116th Session **Judgment No. 3299**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs R.E. S. against the International Organization for Migration (IOM) on 20 April 2011 and corrected on 31 July 2012, IOM's reply of 16 January 2013, the complainant's rejoinder of 27 February and IOM's surrejoinder of 10 May 2013;

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

Having examined the written submissions and decided not to order oral proceedings, 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 joined IOM in 1987 and worked discontinuously in various positions until April 2007. On 3 March 2010 she joined IOM again under a six-month special appointment as an Administrative and Financial Assistant, at grade G.5, for the Support Unit of the Global Forum on Migration and Development (GFMD). Her appointment was due to terminate on 2 September 2010.

Shortly after being appointed, the complainant met with her supervisor, the Head of the Support Unit, on several occasions to discuss her tasks. On 29 March 2010 the supervisor wrote an e-mail to the complainant giving her "guidelines" with respect to the discharge of her duties. The following day she filled in a Performance Development System (PDS) form with respect to the complainant's performance and forwarded it to her for comment and signature. The complainant signed the PDS form and returned it to her supervisor. They met on 31 March to discuss the performance and the complainant noticed new handwritten comments on the form her supervisor was referring to. She requested a copy of that form, but her supervisor denied her request. On 6 April the supervisor sent a modified version of the form to the complainant asking her to read it, comment and sign it. The complainant replied on 9 April that she had been informed that it was neither appropriate nor necessary to fill in a PDS form at this stage and therefore she did not sign it.

The Head of the Support Unit wrote to the complainant on 13 April 2010 to inform her that, following the meetings they had had and in light of her "Terms of Reference and the PDS form dated 30 March 2010", she considered that some aspects of her performance were unsatisfactory. More particularly she criticised her for getting "wobbly, dizzy and hyperactive" when she was asked to provide explanations regarding her work. The letter was a warning in accordance with Staff Regulation 9.2 and Staff Rule 9.211. She added that she would reassess her performance in 30 days in light of the "guidance/instructions" given therein, and that if no improvement was noted, "further action" as per the relevant Staff Regulations and Staff Rules for employees at Geneva would be taken against her. She added that the letter would be placed in her personnel file. The complainant replied to her supervisor by a letter dated 20 April, copying the Director of Human Resources Management (HRM), that her remarks were either inaccurate or concerned a "one-off occurrence" and that they were discriminatory and offensive. She requested that the warning letter be removed from her personnel file. On 29 April she wrote an e-mail to her supervisor asking to meet with her and the Ombudsman to discuss the "current situation".

The complainant was on sick leave for most of May 2010, except for a few days when she returned to work either on a full-time or a part-time basis. Her sick leave was then extended until the end of June. She met with the Director of HRM and the Chief Medical Officer on 7 June 2010 to discuss the issues raised in the letter of 20 April. The Director of HRM wrote to the complainant on 11 June summarising the discussions they had during the meeting of 7 June and indicated that, as agreed, she should immediately stop working for the Support Unit given that there was no "sound relationship" between her and her supervisor. He added that her appointment would not be renewed beyond its expiry date of 2 September 2010. He noted that she was on sick leave until 30 June 2010 and indicated that she was not required to report for work upon recovery. Thus, she would have time until the expiry of her contract to explore other job opportunities. The complainant replied on 19 June that she had never agreed to his offer not to resume work and that she intended to report for work upon receiving medical clearance. On that same day she sent him her statement of appeal, which he received on 23 June. She contested the decision to issue her with a warning letter and to place it on her personnel file. She also challenged the decision of 11 June not to renew her contract.

On 5 July the complainant, whose sick leave had been further extended for one month, i.e. from 1 July to 31 July, was informed that, as of 20 June, she had exhausted her annual and sick leave entitlements and that, as of 21 June, she would exceptionally be placed on special leave without pay for one year on medical grounds. She was also informed that due to late notice, the Organization had released her salary of June in full but that it would recover from her 2,243.02 Swiss francs as overpayment of her June salary. The complainant informed IOM the same day that she would have to return to work that same week because she could not live without income. She indicated that she had a medical appointment the following day with her medical practitioner and that she would ask him for medical clearance although she was not feeling well. She received medical clearance but the IOM Chief Medical Officer opposed her resuming her duties considering that she was not fit to

work and informed the complainant and the Director of HRM on 6 July about it. On that same day IOM decided to take exceptional measures and the Director of HRM informed the complainant that she was granted additional sick leave entitlements with retroactive effect to cover her certified sick leave up to the expiry of her contract on 2 September 2010. He added that she was not due to report for work until the expiry of her contract.

In its report of 13 December 2010 the Joint Administrative Review Board (JARB), which had been convened to examine the complainant's appeal, considered that she had been put under an "unnecessary amount of psychological pressure" to adhere to unusual and strict guidelines and instructions from her supervisor. It also considered that the latter made inappropriate and offensive remarks to the complainant, particularly given her illness. The JARB therefore considered that the complainant had been harassed by her supervisor. In addition, it noted that the supervisor had prepared a PDS form one month after the beginning of the complainant's contract despite the fact that, according to the PDS Guidelines, such a form should be completed only after one year of service for staff members holding a temporary contract. It therefore concluded that the final version of the PDS form, which her supervisor forwarded to the competent authority without giving a copy to the complainant, was issued for the sole purpose of having a reason to issue a warning letter. The JARB recommended that the complainant's contract be renewed and that she be assigned to another suitable position. It also recommended that she be granted moral damages and that the warning letter be removed from her personnel file.

Attached to an e-mail of 17 January 2011, HRM forwarded to the complainant a letter of 14 January by which the Director of HRM informed her that the Director General had decided not to endorse the JARB's recommendation. The Director of HRM attached a copy of the JARB's report on which the Director General had indicated on 11 January that the appeal should be dismissed, without giving reasons. The Director of HRM wrote again to the complainant on

8 February informing her of the Director General's reasons for dismissing her appeal. In his view, the JARB's report was tainted with errors of fact and law, and there was no valid reason to justify the renewal of her appointment given that her performance was unsatisfactory. He also considered that the allegation of harassment was unfounded and that the warning letter was issued in accordance with Staff Rule 9.211. Therefore, the warning letter would remain in her personnel file as evidence of her unsatisfactory performance. That is the decision the complainant impugns before the Tribunal.

B. The complainant alleges undue delay in the internal appeal proceedings. In accordance with Article 11 of Annex D to the Staff Rules, the JARB should be convened no later than 45 days from the receipt of the appeal by the Director of HRM. She submitted her statement of appeal on 19 June 2010 to the Director of HRM, but the JARB did not meet until 13 December 2010, which means it was not convened within the prescribed time limit. Moreover, the Director General's final decision was not taken within 120 days of the filing of her appeal, as required by the IOM rules.

According to the complainant, the decision not to renew her appointment was based on inaccurate facts, and on an irregular evaluation of her performance. She argues that she merely received some guidelines from her supervisor but was not given proper objectives or terms of reference. Moreover, the PDS form of 30 March 2010 to which her supervisor referred in the warning letter of 13 April 2010 was not the final version of the form. She met with her supervisor on 31 March to discuss the PDS form of 30 March and noted that some handwritten comments were added to it. The supervisor refused to give her a copy of the modified form. She adds that the meetings to which her supervisor referred in the warning letter were held at an early stage of her employment and dealt with specific tasks she had to perform; at no point of time was she informed of potential "misbehaviour" on her part. Consequently, the warning, which is a disciplinary measure, was taken without prior consideration or investigation, in breach of Staff Rule 10.1.

The complainant alleges harassment on the part of her supervisor. In her view, some of the guidelines given by her in the e-mail of 29 March 2010 were clearly abusive, especially since she had signed her employment contract thereby accepting to act in conformity with the Staff Regulations and Staff Rules. The complainant further submits that her supervisor made offensive and discriminatory remarks on both the PDS form and the written warning of 13 April. Indeed, it was particularly inappropriate to say that she became "wobbly, dizzy and hyperactive" when she was asked to give explanations concerning the performance of her duties. She stresses that she suffers from a neurological disease, which makes it very difficult for her to stand for more than a few seconds without severe pain; it is therefore inevitable that she gets "wobbly and dizzy". She further contends that she was put under unnecessary pressure when she was erroneously asked to pay back her salary on the ground that she had exhausted her entitlement to annual leave and sick leave.

She alleges bad faith on the part of IOM and criticises it for having "offered" her suspension from duties on full pay until the end of her contract instead of finding her another position commensurate with her experience and qualifications. She adds that when she asked that the "offer" be put in writing, she received a termination letter.

The complainant submits that no reasons were given by the Director General on 11 January 2011 to depart from the JARB's recommendation. The letter of 17 January by which she was notified of his decision was also silent. She emphasises that, according to the Tribunal's case law, an unfavourable final decision must be motivated. In her view, the fact that the Director of HRM wrote to her again on 8 February 2011 to inform her of the Director General's reasons for rejecting the JARB's recommendation is evidence that the Director of HRM knew that the Director General should have motivated his decision.

The complainant asks the Tribunal to set aside the decision of 17 January 2011 and the decision of 11 June 2010 as a "direct follow up" of the warning letter of 13 April 2010. She also asks that the warning letter be "withdrawn". She further asks to be reintegrated in

the same position or another suitable position with retroactive effect to the date of termination of her appointment. She further claims moral and "professional" damages together with costs.

C. In its reply IOM submits that the complaint is irreceivable. According to Article 6(2) of the Rules of the Tribunal, the Registrar shall call upon a complainant to correct the complaint, if not satisfied that it meets the requirements of the Rules, within 30 days. The complainant filed her complaint on 20 April 2011 and the Registrar asked her by a letter of 10 May 2011 to correct it within 30 days but she did so only on 31 July 2012, explaining that she could not send her corrected submissions earlier because she had been very ill. IOM criticises the complainant for not having asked for an extension of the 30-day timeline to correct her complaint and questions the reasons given to justify the delay. In any event, such delay in correcting the complaint contravenes the rationale of the Tribunal's Statute and Rules as it undermines the stability of the parties' legal relations.

Regarding the delay in the internal appeal proceedings, IOM acknowledges that the JARB had failed to hold its first meeting within 45 days of receipt of the complainant's appeal but indicates that it was due to exceptional circumstances: some of its members were on annual or maternity leave and the complainant objected to the appointment of one member. Regarding the alleged delay in issuing the final decision, IOM submits that paragraph 17 of Annex D to the Staff Rules merely provides that a staff member may file a complaint directly with the Tribunal if he or she has not received a final decision within 120 days from the date of filing his or her appeal; it does not mean that the Director General must take a final decision within 120 days of the date of the filing of the appeal.

IOM contends that a decision not to renew the complainant's appointment was discretionary stressing that it was not a termination but a non-renewal for unsatisfactory service. It asserts that her performance was properly assessed and rejects the allegation of bad faith. Her terms of reference were those stipulated in the vacancy

notice for the position of Administrative and Financial Assistant for which she had been selected. She discussed her tasks and performance with her supervisor several times in March 2010. The latter sent her an e-mail on 29 March summarising their discussions and giving her guidelines. According to IOM, it was appropriate and desirable that the complainant's supervisor filled in a PDS form at the end of the complainant's first month in her new assignment. It asserts that a copy of the final version of the PDS form was sent to the complainant by e-mail on 6 April 2010 but that she had decided not to sign it. It further explains that the letter of 13 April 2010 was "a warning given in advance of any notice of termination for unsatisfactory performance" in accordance with Staff Regulation 9.2 and Staff Rule 9.211, and not a written warning constituting a disciplinary measure pursuant to Chapter 10 of the Staff Regulations. Consequently, no prior discussion was required in that respect. It adds that it is common practice to place a warning letter in the staff member's personnel file.

IOM rejects the allegation of harassment asserting that the complainant's supervisor did not mean to be offensive when she stated that she had a tendency to get "wobbly, dizzy and hyperactive". She was not familiar with the symptoms linked to her illness and was not aware that it was painful for the complainant to stand, even for short periods of time. She was merely told that the complainant was fit to work as long as she was under medication.

IOM considers that the complainant suffered no moral or "professional" prejudice. Indeed, the warning letter of 13 April 2010 was not a disciplinary measure and therefore had no consequences on her career. Moreover, the Director of HRM met several times with her and explored the possibility of assigning her to another suitable position. IOM granted her sick leave above her statutory entitlements and placed her under special leave without pay so that she could continue to benefit from the same medical coverage. The Organization denies any error in requesting her to pay back part of her salary, explaining that at the time the request was made she had exhausted both her statutory sick leave and her annual leave entitlements. Given

that she was not fit to report for work and was in a difficult financial situation, IOM exceptionally decided to grant her additional sick leave.

IOM acknowledges that no reasons were given with the Director General's decision of 11 January 2011 to dismiss the complainant's appeal. However, the Director of HRM wrote to her on 8 February 2011 to explain the reasons motivating the Director General's decision.

D. In her rejoinder the complainant argues that she filed her complaint within the prescribed ninety days from the date of receipt of the impugned decision, and that the time granted to correct her complaint, although significant, was justified because her health had deteriorated further.

On the merits she contends that the reasons given in the letter of 8 February 2011 did not come from the Director General but from the Director of HRM, who was not competent to provide these reasons. She alleges unequal treatment insofar as no action was taken against her supervisor who had failed to establish a sound working relationship with her. She indicates for instance that when she asked to meet her supervisor with a view to resolving the different issues between them, the latter did not reply. Lastly, she asserts that her supervisor knew about her illness and more particularly that it was painful for her to stand because she had told her so.

E. In its surrejoinder IOM maintains its position. It also asserts that the Director of HRM had authority to inform the complainant of the Director General's reasons to dismiss her appeal.

CONSIDERATIONS

1. The Organization has raised irreceivability as a threshold issue on the ground that when the complaint was filed on 20 April 2011, it was filed without the supporting brief which Article 6(1) of the Rules of the Tribunal requires. The Tribunal has consistently held

that a complaint would not thereby be rendered irreceivable because Article 6(2) of the Rules of the Tribunal permits a complaint to be corrected within the time signified by the Registrar (see, for example, Judgment 3225, under 5). The Tribunal has stated that the Rules provide this facility to international civil servants as a means of protecting them against the strict procedures of the Statute and the Rules with which they are not necessarily familiar (see, for example, Judgment 2439, under 4). Article 6(2) directs the Registrar of the Tribunal to call upon the complainant or her or his agent to meet the requirements for correction within 30 days.

2. The Tribunal has stated that the complaint should be corrected within the time given by the Registrar. However, it has warned against being excessively formalistic to find that a complaint is irreceivable because the outstanding document was supplied with some delay.

3. In a letter of 10 May 2011, the Tribunal requested the complainant's Counsel to correct the complaint and to submit the properly completed complaint to the Tribunal within 30 days. The complainant did not file the submissions within the time that the Registrar required. However, considering the gravity of the illness of the complainant, which, as her representative alleged, affected the timeliness of the filing of the corrected submissions, the Tribunal considers the complaint receivable.

4. Briefly stated, the complainant appeals to the Tribunal against the decision of the Director General of IOM of 11 January 2011, and the reasons for that decision dated 8 February 2011. In the impugned decision, the Director General refused to follow the recommendations which the JARB issued on 13 December 2010 that the warning letter, which the Head of the Support Unit, the complainant's supervisor, issued to the complainant on 13 April 2010, should be removed from her personnel file. The Director General also rejected the recommendation by the JARB that the complainant's contract should have been renewed in another suitable position in the

Organization. The Director General also rejected the JARB's recommendation that moral damages should be paid to the complainant. In effect, the Director General confirmed the decision of the Head of the Support Unit to issue the warning letter dated 13 April 2010 to the complainant. The complainant asks the Tribunal to overrule this decision and order the removal of the warning letter from her file.

5. The Director General also confirmed the decision by which the then Director of HRM, by letter dated 11 June 2010, notified the complainant that her contract would not be renewed on the ground of her unsound working relationship with the Head of the Support Unit. The complainant asks the Tribunal to quash the impugned decision on the ground that it was a direct follow-up of the 13 April 2010 warning letter, which was unlawful because it was based on inaccurate facts and incomplete and irregular performance evaluations. She insists that the warning letter and actions by the Head of the Support Unit were discriminatory, oppressive, harassing and offensive and caused moral and professional damage to her career. She contends that, by extension, the notice of termination was tainted with irregularity because it was issued on the basis of the unlawful warning letter.

6. The Tribunal has consistently stated that the decision to extend or not to renew a contract is discretionary and can be reviewed only on limited grounds. The Tribunal will not, for example, substitute its own assessment for that of the organisation. The Tribunal will only impeach such a decision if the decision is tainted by a legal or procedural irregularity, is based on incorrect facts, if essential facts have not been considered or wrong conclusions have been drawn from the facts, or if the decision is based on an error of fact or law or amounts to an abuse of authority (see, for example, Judgment 2850, under 6, and Judgment 2861, under 83).

7. The complainant contends that the Director General failed to provide reasons for rejecting the recommendations of the JARB in his 11 January 2011 decision notified to her by e-mail on 17 January 2011. This is not entirely correct. It is true that when she was notified

of the decision on 17 January 2011 reasons were not provided. Apparently, at the complainant's request, reasons were provided on 8 February 2011. This means that, on the face of it, the complaint was filed beyond the ninety-day limit contemplated in the Tribunal's Statute. However, the Tribunal will not penalise the complainant for the failure of the Director General to provide reasons at the time the decision was rendered, as consistently stressed by the Tribunal. The letter of 8 February 2011 informed the complainant that the Director General refused to accept the recommendations of the JARB because the JARB's report contained errors of fact and law. The letter stated that this was particularly because there was no reason to justify the renewal of the complainant's contract. According to that letter, the non-renewal was because of the complainant's unsatisfactory service in accordance with Staff Regulations and Staff Rules for employees at Geneva. In the second place, the complainant's allegation of harassment was groundless in the light of the Organization's Policy for a Respectful Working Environment. In the third place, the warning letter was issued in accordance with Staff Rule 9.21, which is not a disciplinary measure pursuant to Staff Regulation 10. The letter of 8 February 2011 further stated that it was for this reason that the letter had to be kept on her personnel file as evidence of unsatisfactory performance.

8. The foregoing statements present a brief synopsis of the Organization's arguments before the JARB. Their submissions before the JARB also stated that the complainant received the written warning because she did not have good working relations with the Head of the Support Unit. The Organization stated that this is considered as a form of unsatisfactory service under Staff Rule 9.21. According to the Organization, this is evidenced by communication in meetings and from internal exchanges between the complainant and the Head of the Support Unit. It seems, however, that the meetings and exchanges were concerned with the complainant's alleged failure to adhere to her supervisor's guidelines and with her terms of reference for her work.

9. The complainant experienced difficulties obtaining the terms of reference for her work from the Head of the Support Unit. The complainant's insistence that no terms of reference were attached to her contract has not been controverted. The Head of the Support Unit stated that it should have been obvious to the complainant that the terms of reference were contained in the vacancy notice. The complainant's response that there were two vacancy notices which contained varying terms of reference is uncontroverted. It seems that the terms of reference were finally clarified in an e-mail of 29 March 2010. This was in the form of "guidelines" which her supervisor issued. The JARB noted that the Head of the Support Unit e-mailed the "guidelines" to the complainant on 29 March 2010 for her to sign, when the complainant had already signed to abide by the IOM rules and regulations. The JARB opined that the "contract-like" format of the guidelines included unreasonable requirements. This is apparent from the guidelines. Among other things, they required the complainant to seek prior approval before leaving the room during office hours; to "do any task" that the Head of the Support Unit requested "provided that it [was] not unlawful"; and not to unnecessarily make reference to her (the complainant's) past job experiences.

10. Given these terms, which seem to be unhelpful as terms of reference, it is not surprising that the JARB considered some points of the guidelines to have been inappropriate and did not lend themselves to a sound working relationship. According to the JARB, these characteristics of the guidelines tend to a form of harassment under the Policy for a Respectful Working Environment as provided for in IOM's General Bulletin No. 2017 of 22 August 2007. It is important to look at the provisions contained in IOM's Staff Rules and General Bulletins against which this finding was made.

11. In paragraph 2 of General Bulletin No. 2017 of 2007, IOM makes a commitment to the principle that every staff member has the right to work in a respectful, harassment-free environment. It reiterates IOM Standards of Conduct, contained in General Bulletin

No. 1278 of 2001, revised in June 2002. The statement is that staff members shall not threaten, intimidate or otherwise engage in any conduct, directly or indirectly, to interfere with the ability of other staff members to discharge their duties. It also prohibits the use by any staff member of their official function for personal reasons to prejudice the positions of colleagues they do not favour. Paragraph 5 states that harassment encompasses any act, conduct, statement or request which is unwelcome to another person and could, in the circumstances, reasonably be regarded as behaviour of a discriminatory, offensive, humiliating, intimidating or violent nature or an intrusion on privacy. It further states that harassment may include an action, behaviour, statement or displays related, among other things, to a person's physical attributes. It also states that harassment concerns not only intent but also effect, as an act which would be reasonably perceived by a person as offensive may constitute harassment, whether intentional or not. It concludes that harassment includes but is not limited to mobbing, abuse of authority and retaliation, and usually arises as a result of unresolved conflict in the workplace.

12. Paragraph 6 of General Bulletin No. 2017 of 2007 states that bullying or mobbing is repeated or persistent aggression in or in connection with the workplace, whether verbal, psychological or physical, which has the effect of humiliating, belittling, offending, intimidating or discriminating against a person.

13. Paragraph 8 of General Bulletin No. 2017 of 2007 states that abuse of authority occurs when a person misuses his or her official function for personal reasons to prejudice the positions of colleagues he or she does not favour. It is the exercise of authority in a manner which is not in the interest of the organisation and which serves no legitimate work purpose. Abuse of authority or misuse of power may include intimidation, threats, blackmail or coercion.

14. Paragraph 11 of General Bulletin No. 2017 of 2007 affirms the right of every staff member and non-staff personnel to be treated

fairly and respectfully in the workplace. Each staff member has the responsibility to treat co-workers in a way that respects individual differences.

15. Against these provisions, it is apparent that the guidelines issued to the complainant by the Head of the Support Unit were inappropriate and unhelpful for a sound working relationship tending to a form of harassment under IOM policy. This is highlighted, for example, from the warning letter in which the Head of the Support Unit stated that the complainant's unsatisfactory performance was reflected in her lack of progress in contacting the focal points of United Nations Member States. The Head of the Support Unit ended by stating as follows:

> "When [the complainant was] asked to explain why not much progress was made, [she] reasoned out that the computer had a technical problem, or that the Permanent Missions in Geneva did not pick up [her] calls. **I also noticed that, when [she was] asked to explain, [she] demonstrated [her] tendency to get wobbly, dizzy, and hyperactive**." [Highlight by the Tribunal]

16. It was not the only occasion on which the Head of the Support Unit made this observation in writing. It was entered as a handwritten note which the Head of the Support Unit made in the "Overall assessment" column of the PDS form. That note stated that after working for about a month with the complainant, she (the Head of the Support Unit) had observed that the complainant's medical condition was getting in the way of her work. The note stated, further, that the complainant hardly remembered things and became hyperactive, wobbly and dizzy when pressured.

17. It is apparent that the Head of the Support Unit had prior knowledge of the complainant's medical condition when these statements were made. This rendered the statements particularly unfortunate and insensitive. This was exacerbated by the unsettled nature of the terms of reference for the complainant's work. These were clarified on 29 March 2010, but her work evaluation commenced

almost immediately. The PDS form was issued on 30 March 2010 and the meeting was held on 31 March 2010.

18. The Tribunal considers that, for a person of physical disability and severe chronic conditions impairing posture, the warning letter was offensive. The Tribunal also notes the complainant's uncontroverted statement that there were many occasions on which she was called into the Head of the Support Unit's office and was not offered the opportunity to sit whilst the Head of the Support Unit sat. The Tribunal also notes the statement by the Head of the Support Unit that the complainant also wanted to speak to her every time she entered her room, while she (the Head of the Support Unit) was in the middle of a thought, or was rushing to finish something, and would also call her on her local extension. The Tribunal further notes the JARB's rhetorical question: "How would any person know whether their supervisor is in the middle of a thought".

19. It is obvious that differences arose between the Head of the Support Unit and the complainant almost from the time the complainant commenced work with IOM on 3 March 2010. The Tribunal notes that it was the complainant who took the initiative to resolve the difference when she suggested remedial action in an e-mail to the Head of the Support Unit on 29 April 2010 suggesting that they meet with the Ombudsman. The Head of the Support Unit did not reply to the e-mail.

20. Against this background, the Tribunal finds that the complainant sustained behaviour of an offensive and humiliating nature which amounted to harassment and bullying, whether intentional or not, contrary to the terms of the provisions of IOM General Bulletins set out above.

21. It also is apparent that there was irregularity in the performance evaluations. The guidelines provided in IOM General Instruction No. 1001 of 9 August 2006, as amended on 7 May 2007, state that the PDS is intended to permit the Organization to understand

how individual work contributes to the goals and achievements of the Organization. They further provide that the performance evaluation is for the purpose of measuring and developing staff performance as an essential tool for staff retention, career development and organisational growth, which is to be done systematically, consistently, fairly and seriously.

22. The Tribunal notes that a PDS form, with a full evaluation, was established for the complainant in less than a month after the complainant commenced her work on 3 March 2010. Paragraph 15 of General Instruction No. 1001 permits an early evaluation, but not a full evaluation at that stage. An early evaluation in the terms of IOM general guidelines is perfectly appropriate and desirable as, properly used, it would be a facilitating guide for a supervisor and staff member going forward. However, the guidelines in General Instruction No. 1001 providing for discussion, feedback and guidance to the employee were not followed. The circumstances in which the evaluation was done suggest that it was an unusual process as it was carried out in relation to the complainant. It is obvious that the evaluation was intended to be the basis of the warning letter that was issued to the complainant.

23. The Tribunal notes that the evaluation included mainly negative remarks. Paragraphs 18 and 19 of General Instruction No. 1001 require a supervisor to meet with a staff member who is being evaluated to discuss the performance and to offer constructive suggestions for improvements, where necessary. The Tribunal further notes that the first evaluation was completed, signed by the supervisor and the complainant and given back to the supervisor. When, on 31 March 2010, the supervisor and the complainant met to discuss the performance, the supervisor refused to give a copy of the PDS form to the complainant. The complainant requested a copy when she noticed that there were handwritten comments on the form. Under the PDS guidelines, the complainant was entitled to see all comments, particularly adverse comments, and to be given the opportunity to respond as the assessment is to be kept on her personnel file. A final

observation is that the PDS form that was used in the evaluation was that which was to be used at the time of renewal of contract and applied at the six-month interval. It is noteworthy that the caption on the form states "END OF PROJECT (OR ASSIGNMENT) EVALUATION".

24. In the foregoing premises the evaluation process was procedurally irregular.

25. The procedurally irregular PDS evaluation was the basis of the warning letter. The notice of non-renewal of contract flowed from these. It is noteworthy that the warning letter promised that the complainant's performance would have been reassessed within 30 days for further action against her failing improvement. In the letter of 11 June 2010, the Director of HRM informed the complainant of the non-renewal of her contract, citing the unsound relationship between the complainant and the Head of the Support Unit. It seems that unsound relationship was first formally raised with the complainant at her meeting with the Director of HRM and the IOM Chief Medical Officer on 7 June 2010. The Director of HRM's termination letter of 11 June 2010 was based on that meeting. The PDS evaluation, however, highlighted unsatisfactory performance. The warning letter that resulted from the evaluation promised further action failing an improvement in unsatisfactory performance.

26. Staff Rule 9.21, under which the Organization expressly acted, provides for termination of service for unsatisfactory service. Staff Rule 9.211 states that before action is taken to terminate a staff member for unsatisfactory service, the staff member is to be given a written warning at least 30 days before a notice of termination is issued. There is no evidence that such a warning was issued on the basis of possible termination because of an unsound relationship, prior to the issue of the termination letter. In fact, the letter of 8 February 2011, by which the Director of HRM adumbrated the reasons why the Director General rejected the JARB's recommendations, states that the non-renewal was for unsatisfactory performance. In the face of

these inconsistencies, the Organization's explanation that unsound relationship is a form of unsatisfactory service under Staff Regulation 9.2 provides an ingenious but unconvincing explanation to justify the non-renewal of the complainant's contract.

27. For the foregoing reasons, the impugned decision is set aside. The warning letter shall be expunged from the complainant's personnel file.

28. The JARB recommended that the Organization should renew the complainant's contract in another suitable position. The Tribunal is cognisant of the fact that the complainant was on a short-term contract. The Tribunal is also cognisant of the practical difficulties that would arise given the effluxion of time since the non-renewal of the complainant's contract. In these circumstances, reinstatement is not a viable option. However, the Tribunal will award the complainant material and moral damages in the total amount of 40,000 Swiss francs. IOM shall pay the complainant 2,000 Swiss francs as costs in these proceedings.

DECISION

For the above reasons,

1. The impugned decision is set aside.
2. The warning letter, dated 13 April 2010, which the Head of the Support Unit issued to the complainant is to be removed from the complainant's personnel file.
3. IOM shall pay the complainant a total amount of 40,000 Swiss francs in moral and material damages.
4. IOM shall pay 2,000 Swiss francs as costs to the complainant.
5. All other claims are dismissed.

In witness of this judgment, adopted on 8 November 2013, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 5 February 2014.

Giuseppe Barbagallo
Dolores M. Hansen
Hugh A. Rawlins
Catherine Comtet