117th Session **Judgment No. 3315**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second and third complaints filed by Ms R. S. against the World Health Organization (WHO) on 18 January 2012 and corrected on 13 March, WHO's replies of 22 June, the complainant's rejoinders of 18 September and the Organization's surrejoinders of 20 December 2012;

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

Having examined the written submissions and decided not to order oral proceedings;

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

A. Facts relevant to this case are to be found in Judgment 3314, also delivered this day. Suffice it to recall that in May 2008 the complainant filed a formal complaint of harassment against Dr L., who admitted in the course of the interview held on 21 June with the Field Security Officer (FSO) that the allegations made against him were true. On the following day Dr L. requested to change the contents of his Voluntary Statement Form (VSF). His request was denied by the FSO who suggested instead that Dr L. submit an additional VSF. By letter of 28 July 2008 Dr L. was notified of the

allegations of improper actions and conduct, and of the disciplinary measures he might face. He replied on 8 August 2008, and attached documentation in support of counter-allegations of defamation and harassment against the complainant. In September 2008 Dr L. was informed of the Administration's decision to confirm the finding of serious and entirely unacceptable conduct. Since Dr L.'s contract had already expired on 31 July, he was advised that WHO would not offer him employment in the future and that a copy of the letter would be placed in his file.

Meanwhile, in mid-August, the complainant requested an update from the South-East Asian Regional Office (SEARO) on the action taken on her harassment complaint against Dr L. SEARO's Director of Administration and Finance (DAF) replied on 15 August that the Administration had received Dr L.'s response to her allegations and that it needed time to review it. The complainant's three-month contract was also renewed in August, but its terms provided that there would be no further extension of her assignment beyond 31 October 2008.

By a letter of 20 October 2008 the complainant was informed of the allegations of improper actions and conduct made against her by Dr L. on 21 June and in August 2008. She was advised that, on the basis of these allegations, "it could be concluded that you have contravened [the] standards [of conduct expected of international civil servants]". The letter further stated that this could lead to a finding of misconduct, which could lead to disciplinary action, including summary dismissal, and asked the complainant for her comments by 31 October 2008, the date on which her contract was due to expire.

On 8 November the complainant replied, through her lawyer, denying the allegations of misconduct and claiming that the letter constituted retaliation, an abuse of authority and an attempt to intimidate the complainant and to undermine the integrity of her complaint against the Regional Administration's failure to act on her complaint of harassment. The letter of 20 October was considered as a breach of the WHO Policy on Harassment and contradictory. The complainant considered Dr L.'s response entirely without merit and

warranting no reply. On 3 December the complainant's lawyer sent a reminder to SEARO's DAF for a reply to her letter dated 8 November.

On 19 December the DAF replied to the letters of 8 November and 3 December 2008, explaining that his letter of 20 October had been written in accordance with relevant Staff Rules and within his authority. Noting that the lawyer's letter of 8 November "circumvented" the main issues raised without replying to them, he requested that the complainant and her lawyer urgently provide their "specific concrete comments on those relevant points". In case no response was received by 29 December 2008, it would be assumed that the complainant had no comments on those charges. The complainant's lawyer responded on 26 December, asserting that the allegations of improper actions and conduct against her were evidence of SEARO's attempt to harass her through repeated threats of disciplinary action and the imposition of short deadlines to respond to such allegations while the complainant was still on sick leave. She added that since there were no specific questions formulated in the letter of 20 October, the language and tone of his letter of 19 December could only be interpreted as an attempt to further intimidate her, that the allegations were baseless and wholly denied by the complainant, and that such discriminatory treatment against the complainant was further compounding her ongoing mental trauma and emotional distress.

Between 31 October 2008 and 18 January 2009 the complainant was on certified sick leave. She wrote to her second-level supervisor on 23 January to inform him that her health had improved and that she wished to resume her work. She did not receive a reply, and was separated from service when her contract expired on 29 January 2009.

In March 2009 the complainant's lawyer wrote several times to the DAF to complain about SEARO's lack of follow-up with regard to the letters responding to the allegations of misconduct. In the event that the matter was not pursued, the complainant's lawyer claimed full compensatory damages for the emotional harm, loss of dignity and character assassination directly arising from the "false, misleading and defamatory allegations" contained in the letter of 20 October. In addition, a written apology and public retraction of the said letters and

its contents were also sought. These communications were copied to senior officials of WHO both at SEARO and Headquarters. On 30 March, the complainant wrote to the Ombudsman at Headquarters with reference to former discussions of her issues relating to her sexual harassment complaint. She brought to his attention other issues, such as her performance appraisal reports, the special mention in her three-month contract of August 2008 and the absence of a response to her replies of November and December 2008 to the allegations of misconduct made by the Regional Administration in October 2008. She asked for his advice on these issues.

On 3 April 2009 the complainant was informed of the Regional Director's decision to close the case against her, citing "practical difficulties in conducting post-facto inquiries" and referring to the "personal context" of the e-mails and communications which had been sent to WHO by Dr L. The complainant lodged an internal appeal against the decision to close the disciplinary case against her, challenging WHO's "partial and belated action" and the disciplinary proceedings as a measure of reprisal and intimidation for her complaint of harassment, as well as a misuse of authority. The Regional Board of Appeal (RBA) considered that there was no action which had been prejudicial to the complainant and affected her appointment status and it recommended rejecting the appeal as irreceivable, which the Regional Director did, by a letter of 28 October 2009.

The Headquarters Board of Appeal (HBA) found the appeal receivable, but devoid of merit. It recommended granting moral compensation in the form of the opportunity to apply to WHO vacancy notices as an internal candidate for a period of 12 months. In a letter of 21 October 2011 the Director-General decided to dismiss the appeal on the merits and to reject the HBA's recommendation to award moral compensation. That is the impugned decision in her second complaint.

Prior to that decision, on 12 January 2010, the complainant lodged another appeal with the Headquarters Grievance Panel (HGP), the Office of the Director-General (DGO) and the Office of Internal Oversight Services (IOS) alleging institutional harassment and

repeated retaliatory actions by SEARO, which is the subject of her third complaint before the Tribunal. Having received no definitive reply within the 90 days that followed her appeal, she filed a notice of intention to appeal with the RBA on 19 April 2010, followed by a notice of intention to appeal to the HBA. In an undated report, the HBA found the appeal irreceivable, as filed by a former staff member whose appointment status expired before starting proceedings before the HBA or the RBA, and declared itself incompetent to review the allegations of institutional harassment. On 21 October 2011, the Director-General rejected the appeal. In what is the decision impugned in the third complaint, the Director-General declared irreceivable pleas concerning incidents, which occurred while the complainant was a staff member, because these were the subject of other appeals, and she declared also irreceivable allegations in relation to events that occurred after her separation from service, because these events did not affect her appointment status and, therefore, the complainant did not have standing before the appeal bodies of the internal justice system.

B. The complainant argues that the letter dated 20 October 2008 treated Dr L.'s allegations as established charges in breach of Staff Rule 1130, which provides that a disciplinary measure listed in Staff Rule 1110.1 may be imposed only after the staff member has been notified of the charges made against him or her and has been given an opportunity to reply to those charges. Applicable procedures were completely bypassed, as there was no investigation into the allegations made against her and no report to establish the facts considered to constitute misconduct. Moreover, in asking her to answer unsubstantiated charges, the Regional Administration acted in bad faith and in serious breach of due process. The complainant submits that the timing of the letter precisely nine days before her contract was due to expire, together with the Regional Administration's inaction for three months before choosing to exploit Dr L.'s allegations and to charge her with unsubstantiated accusations, constitute evidence of the prejudice and ill will of the Regional Administration towards her. In her view, the letter of 20 October was also unlawfully vague, as it

did not indicate which rule of conduct was allegedly breached or specify how the complainant allegedly breached that rule. The DAF simply forwarded 150 pages of documents containing private e-mails, inter alia, submitted by Dr L. and the onus was placed on her to determine what the charges were.

The complainant further argues that the decision impugned is arbitrary, as it is based on an incomplete consideration of the facts. In particular, she alleges that the Administration failed to establish the facts prior to initiating disciplinary proceedings against her. Moreover, the fact that the DAF afforded Dr L. another opportunity to issue a subsequent statement dated 8 August 2008 seeking to retract his earlier admission of 21 June, and that his retraction was taken at face value, to initiate proceedings against her, in spite of his conduct having been found as sufficiently grave to terminate his fellowship, demonstrates the arbitrariness of the decision. When she enquired from DAF on 15 August 2008 about the status of her harassment complaint and requested to be shown the counter-allegations made by Dr L., he wrote back that the complainant should re-familiarise herself with the UN Code of Conduct and refused to transmit these allegations. She submits that the time taken to "close the matter", namely from 8 August 2008 until 3 April 2009, without conducting an investigation or affording her due process, and the accusatory undertones of his communications, constitute sufficient evidence of the DAF's personal prejudice against her. Indeed, if he wanted to give the complainant an opportunity to respond to Dr L.'s allegations, as is stated in his letter of 3 April 2009, then why were these allegations not shared with her as soon as possible, rather than waiting until a few days prior to the expiry of her contract to initiate disciplinary proceedings? The unlawful attempt to charge her with misconduct on the basis of inadmissible evidence also amounts to an abuse of authority.

In her view, the letter of 20 October 2008 was issued as a retaliatory measure and an act of intimidation, in breach of the WHO Policy on Harassment. In this context, she mentions that the letter of 20 October can be seen as the culmination of a series of retaliatory measures, such as despoiling her performance appraisal reports,

isolating, sidelining and mobbing her at her workplace, disassociating her from her assigned duties and putting a caveat in her contract to prevent its renewal beyond 31 October 2008. In her third complaint, she argues that when taken together, these measures as well as those which were taken following her separation from service, amount to a form of institutional harassment, for which she is entitled to damages. She points out that, after her contract was extended so as to cover the period she was placed on certified sick leave, it was unlawfully terminated at the end of January, without conducting a medical examination on separation, in breach of Staff Rule 1085. She was also deprived of the one month's notice which applies to the termination of temporary appointments, in breach of Staff Rule 1040.1. Moreover, she was paid her terminal dues on 15 October 2009, some nine months after her separation from service, which caused her hardship. She was denied the opportunity to get her private belongings from her office and she was asked to complete her assignment report from home. Her performance appraisal for the period from 19 August to 31 October 2008 was done in violation of due process. Prior to receiving the letter of 20 October, she had asked her supervisors and the Human Resources Department (HRD) for an extension of her contract on 17 October, but she never received a reply. In addition, she argues that she was denied a legitimate expectation of employment at SEARO. She had worked from 2003 to 2009 at SEARO and had received only commendatory appraisals. Even after the closure of the disciplinary case against her, and in spite of having applied for several advertised temporary and fixed-term vacancies for which she was qualified, she was never even shortlisted. As a single mother, the complainant submits that she has lost valuable opportunities of gainful employment with WHO and that she is now blacklisted from employment at SEARO for having lodged a harassment complaint.

Lastly, she argues that the HBA report and the Director-General's decisions are tainted with bias and errors of fact and law, and that both the proceedings before the RBA and those before the HBA were tainted with excessive and inexcusable delays.

The complainant asks the Tribunal to set aside the letters of 20 October 2008 and 3 April 2009 and to order WHO to treat her as an internal candidate in considering her candidature and that it be ordered to grant her a fixed-term contract befitting her experience and qualifications. She seeks material, moral and exemplary damages under several heads in the amount of 3 million United States dollars. She also asks for costs in the amount of 45,000 dollars.

The accusation of misconduct was one element in the alleged institutional harassment, which, according to her third complaint, is evidenced by the following actions of the Administration:

– A lack of response of WHO authorities to her repeated letters and messages (HQ Ombudsman, SEARO Staff Advisory Group, Staff Association, HGP, Regional Administration, DGO).
– Unlawful end of her contract as she was on a certified sick leave and without a notice on the non-extension of temporary appointment provided for in Staff Rule 1040.1. Furthermore, no medical examination was conducted to assess her fitness to work as required by Staff Rule 1085.
– Her performance appraisal for the period from 19 August to 31 October 2008 was done in violation of due process, without a mandatory assignment report and by a person who has never been her supervisor. It was signed by the first-level supervisor on 23 February 2009 and by the second-level supervisor on 2 March 2009, i.e. after the termination of her contract, and the complainant refused to sign it.
– A denial of employment opportunities with WHO which she alleges to be a result of an unwritten "embargo" against her.
– A delay in paying her "pending dues" on 15 October 2009, i.e. nine months after the end of her employment with WHO.

In relation to the institutional harassment, the complainant requests that adverse remarks in her performance appraisal dated 2 March "be expunged", that she be awarded moral damage for the "invalid ending" of her contract, for isolation, mobbing and loss of opportunity as well as compensation for hardship caused by the late payment of

her dues, for the lack of protection against harassment, for her flawed separation from service and the denial of fair chances of employment with WHO, and for the 1.5 year delay in internal proceedings. She values the material and moral damages at 300,000 United States dollars and claims costs in the amount of 20,000 dollars.

C. In its reply to the second complaint, WHO denies that the contested decision resulted from personal prejudice and that it was a retaliatory action linked to a complaint of harassment that the complainant made against a colleague. According to WHO, in light of the serious allegations this colleague made against her and the supporting documentation he provided, the Regional Administration had an obligation to take the matter seriously and conduct an investigation. WHO argues that the allegation of prejudice is not supported by evidence and, relying on the HBA's findings, considers that the information gathered during the investigation into the complainant's harassment claim was relevant for the investigation into her potential inappropriate actions. WHO further contends that the disciplinary proceedings against the complainant were started in good faith on a proper basis, since the documentation provided by the alleged harasser provided sufficient evidence, *prima facie*, that could lead to the conclusion that there was misconduct on the part of the complainant. The charge letter that the complainant received was deemed sufficiently clear and definite, contrary to what the complainant argues. She was also provided with sufficient time to reply to the allegations.

WHO affirms that the decision to close the case was based on the finding that the available evidence fell short of the standard of proof required to support a finding of misconduct and that, due to the lapse of time, further enquiries were not possible. It further considers that the proceedings before the RBA and the HBA were not flawed. More particularly, the fact that the Administration had been represented by a lawyer did not violate any policy or rule. Consequently, WHO asks the Tribunal to reject the second complaint in its entirety.

Regarding the third complaint, WHO makes a link between this complaint, the complainant's harassment accusation and her complaint

concerning the allegations of misconduct. Concerning her separation from service, WHO stated that the certified sick leave ended on 18 January 2009 and that the complainant was separated from service on 29 January. WHO affirms that the complainant completed separation formalities, including completion of her assignment report, performance appraisal, and clearance certificates in February 2009. Following her 12 January 2010 appeal, the complainant received a letter, on 14 June 2010, from the Executive Director of the DGO, proposing a "holistic approach" of considering her three appeals before the HBA and the referral of her overlapping allegations of harassment and of retaliation to the HGP, which the complainant refused on 2 July 2010.

WHO contends that the complainant did not have standing as regards events which occurred after her separation from service, given that she was not appealing any administrative action or decision affecting her appointment status, as required under Staff Rule 1230.1. As her internal appeal was irreceivable, her complaint before the Tribunal is also irreceivable. WHO asks the Tribunal to reject the complaint in its entirety.

D. In her rejoinder to the second complaint, the complainant presses her pleas. She contests the facts presented by WHO. She specifically argues that Dr L. has never made any allegations of improper action or conduct against her, but simply responded to her harassment claim. It was the Administration who "with ill-intent and malice" treated that documentation as an allegation of the complainant's misconduct. She firmly affirms that WHO failed to take any steps to investigate or establish the charges made against her in the 20 October 2008 letter. She argues that the shock of receiving the letter in question caused a physical and mental breakdown that resulted in a two-month sick leave. She also had to engage an "expensive" lawyer from the Supreme Court bar to defend herself against the Administration.

Regarding the third complaint, the complainant argues that separation formalities were not completed in February 2009, but on 9 September with her final dues released on 15 October 2009. She further argues that, after lodging a complaint before the HGP within

the prescribed time limits, sending several reminders and waiting for over 90 days for action to be taken on her complaint, she was left with no choice but to proceed before the RBA and the HBA. The Administration's suggestion to refer the case back to the HGP makes little sense when her appeal itself is, inter alia, against the inaction of the HGP in the first place. She presents several arguments in favour of the receivability of her complaint. To the elements of her alleged institutional harassment, she adds being isolated and sidelined at work, her promised contract extension being stalled, she being mobbed by her supervisors, etc.

E. In its surrejoinder to the second complaint, WHO maintains its position in full. It argues that the presumption of innocence was demonstrated by the language used in the contested letter and the time allowed for her to provide a response.

In its surrejoinder to the third complaint, WHO maintains its position in full. It explains that the HBA could not deal with harassment cases and states that the complainant's contract was terminated according to its terms. WHO argues that the claim of institutional harassment is therefore not substantiated.

CONSIDERATIONS

1. The Tribunal joined these two complaints because they involve the same parties and raise the same or closely related issues.

2. The central issue for determination in [the second complaint] is whether the Organization unlawfully initiated or foreshadowed misconduct proceedings against the complainant in the letter dated 20 October 2008. The letter was issued on behalf of the Regional Director of WHO's South-East Asian Regional Office (SEARO) in India, purportedly pursuant to Staff Rule 1110 of the WHO Staff Regulations and Staff Rules ("Staff Rules"). The complainant insists that its issue was based on unfounded and unestablished allegations. In her view, this was confirmed by the Administration's

discontinuance of the proceedings against her by a letter to her dated 3 April 2009. She complains that the discontinuance was made with reservations and without an apology for initiating the proceedings. She insists that these circumstances all caused her to suffer mental and physical injury, stress, anxiety and trauma. She seeks compensation, material and moral damages for these as well as for the Organization's alleged failure to provide an efficient internal means of redress that caused delays in the proceedings in her appeal. She also seeks a withdrawal of the letters of 20 October 2008 and 3 April 2009.

3. The Tribunal observes that the complainant also seeks to be treated as an internal candidate of the Organization under Staff Regulation 4.4 for obtaining an appointment and prays that she be granted a fixed-term service contract befitting her experience and qualifications. These prayers apparently arose from the recommendation which the HBA made, but which the Director-General rejected. The Tribunal has consistently stated that it has no power to grant such relief as these matters are within the discretion of the Organization, to be determined pursuant to the relevant rules of the Organization.

4. The Organization raised three other aspects of the complaint which it submits are irreceivable because they were not in the original appeals. These are the allegations that the complainant's contract was invalidly terminated, that the procedures for her separation from the Organization on termination were not followed, and that the Organization placed a bar on her future employment resulting in her not being shortlisted for vacancies for which she applied. The complaint shows that the first two allegations are not actual claims. They were raised in the brief to support the central claims. However, inasmuch as the complainant instituted separate proceedings on these two aspects, the Tribunal will not comment on them in relation to [the second complaint]. However, the third allegation that the Organization placed a bar on the complainant's future employment is expressly a part of her claim for exemplary, material and moral damages in [the second complaint].

5. Concerning the central issue in the complaint, the complainant contends that the letter of 20 October 2008 was an act of retaliation and intimidation that was issued in abuse of authority and contrary to Staff Rules 1230.1.1, 1230.1.2, 1230.1.3 and 1130, contrary to stated procedure and in breach of due process.

6. The Tribunal's case law on due process in disciplinary proceedings is succinctly expressed, for example, in Judgment 2771, under 15, as follows:

> "The general requirement with respect to due process in relation to an investigation – that being the function performed by the Investigation Panel in this case – is as set out in Judgment 2475, namely, that the 'investigation be conducted in a manner designed to ascertain all relevant facts without compromising the good name of the employee and that the employee be given an opportunity to test the evidence put against him or her and to answer the charge made'. At least that is so where no procedure is prescribed. Where, as here, there is a prescribed procedure, that procedure must be observed. Additionally, it is necessary that there be a fair investigation, in the sense described in Judgment 2475, and that there be an opportunity to answer the evidence and the charges."

7. The complainant introduced no evidence of a sufficient quality and weight from which the Tribunal may infer that, contrary to Staff Rule 1230.1.1, the Administration issued the letter of 20 October 2008 arbitrarily, out of malice, out of prejudice, or on the basis of a vengeful and retaliatory mindset against her because she had lodged an appeal in the RBA against the Administration. The letter of 3 April 2009, which notified the complainant of the discontinuance of the proceedings, does not assist with that proof. Suspicion and surmise are insufficient.

8. Staff Rule 1230.1.3 permits a staff member to appeal against any administrative action or decision that affects his or her appointment status where the action or decision resulted from a failure to observe or apply correctly the provisions of staff rules or the terms of the staff member's contract. The complainant contends that, in violation of Staff Rule 1130, the Administration's letter of 20 October 2008 treated the allegations that her colleague made against her in his reply in the harassment proceedings as established charges. Staff Rule 1130 provides

that a disciplinary measure that is listed in Staff Rule 1110.1 may be imposed only after a staff member is notified of charges and given an opportunity to reply to them. The reply is to be made within eight calendar days from the receipt of the notification, unless that time is shortened on account of urgency. The complainant contends that the reference is to established charges which are laid after investigation and not mere unsubstantiated accusations.

9. The Tribunal notes that, at the material time, SEARO had a document entitled "Procedure and Policy for Conducting Complaint Investigation/Fact Finding". It was a general investigative guide for administrative investigations. The terms of this document were markedly similar to those set out in WHO's Investigation Process. In fact, paragraph 1.4 of SEARO's Procedure and Policy required its terms to be in line with those in WHO's Investigation Process, which was applicable to investigations in SEARO at the material time. WHO's Investigation Process fulfilled WHO's policy to have an independent fact-finding investigative process to guide the Director-General and a Regional Director in deciding whether to lay a charge on the basis of allegations. It is that process that permits them to determine whether allegations are sufficiently substantiated for charges to be laid.

10. WHO's Investigation Process revolves around the Headquarters' Office of Internal Oversight Services (IOS). It makes that Office responsible for fact-finding by investigating allegations against staff members. Accordingly, the document states that the Director-General has given functional independence to the IOS, which is to formulate its investigative programme and the conduct of it. In deciding whether to investigate a complaint, the IOS is to determine whether the matter could be dealt with more appropriately by another entity. The process provides for interviews, including the person against whom the allegation is made, and witnesses. Investigators are required to document the interviews and to ask those interviewed to review the record of the interview and sign it. The investigating authority must then prepare a report containing the established facts and evidence gathered, including statements and documents. The

report is to be sent to the Director-General or the Regional Director. If, after reviewing it, the latter decides to initiate disciplinary proceedings, he or she should ask the Director of HRD to make the formal written charge and dispatch it to the staff member with all of the information on which the charge is based. Neither this nor any similar process was followed in the present case.

11. The Organization explains that the letter of 20 October 2008 was sent to the complainant based on extensive information from her colleague during the harassment investigation and the Regional Director's analysis of the matter. However, the status of the letter was markedly ambiguous. It can even be reasonably viewed as threatening. Among other things, it stated as follows:

> "Of serious concern to the Organization is that staff members, as international civil servants, must observe at all times the standards of conduct as defined in Article 1 of the Staff Regulations and Rule 110. On the basis of the attached allegations from [her colleague], it could be concluded that you have contravened these standards. This could lead to a finding of misconduct pursuant to Staff Rule 110.8, which could result in disciplinary action taken against you further to Staff Rule 1110, including dismissal or summary dismissal.
>
> In view of the gravity of the allegations made against you, and before deciding whether or not to take disciplinary action against you under Staff Rule 1110, please provide your comments on this letter to the undersigned, which is being delivered to you by hand, **by 31 October 2008**.
>
> Following a review of any comments provided to us within the aforementioned deadline, and subject to any further investigation that is considered to be warranted, you will be notified of the final decision in this matter."

12. These statements were made in circumstances where there had been no independent investigation of the allegations. This was coupled with the clear suggestion that in the absence of a satisfactory explanation from the complainant, she could be subjected to disciplinary measures without more being done. In particular, no charges would be formulated identifying precisely the conduct which was said to constitute misconduct and apparently without having an opportunity to answer as contemplated by Staff Rule 1130 and without establishing the

investigative procedure which the Organization's guidance requires. This was a breach of due process. It was in further breach of due process to have sent the many pages of documents to the complainant, requiring her to determine from them the grounds for the alleged misconduct.

13. The Organization states that the Administration previously used the procedure. This, however, is not an acceptable excuse when WHO's Investigation Process required an investigation and fact-finding on the allegations before a letter of that nature was issued.

14. The Tribunal notes that the allegations on which the letter of 20 October 2008 was issued were circulated to various authorities within WHO. The Organization explains this by stating that they were sent to keep the authorities to whom the complaint against the accused colleague had already been sent apprised of the situation. The allegations contained statements of a personal nature. They were potentially harmful to the complainant's reputation and, as she states, they were hurtful to her. In these circumstances, the failure to investigate the allegations in accordance with WHO's own Investigation Process before they were circulated also amounted to a want of fairness and good faith that constituted moral injury which entitles the complainant to compensation. The complainant is entitled to have the letters of 20 October 2008 and 3 April 2009 expunged from her personal file.

15. In the Tribunal's opinion, the violation of due process was exacerbated by delay in the internal appeal process in which the complainant was seeking to establish that the letter of 20 October 2008 was unlawful. First, there was an unnecessary delay of almost two months when the Secretary of the RBA returned the notice of intention to appeal, which the complainant filed on 17 April 2009. Without authority to do so, the Secretary suggested that the subject matter of the notice of intention to appeal was vague and deficient. However, the RBA accepted the same notice of intention to appeal on 12 June 2009, conducted a hearing in September 2009 and submitted its (undated) report to the Regional Director in October 2009. In the

HBA proceedings, there was an inordinate delay in submitting the report with the recommendations to the Director-General. The HBA heard the appeal on 6 September 2010 and on 27 January 2011, but presented an undated report to the Director-General in October 2011. This was inordinate delay, by which the HBA violated its own Rules of Procedure and breached the due process in the internal appeal proceedings to which the complainant was entitled.

16. In summary, the Organization breached the due process requirements of Staff Rules 1230.1.3 and 1130 and WHO's Investigation Process. The Organization also breached its duty to provide the complainant with the efficient internal means of redress to which she was entitled. The complaint is well founded on these grounds, which entitles the complainant to damages.

17. The complaint in [the third complaint] is concerned with allegations of institutional harassment, retaliation and intimidation. The essential question for determination is whether officials of the Organization subjected the complainant to intimidation and retaliation in the workplace after she complained of harassment against a colleague with whom she worked at SEARO. The complainant claims material and moral damages and costs. In the impugned decision, contained in her letter dated 21 October 2011, the Director-General, accepting the recommendation of the HBA, dismissed the complainant's appeal as irreceivable.

18. The HBA had unanimously recommended that the appeal be dismissed as irreceivable on three grounds. The first was that the complainant was no longer a staff member of the Organization for almost a year before she issued the complaint on 12 January 2010 and subsequently lodged her appeal to the HBA. The HBA therefore found that her "appointment status" with the Organization could not have been affected by any administrative action. The HBA accordingly found that she lost her right of appeal under Staff Rule 1230.1. The HBA also found that it was not competent to review institutional harassment under WHO Staff Rules. This, according to the HBA, was

particularly so because the allegations related to matters that were subject to past or present investigations and other appeals which she had before the HBA and the RBA. These included appeals concerning her last 2008 performance appraisal report and the terms of her last contract.

The Director-General accepted these findings, in the letter containing the impugned decision. However, she specifically noted that the appeal comprised of matters that allegedly occurred when the complainant was a staff member of the Organization and some which occurred after her employment ended. The Director-General determined that the matters that allegedly occurred when the complainant was not any more a staff member were irreceivable because they did not affect her appointment status with the Organization as that status expired when her employment ended in January 2009. Accordingly, the Director-General concluded that the complainant had no standing to revert to WHO's internal appeal system in relation to those matters. However, even in such cases, a former staff member has recourse to the Tribunal (see Judgment 2840, under 21).

19. The Director-General determined that the pre-termination matters were irreceivable on two grounds. One ground was that they are the subject of other proceedings and are therefore *sub judice*. The Tribunal notes that some of the substantive pre-termination claims which the complainant relies upon in [the second complaint] were subject to the proceedings in [the first complaint] in which she complained against the Organization's inaction and delay in the investigation and internal appeal proceedings in her harassment claim. Inasmuch as the Tribunal has held that the claim in [the first complaint] is well founded, the allegations of inaction and delay in the pre4sent matters will be accorded judicial notice. However, allegations that relate to the complainant's performance appraisal, including the allegation of the despoiling of her report for the period 19 May to 18 August 2008, was the subject of an appeal in September 2008. The RBA dismissed that appeal as irreceivable on 2 January 2009. The allegations concerning invalid termination of contract, which are

entwined with the caveat on the complainant's last contract, were the subject of an appeal of 29 September 2008. The RBA also dismissed it as irreceivable. The Tribunal will not therefore comment on those allegations in the present proceedings.

20. However, the complaint in [the third complaint] raises a discrete case which focuses on allegations that the complainant suffered administrative harassment, retaliation and intimidation by officials and the Organization. Her central argument in this complaint is that she was harassed, mobbed and isolated in the workplace and denied the opportunity to perform assigned duties, while various authorities in WHO failed to protect her from the institutional harassment. This is not *sub judice*. Neither are her claims that the Organization paid her dues late; officials of the Organization prejudicially denied her a fair chance of employment prior to and after her termination in January 2009; there was inordinate delay and inaction on her substantive harassment claim; the investigative internal appeal proceedings were flawed because of inordinate delay; and that she was denied access to her office to wind up her workstation when her assignment ended.

21. In the second place, the Director-General decided that the allegations concerning pre-termination events or decisions that were not *sub judice* were nevertheless irreceivable because they were filed out of time. The Tribunal notes that only the first stated allegation, that she was harassed, isolated and mobbed in the workplace, the central complaint in the present case, fairly arose while she still worked in the Organization. The Tribunal further notes the complainant's contention that her appeal was not time-barred because her allegations are a compendium of institutional harassment, intimidation and isolation of an ongoing nature. In effect, she contends that although the events and actions which she complains of commenced while she was in office, they were part of "the series of acts of institutional harassment and retaliatory actions".

22. The Tribunal has stated, in Judgment 3250, under 9, that where a specific intentional example of institutional harassment is not identifiable, a long series of examples of mismanagement and omissions by an organisation, which compromises the dignity and career of an employee, may represent institutional harassment. The complainant's receivable grounds, which are set out in consideration 21 of this judgment, and the allegations proffered in support, if proved, can individually and compendiously be bases for institutional harassment. Her appeal, which was filed on 25 April 2010, could not have been out of time when one of her grounds of appeal is, in effect, that she had been and still was being prejudicially denied a fair chance of employment in the Organization.

23. There is insufficient evidence from which to infer that officials of the Organization prejudicially denied the complainant a fair chance of employment prior to and after her termination in January 2009. The Organization sought to controvert her allegation that she was denied access to her office to wind up her workstation when her assignment ended. However, there is credible evidence that the complainant was unable to properly finish her assignment report and did not have the opportunity to get her private belongings from her office. There is clear evidence that the Organization paid her terminal dues some nine months after her last assignment ended. This was an inordinate and unacceptable delay, particularly given that she is a single mother who made various requests for payment. She sent reminders to the Department of Financial Services and to HRD explaining the inconvenience that the delay was causing her. Additionally, the Tribunal considers the finding earlier in this judgment that the complainant's due process rights were violated by issuing the letters of 20 October 2008 and 3 April 2009 concerning misconduct. The Tribunal also considers its finding in [the first complaint] that there was inaction and inordinate delay in the investigation and internal appeal processes in her harassment proceedings. These are all examples of institutional harassment by violations of the complainant's right to be treated with dignity and respect as a staff member.

24. Even further, there was inordinate delay in the internal appeal proceedings not only in the complainant's appeal from the misconduct proceedings but in the institutional harassment appeal as well.

25. In the foregoing premises, the complainant's case that she sustained institutional harassment is also well founded. She is accordingly entitled to compensation.

26. The complainant claims material damages but has adduced no evidence of actual injury as a result of an unlawful act in order to obtain such damages, notwithstanding that the events in question occurred some years before she filed her complaint. Accordingly, the Tribunal does not award material damages. There is no ground for the award of exemplary damages. However, the complainant is entitled to moral damages for the flagrant breach of due process, as well as for the institutional harassment which she sustained. These are grave violations, for which the complainant is accordingly awarded moral damages in the sum of 65,000 United States dollars. She is also awarded 3,000 dollars in costs.

DECISION

For the above reasons,

1. The decisions contained in the letter of the Director-General dated 21 October 2011, so far as they relate to HBA Appeal No. 741 and HBA Appeal No. 766, are set aside.

2. The Organization shall expunge the letters of 20 October 2008 and 3 April 2009 from the complainant's personal file.

3. The Organization shall pay the complainant compensation for moral injury in the amount of 65,000 United States dollars.

4. The Organization shall pay the complainant 3,000 dollars in costs.

5. The complaints are otherwise dismissed.

In witness of this judgment, adopted on 20 February 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 April 2014.

GIUSEPPE BARBAGALLO
MICHAEL F. MOORE
HUGH A. RAWLINS

DRAŽEN PETROVIĆ