts within the Organization, a staff member could be considered fit for the post in question. As regards the consideration of the more recent medical certificates, the Tribunal agrees with the majority of the members of the Appeals Committee, who stated that:

> "[T]he [complainant] was a security officer, a profession that requires a certain level of physical and mental health to ensure the security of the Organization's premises and the welfare of its staff. He had been on extended sick leave […]. In the Committee's opinion, it would have been unreasonable if not irresponsible in these contexts for the Chief [Medical Officer] and the Organization not to have at least some doubt as to the [complainant]'s ability to serve in the demanding job of security officer. The position of the Chief [Medical Officer] with respect to his findings leading to the decision impugned and the doubt about the [complainant]'s ability to return to work after an extended period of certified sick leave is clearly expressed in [an e-mail written by] the Chief [Medical Officer] in September 2008. Indeed, the Chief [Medical Officer] state[d] that '*it would be irresponsible to reinsert a patient into a post with possible exposure to highly stressful conditions*'. The Committee concurs with this view."

Considering the medical certificates taken as a whole, the exigencies of the post of Assistant Security Supervisor, and the numerous interactions between the complainant and the Organization, it appears that the conclusion reached by the Organization (i.e. to transfer the complainant to a post commensurate with his state of health for a period of readjustment prior to reassessing his suitability for a possible transfer back to his previous position) was not

unreasonable. Moreover, the Tribunal cannot substitute its own assessment for that of the Organization, barring situations in which the competent body acted on some wrong principle, overlooked some material fact, breached a rule of form or procedure, based its decision on an error of fact or law, or reached a clearly wrong conclusion; which is not the case here.

10. The complainant alleges that the Organization violated its duty to inform as well as his right to be heard, and that the transfer decision was not taken by the competent authority. These allegations are unfounded. It is evident from the submissions that the Organization adhered to the applicable rules regarding competency. The Chief Medical Officer was the competent authority to initiate the action to terminate the complainant's appointment for health reasons in line with Manual paragraph 314.2.41, and to approve the suggested transfer to a vacant post identified as commensurate with the complainant's medical condition. The Director of AFH was competent to identify the vacant post commensurate with the complainant's professional qualifications and condition. The Assistant Director-General, AF, was the competent authority to approve the transfer decision, and the Personnel Officer was competent to notify the complainant of that decision. It should also be noted that delegation of authority is permitted and that the FAO was clear in informing the complainant as to who was involved in the decision-making process. In his decision of 28 December 2007 the Director of AFH informed the complainant that "[…] further to a careful review of [his] representations, and consultations with the Assistant Director-General, AF, and pursuant to Staff Regulation 301.1.2, it has been decided to proceed with [his] transfer, as there does not appear to be any overriding impediment thereto".

Therefore, the transfer decision was taken under the authority of the Assistant Director-General. The memorandum of 23 November 2007 gave the complainant all the relevant information regarding the proposed transfer and offered him the opportunity to provide his observations, which he did. In addition, the date of transfer, indicated in that memorandum, was subsequently postponed to 7 January 2008 in order to allow the Organization sufficient time to respond to the

complainant's concerns regarding the transfer. It should also be noted that the fact that the Organization maintained its decision in the face of the complainant's contestations does not show that it ignored his observations, but rather that it did not consider them convincing enough to overturn the decision.

11. The complainant submits that the transfer decision was inadequately substantiated from a medical and legal point of view, and consequently requests that it be held unlawful for absence of reasons. This claim is also unfounded. As stated in the memorandum of 23 November 2007 – which quoted from the Chief Medical Officer's memorandum of 11 October 2007 initiating the termination procedure – the decision was based on the Chief Medical Officer's occupational health assessment that the complainant had developed a medical condition that "[put him] at high risk of serious complications when implementing [his] duties as security guard" and that "[his] condition [was] not deemed to be reversible in the foreseeable future". Considering that the Chief Medical Officer's decision was based on the medical assessments contained in the certificates submitted by the complainant himself, it is not reasonable for the complainant to claim that the medical reasons for the decision were unclear to him. The complainant also asserts that the medical certificates "did not certify that he was not fit to continue his work" but this is not supported by the fact that all but the last two certificates prescribed a period of rest which eventually amounted to over seven months of consecutive sick leave.

12. The complainant's claim concerning the breach of his acquired rights is likewise unfounded. Manual Section 308.3.8 regarding service differential, in relevant part, provides that:

> "A service differential is paid only when the extended hours of work are considered essential for a particular operation of the Organization. Such extended hours of work may be discontinued whenever the circumstances so warrant. […] The amount of service differential is not taken into account in establishing salary rates upon promotion, nor is it transferrable to another post where service differential is not payable."

It follows that, as the complainant was no longer performing the extended hours required to obtain the service differential, and his contract contained no indication that he would acquire any right to receive the service differential permanently, there was no reason for him to continue receiving it. The loss of the service differential in the present case resulted from a legally taken administrative measure, and did not violate any of the complainant's acquired rights.

13. Moreover, the complainant claims that the transfer decision was a hidden disciplinary measure and that it was tainted with misuse of authority for the following reasons: it was made suddenly and without previously giving him the opportunity to be heard; it was not properly substantiated and it altered his contractual status. He further submits that as a result of that decision he had to perform duties of a grade lower than those he used to perform. He adds that the post of Stock Control Clerk was in fact not vacant. Also, it was not made in the best interests of the Organization or in accordance with the relevant rules. Lastly, he contends that it stemmed from the fact that the Chief of the Security Service was biased against him. These allegations are unfounded. As noted above, the transfer decision was sound, properly motivated, and taken in accordance with the relevant rules. Regarding the specific allegations made in support of the claim that the decision constituted a hidden disciplinary measure, the Tribunal notes that the complainant has not provided evidence to support them. In the memorandum of 23 November 2007 it was specifically stated that his grade and step would remain the same, as would the date of his next within-grade and step increase. The complainant has provided no evidence that his grade or step did change. Furthermore, as noted by the majority of the members of the Appeals Committee, the complainant's claim that the post to which he was transferred was not vacant is not supported by evidence. The Tribunal notes that the complainant has not shown any plausible link between his difficult relationship with the Chief of the Security Service and the decision to transfer him which was taken by the Assistant Director-General, AF. In these circumstances, the

complainant's argument that his transfer was a hidden disciplinary measure must be dismissed.

14. The claim in connection with the alleged failure to respect the complainant's dignity is also unfounded. The transfer for health reasons was carried out specifically in the interest of the complainant to avoid terminating his appointment. His assertion that the post to which he was transferred was at a grade lower than his previous post is also irrelevant as he retained his G-4 grade salary. Furthermore, the Tribunal notes that in the report of the Appeals Committee the majority of the members stated in relevant part:

> "The Committee notes that an assurance had been given by the authorized officer within the Organization on the availability of the post and that an earlier decision to downgrade the post from a G4 to a G3 post in light of the proposals for savings and restructuring in the 2008-2009 Programme of Work and Budget was not implemented due to the overriding need and interest of the Organization to locate an alternative position for the [complainant]. The Committee recognizes the efforts put into identifying an alternative post and the difficulty in making changes to earlier plans to reduce level of posts due to the need of the Organization-wide downsizing, restructuring and the need to redeploy a large number of General Service staff members in order to accommodate the [complainant's] transfer. At the very least, the Committee considers that the Organization in this respect cannot be accused of not acting in the interest of the [complainant]."

The complainant further contends that his transfer to the new post harmed his dignity because he saw the position as being far less prestigious than his previous position in the Security Service. However, as the two posts were of the same grade, they should be considered as having the same level of prestige. It is not uncommon for the duties of equally graded posts in different departments to be diverse, as each department would naturally define post responsibilities according to its specific needs. Considering that, the Tribunal is of the opinion that it is not enough to show that the responsibilities of the new post were "completely different" from

those of the previous post in order to substantiate a claim of disregard for the official's dignity; it must also be shown that the grade and step of the new post are lower than those of the previous one. The Tribunal concludes that this has not been shown and is therefore satisfied that the Organization acted in the complainant's interest and with consideration for his dignity.

15. The complainant contests the Director-General's rejection, in his decision of 18 June 2009, of the recommendations made in the dissenting opinion. The Tribunal finds that the Director-General properly considered that the dissenting opinion was not well founded. Specifically, the view that "there was an incorrect evaluation of the medical conditions", supported by the finding that the transfer decision was "hasty", and that the Chief Medical Officer should have personally consulted the complainant "to truly ascertain [his] state of health" is not tenable. Staff Rule 302.9.22 clearly states that "[t]he appointment of staff members […] who have physical or mental limitations which render them unable to perform the duties currently assigned to them, may be terminated **at any time**" (emphasis added). Furthermore, initiating a termination procedure after the complainant had been on certified sick leave for over four months cannot be considered hasty or unreasonable, especially considering the occupational health concerns raised in connection with the complainant's ability to discharge the duties of Assistant Security Supervisor. Moreover, the Chief Medical Officer's authority stems from his experience as a medical practitioner and as an expert who considers the suitability of specific posts within the Organization having regard to occupational health. He acted properly in relying on the medical certificates submitted by the complainant, as there was no indication that they were untrue or unreliable – which could have led him to request a separate analysis by a medical practitioner chosen by the FAO – and there is no evidence to support the dissenting opinion that a personal consultation by the Chief Medical Officer would have led to a more accurate health assessment. The dissenting opinion further suggests other ways the Organization could have responded.

However, and as noted above, the way in which the FAO chose to act was not unreasonable. Accordingly, the Director-General's decision can only stand.

16. In light of the above considerations, the complaint will be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 20 May 2011, Ms Mary G. Gaudron, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2011.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet