Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

P. (No. 2)

v.

Global Fund to Fight AIDS, Tuberculosis and Malaria

127th Session **Judgment No. 4072**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr A. P. against the Global Fund to Fight AIDS, Tuberculosis and Malaria (hereinafter "the Global Fund") on 12 January 2016 and corrected on 10 March, the Global Fund's reply of 30 June, corrected by letter of 4 July, the complainant's rejoinder of 17 October 2016 and the Global Fund's surrejoinder of 25 January 2017;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the lawfulness of the mutually agreed separation agreement which he signed.

Facts relevant to this case are to be found in Judgment 3424, delivered in public on 11 February 2015, concerning the first complaint filed by the complainant. Suffice it to recall that on 20 March 2012, as part of the implementation of the "consolidated transformation plan" aimed at improving the organization's performance, the complainant, who was employed under a permanent contract as a portfolio manager in the Grant Management Division, was called to an individual meeting

during which he was invited to sign a Mutually Agreed Separation (MAS) agreement (hereinafter "separation agreement"), whereby he would be placed on special leave with pay until 30 April 2012, the date on which his contract would end, would receive a termination indemnity and six months' basic salary in lieu of notice and in lieu of reassignment and would forgo any right of appeal. The complainant signed the separation agreement on 21 March 2012.

In Judgment 3424, the Tribunal set aside the implied decision rejecting the appeal filed by the complainant against the organization's refusal to reopen negotiations on the agreement and remitted the complainant's case to the Global Fund so that the internal appeal proceedings could be resumed directly before the Appeal Board since, following the abolition of the post of Director of Corporate Services, it had become impossible to pursue the internal appeal procedure in the normal way. The Tribunal stated that during the internal appeal procedure it would be important to determine and verify a number of elements. In particular, it would be important to determine whether, as the complainant submitted, he had been "threatened", during the successive individual meetings to which he had been called, with being subjected to a performance improvement plan setting unattainable objectives, and with then being dismissed without compensation for unsatisfactory performance. It added that it was also necessary to verify the truth of the complainant's assertion that his consent to the disputed agreement was obtained by misrepresenting the content of his last performance evaluation and to establish the factual circumstances in which the meetings in question took place, especially with regard to the possibility of being assisted by a third party or having sufficient time for reflection.

The complainant filed an appeal with the Appeal Board on 9 April 2015. In his appeal he complained about the conditions in which he had been led to sign the separation agreement, since he considered that he had been misled. He alleged that during the meeting of 20 March 2012 he had wrongly been told that he could not be retained in the new structure since the calibration (weighting) process – consisting of peer review of the manager's initial rating – had shown that his performance was unsatisfactory. Since the only alternative to signing the proposed

agreement was to undergo a performance improvement plan, which had been presented to him as being doomed to failure and likely to result in dismissal without compensation for unsatisfactory performance, he said that he had been subjected to an "illegitimate threat". He also asserted that he had been subjected to "illegitimate pressure", in that he had been given very little time to reflect before giving his answer, and had not had a copy of the agreement, and that he had been denied permission to be accompanied by a staff representative. He argued that his consent had therefore been invalidated. In the reply that he submitted on behalf of the organization, the Head of the Grant Management Division indicated that the High-Level Independent Review Panel had made a number of recommendations concerning the restructuring of the aforementioned division. He explained that in order to implement these recommendations he had been obliged, with the support of the Human Resources Department (HRD), to conduct a review to evaluate whether the incumbent staff concerned had the competencies to be appointed immediately to redesigned and more demanding roles within the new structure. Since the review had indicated that the complainant lacked the skills and competencies to meet the new requirements, he had been given the option of participating in a performance improvement plan or signing a separation agreement. He had chosen the latter option without any coercion.

The Appeal Board delivered its report to the Executive Director on 29 September 2015, after hearing the parties. In its view, since the complainant's post had been mapped into the new structure, the organization should not have proposed a separation agreement or a performance improvement plan. It considered that the complainant had also been misled, since the Global Fund's proposal that he participate in a performance improvement plan, as an alternative to signing a separation agreement, was not consistent with the applicable rules, and that the hints that this plan was doomed to failure could be interpreted as threats to make him sign the agreement in question. Moreover, the Board considered that the complainant had been unfairly treated and it noted the lack of communication and transparency on the part of the organization. The Board also considered that the meeting of 20 March 2012 had been prepared in haste, and it emphasized that it saw no

justification for the fact that the complainant had been denied the right to be accompanied, or the fact that he had not been given sufficient time for reflection. In conclusion, it stated that the complainant had been pressured by the Global Fund, but that he had nevertheless had the option not to sign the separation agreement, as others had done in similar circumstances. The Board recommended that he be granted compensation of 18 months' salary, less the amount received under the above-mentioned agreement, on the basis that the complainant would have stayed in the service of the organization for another year if his case had been treated correctly and that six months' salary should be paid to him as moral and material damages.

The Executive Director's decision on the appeal was set out in a note of 14 October 2015, which constitutes the impugned decision. He observed that the Appeal Board had not reached a clear conclusion on whether the complainant had signed the separation agreements under duress, but he asserted that there was no evidence to suggest that this had been the case. He therefore concluded that the agreement was valid and that hence the appeal was irreceivable since, under the terms of the agreement itself, the complainant had waived any right of appeal. Noting that the Tribunal, in Judgment 3424, had considered that the mere fact that in 2012 the Global Fund had rendered it impossible for the complainant's appeal to be dealt with in accordance with the applicable rules, owing to the abolition of the post of the authority competent to hear it, was sufficient to vitiate the decision taken on this appeal, the Executive Director considered that the organization had to take responsibility for its failure to provide the complainant with an effective means of pursuing his internal appeal and had thus created complications which could have been avoided. He awarded the complainant compensation under that head in the amount of 5,000 Swiss francs.

The complainant seeks the setting aside of the impugned decision – except with respect to the award of compensation of 5,000 Swiss francs – and of the separation agreement which he signed, full redress for the injury which he claims to have suffered, punitive or exemplary damages and 10,000 euros in costs for the internal appeal proceedings and the proceedings before the Tribunal. In his rejoinder, the complainant

asks that an amount corresponding to the fees and taxes which he has undertaken to pay to his counsel be deducted from any monetary awards made to him and that such amount be paid to his counsel**.**

The Global Fund requests the Tribunal to declare the complaint irreceivable, since the complainant waived any right of appeal by signing the separation agreement, or, failing that, unfounded.

CONSIDERATIONS

1. As stated above, the present complaint is the sequel to Judgment 3424, in which the Tribunal remitted the complainant's case to the Global Fund so that the internal appeal proceedings could be resumed, the complainant being invited to file an appeal with the Appeal Board with a view to the adoption of a recommendation to the Executive Director. In this respect, the Tribunal emphasized that "one of the main justifications for the mandatory nature of such a procedure is to enable the Tribunal, in the event that a complaint is ultimately lodged, to have before it the findings of fact, items of information or assessment resulting from the deliberations of appeal bodies, especially those whose membership includes representatives of both staff and management, as is often the case [...]". The Tribunal observed that "the Appeal Board plays a fundamental role in the resolution of disputes, owing to the guarantees of objectivity derived from its composition, its extensive knowledge of the functioning of the Organization and the broad investigative powers granted to it. By conducting hearings and investigative measures, it gathers the evidence and testimonies that are necessary to establish the facts, as well as the data needed for an informed assessment thereof. In the present case, it appears to the Tribunal all the more essential to have this background knowledge, since the parties essentially rely on statements giving profoundly different accounts of what actually happened during the individual meetings that were held in camera." (See Judgment 3424, consideration 11(b).)

2. With regard to the issues raised by the Tribunal in Judgment 3424, the Appeal Board responded as follows:

"1. Was the Appellant 'threatened', during [the] successive meetings, with being subjected to a performance improvement plan [PIP] setting unattainable objectives, and with then being dismissed without compensation for unsatisfactory performance?

[T]he Panel found that there was no ground for a PIP and its introduction in the discussion was inconsistent with HR [human resources] procedures. The Panel also found that in introducing the PIP in this manner, the Respondent had misrepresented it intentionally to mislead the Appellant. In addition, the Panel noted that the Respondent could not presume and should not have referred to [a] future negative outcome of the PIP if the Appellant had decided to opt for it. Similarly, the Respondent could not presume the Appellant's subsequent separation from the Organization without compensation. The Panel concluded that the Respondent's above negative assumptions could be interpreted as threats in obtaining the Appellant's signature on the MAS [Mutually Agreed Separation agreement].

2. Was the Appellant's consent to the disputed agreement obtained by misrepresenting the content of his last performance evaluation?

With respect to the Appellant's case, the Panel established that the calibration of his performance evaluation had taken place on 7 February 2012. The result of the calibration and the Appellant's final performance evaluation were disclosed to him more than a year after. [T]he Panel found inconsistencies in the overall rating in the performance evaluation and recalled that the calibration exercise had been declared null and void in May 2013. The GMD [Grant Management Division] review had taken into account past performance evaluations, *'but these were not a conclusive factor'*. Employees were assessed against their skills, experience and competencies to determine whether, going forward, they would suit the Organization's future needs. However, the Panel remained skeptical on the outcome of this review as: 1) Skills and competencies reviewed were never clearly identified in any documents, 2) The alleged higher skills profile requirements in the new structure were not reflected in the TORs [terms of reference] for the new positions, and 3) New objectives were not discussed with the Appellant.

The Panel concluded that, at the time of the meeting, the Appellant had not received the appropriate feedback on his past performance evaluation, on the outcome of the GMD review and on the new requirements needed in the Division. The Panel further concluded that such information was essential for the Appellant to reach an informed decision.

3. What were the factual circumstances in which the meetings in question took place, especially with regard to the possibility of being assisted by a third party or having sufficient time for reflection?

The preparation of meetings: The Panel noted that the meetings had been prepared hastily with notable pressure from Head, HR [...]. [...] The Panel noted that the Appellant was called into the meeting of 20 March 2012, without prior notice and agenda. He was obviously not prepared for it.

The possibility of being assisted by a third party: The Panel relied on the Appellant's statement which was corroborated by the former Staff Council Chairman testimony, the Appellant explained that, the morning following his meeting with the Head, GMD and HRBP [Human Resources Business Partner], he was supposed to meet them, to sign the MAS, at 8:30 am. Few minutes before, the Appellant had informed them that he wished the Staff Council Chairman to be present at the meeting and he had asked them to postpone the meeting until 9.00 am, when the Staff Council Chairman would be available. However, his request was firmly denied. The HRBP immediately ran into his office and pressured him to sign the MAS on the spot. The Panel concluded that the Appellant had been clearly denied the possibility of being accompanied by a colleague. The Panel found no justification for having denied him such right.

The time granted for reflection: The Panel considered that the twelve overnight hours granted to the Appellant were not sufficient time. As mentioned above, the Panel considered that the Appellant's consent was extorted by HRBP the following day. When he requested to postpone the meeting, to be accompanied by the Staff Council Chairman, HRBP ran immediately in his office with the copies of the MAS document to be signed. The Panel found no justification for denying the Appellant sufficient time [for] reflection."

The Appeal Board concluded as follows:

"[D]espite all of the circumstances surrounding his situation, the Appellant had the option not to sign the MAS. As noted above, the Panel has found evidence that the Appellant was pressured into signing the MAS as the best and only option for him [...]. However, the Panel would like to note that the Appellant did have the option not to sign[,] as others had done in similar circumstances.

[...]

[T]he Panel concluded that the Appellant had not been treated fairly by the Organization. Owing to a lack of communication and a lack of transparency, he had not received appropriate information on his situation. As a result, he could not reach an informed decision. The introduction of the PIP element

> in the discussion was inconsistent with HR procedures and its use can be interpreted as intentional misleading and threatening to him. The Panel found no justification for haste on the part of the Organization to get him to sign the MAS, denying him sufficient time [for] reflection or assistance by a third party during the meetings. As a result, the Panel concluded that the Appellant had suffered material and moral prejudice."

Consequently, the Appeal Board recommended that compensation be awarded to the complainant.

3. By the decision of 14 October 2015, the Executive Director refused to follow the Appeal Board's opinion. He decided to award the complainant the sum of 5,000 Swiss francs as compensation for the unlawful situation that the Tribunal had noted in consideration 10 of Judgment 3424, namely the fact that, during the internal appeal procedure in 2012, the Global Fund had rendered it impossible for the complainant's appeal to be dealt with in accordance with the applicable rules, owing to the abolition of the post of the authority competent to hear it. He rejected all the other requests. This constitutes the impugned decision.

4. The defendant raises an objection to the receivability of the complaint, namely that the complainant, by signing the separation agreement, waived his right to challenge either the validity or the content thereof. However, since the complainant contends that he signed this agreement as a result of misrepresentation and pressure which vitiated his consent, this question of receivability is inseparable from the merits of the case (see Judgment 3424, consideration 12). As is also conceded by the defendant, the decision on the objection to receivability depends on the legal validity of the separation agreement, and this makes it necessary to consider the complainant's pleas on the merits (see, in this regard, Judgments 3610, consideration 6, and 3750, consideration 5).

5. The organization contends that, further to the restructuring of its services, duties would be more demanding and that a review was therefore necessary to ascertain whether incumbent staff had the necessary skills and competencies to perform their new roles

immediately or whether support measures would be needed. The review took into account past evaluations but these were not a conclusive factor. It was a question of determining suitability for newly designed and more demanding roles. The organization states that the review was conducted by the Head of the Grant Management Division with the support of HRD, after consultation of the various department heads and regional managers, and each case was examined individually. Certain shortcomings in the complainant's competency level emerged. For this reason he was called to a meeting either to sign a mutual separation agreement or to accept the transfer to his new post, with the strong likelihood of having to participate in a performance improvement plan.

6. The submissions to the Tribunal do not include any document relating to the complainant's performance evaluation which identifies him as showing certain shortcomings as regards the new requirements of his job resulting from the restructuring of the organization.

In the complainant's performance evaluation for the year 2011, his supervisor had indicated that, out of the seven objectives set, he considered that five had been met, one had been partially met, and that, regarding the last one, the complainant had exceeded expectations. Moreover, the complainant has submitted a report showing that his 2011 performance had been appraised positively by multiple evaluators. According to him, at the meetings on 20 and 21 March 2012 he was told that his evaluation had been downgraded following the calibration exercise. However, he did not have the calibrated version of his performance evaluation at the meetings, nor was it in his file accessible through the organization's Intranet. On 9 April 2013 the Head of the Human Resources Department announced that employees could "opt to request deletion of their 2011 performance evaluation if they ha[d] concerns about the pre-calibration and/or post calibration results". Having been informed of this decision, the complainant once again asked for his new evaluation, which was sent to him on 17 May 2013. The new performance evaluation report showed the same results for the seven objectives.

7. The complainant submits that his consent to the separation agreement which he signed was vitiated, especially owing to a lack of both transparency and information, and also on account of pressure from the "threat" of being subjected to a performance improvement plan should he decline the proposed separation agreement.

8. As regards the lack of both transparency and information, the Tribunal recalls that, according to its case law, the principle of good faith and the concomitant duty of care demand that international organizations treat their staff with due consideration in order to avoid causing them undue injury; an employer must consequently inform officials in advance of any action that may imperil their rights or harm their rightful interests (see Judgments 2116, consideration 5, 2768, consideration 4, 3024, consideration 12, and 3861, consideration 9).

In the present case, the organization disregarded the principle of good faith and its duty of care. Indeed, as regards his past performance, the complainant was unaware, at the time of the meetings in question, of the outcome of the calibration of his evaluation referred to by those conducting the meeting. Nor was he informed of the competencies that had supposedly been evaluated in anticipation of the restructuring of the organization or of the new specific requirements of his post, which, according to the Appeal Board, were not reflected in the job descriptions, or of the new objectives, which, again according to the Board, had not been discussed with him. Unaware of the reasons why the organization considered that he did not meet the requirements in question, the complainant was not in a position to make a fully informed choice between the two proposed alternatives. It follows that his consent was vitiated.

9. As regards the alleged pressure on the complainant to choose between keeping his post, subject to participation in a performance improvement plan, and leaving the organization after signing a separation agreement, the defendant corrects its earlier submissions made in the context of the complaint which gave rise to Judgment 3424 by adding an important "nuance which emerged in the [Appeal] Board

procedures"*, now stating that the performance improvement plan was not presented to the complainant as a firm decision but as a mere possibility.

This "nuance" rests on the testimony of the Head of the Grant Management Division to the Appeal Board that non-signature of the separation agreements might have resulted in the complainant having to undergo a performance improvement plan. However, in other passages, he refers to the "probability" of such a plan. Other documents in the file show that maintaining the complainant's role depended on the adoption of a performance improvement plan. Accordingly, the Appeal Board noted that "Head, GMD [...] had called the said employees to a meeting, during which they were asked to opt for a MAS or to be put on PIP". As for the impugned decision of the Executive Director, it includes the following statement: "It is admitted by both parties that the [complainant] was offered the possibility of remaining in his role of [portfolio manager], although this would have required him to participate in a plan designed to improve or develop certain skills and competencies."

The context of the case clearly shows that the organization considered that the complainant did not meet the new requirements of his position after restructuring and that a performance improvement plan was the appropriate tool to remedy these shortcomings if he wished to retain his employment. The prospect of being subjected to such a plan, if he refused to sign the proposed separation agreement, was not presented to the complainant as a mere possibility but as a strong probability.

10. In its written submissions, the defendant contends that the complainant's performance evaluation for 2011 established professional shortcomings that could have led to the adoption of a performance improvement plan, even without the increased requirements resulting from the restructuring.

11. However, at the time of the meetings of 20 and 21 March 2012 with the complainant, there could have been no question of a performance improvement plan on account of underperformance in the job that he held at the time.

* Registry's translation.

Paragraph 2.1.4 of the Managing Underperformance Procedure provides that a performance improvement plan can only be put in place in two situations: either where "year-end overall performance evaluation concludes that the performance of an employee does not meet the expectations" or where "performance improvement discussions[,] which can be initiated any time throughout the year, do not lead to consistent performance improvements". In the present case, neither of these situations was applicable.

Firstly, under the Performance Management Procedure, the supervisor's performance rating is subjected to calibration (weighting) by unit directors and then by cluster directors (paragraphs 3.2 and 8.1). In the first version of the complainant's performance evaluation for 2011, his supervisor expressed some reservations concerning the mid-term review, and his comment in the context of the overall evaluation was that: "This year, [the complainant] has worked hard on two complex portfolios with minimal support. He was the only FPM [Fund Portfolio Manager] coordinating 2 Country Teams. Later in the year, his workload was reduced when another FPM was appointed to oversee Angola. [The complainant] then concentrated on Mozambique and did a good job. He has achieved most of his objectives and exceeded one, in my view." The box "overall ratings" was not filled in by the supervisor. The document in the file submitted to the Tribunal does not contain any signature and does not mention any calibration. Thereafter, a second report dated 12 October 2012 was sent to the complainant on 17 May 2013. It covers the period from 1 January 2011 to 23 March 2012, whereas, in the context of the evaluation procedure, only the 2011 activities were reviewed by the complainant himself and his supervisor. In that document, which was produced a long time after the meetings with the complainant and the termination of his employment, the box "overall ratings" indicating that the complainant had partially achieved expectations was crossed. However, the document is signed neither by the supervisor, nor by the second level supervisor, nor by the complainant, and in this regard, it mentions: "please note that this form has been administratively completed by HR and not by the supervisor or employee". It follows from the above that at the time of the individual meetings with the complainant concerning the termination of

his employment, the "year-end overall performance evaluation" was not yet finished. In fact, it was never properly completed and, at his request, it was ultimately deleted from the complainant's file, as authorized by the Head of the Human Resources Department in her decision of 9 April 2013. It could not therefore have led to the proposal to prepare a performance improvement plan.

Furthermore, although the Managing Underperformance Procedure provides that a "performance improvement discussion" can be held any time throughout the year between an employee and her or his supervisor (paragraph 4.1.2) and result in the imposition of a performance improvement plan (paragraph 2.1.4.2), the pleadings and evidence submitted to the Tribunal and the procedural documentation do not show that such a discussion took place.

In addition, under the Global Fund's applicable rules, it is the supervisor's responsibility to identify any performance issues and initiate a performance improvement plan where needed (see paragraphs 2.1.2, 3.3.4 and 3.3.5 of the Managing Underperformance Procedure and paragraphs 6.1.8, 6.2.2 and 6.4.1 of HR Regulation 11 on Performance Management). Before initiating a performance improvement plan, every effort should be made to resolve performance issues through "open communication" between the supervisor and the employee (paragraph 2.1.2 of the Managing Underperformance Procedure) and, in the event of underperformance, the supervisor must set up a meeting with the employee and indicate in the meeting request the purpose of the meeting and the proposed performance improvement plan (paragraph 5.2.2 of the Managing Underperformance Procedure). Neither the evidence in the file nor the parties' briefs refer to any action by the supervisor concerned.

In conclusion, the complainant's 2011 performance evaluation could not, at least not at the time of the meetings with him, have had the effect of initiating a performance improvement plan on account of past services rendered by him.

12. At all events, in the context of the internal appeal, the organization stressed the fact that any subjection of the complainant to a performance improvement plan was intended to "maximize his chances

of succeeding under heightened expectations in the new structure, and not to remedy past performance issues". In its reply, the defendant also underlines the fact that the complainant's past performance evaluations were not the reason for the proposal to sign a separation agreement and that the "2011 performance evaluation was not [even] [...] a subject of discussion between the parties during the meetings of 20 and 21 March 2012"*.

13. As regards future performance, the organization considered that "the purpose of a PIP was sufficiently broad to allow management to use this tool for the development of skills and competencies in a context where expectations related to a role were being significantly changed". The performance improvement plan in question was intended to enable the complainant to develop his competencies to meet the new requirements of his post.

14. The Tribunal recognizes that international organizations have the discretion to manage their performance management objectives but highlights that they must do so using the tools they have in the manner in which they are designed (see Judgments 3610, consideration 9, and 3750, consideration 8).

Under the Managing Underperformance Procedure (see in particular paragraphs 1.3.2, 4.1.6 and 5.1) and HR Regulation 11 on Performance Management (see in particular paragraph 6.1.8), a performance improvement plan can only be envisaged on the basis of past performance and not in anticipation of possible underperformance in the future.

In the present case, the Global Fund sought to use a tool (the performance improvement plan) which is explicitly designed to correct identified underperformance, in order to address an issue of potential future underperformance. The Tribunal finds that this inappropriate use of the PIP constitutes a misuse of authority which rendered the process non-transparent and arbitrary (see Judgments 3610, consideration 9, and 3750, consideration 8).

* Registry's translation.

15. Since, under the applicable rules, the participation of the complainant in such a plan, either on account of supposed underperformance in the past or shortcomings in his future role, was not a valid option, it should not have been presented as a possible alternative to the signing of a separation agreement. In proposing this alternative, the Global Fund placed him under undue pressure (see Judgment 3610, consideration 7).

16. In this regard, there are no grounds for accepting the defendant's argument that, even on the assumption that the complainant had been told that he was obliged to undergo a performance improvement plan, such a prospect in itself could not be considered unfavourable, since the purpose of such a plan is to support performance and enable the employee to develop her or his competencies to be more successful. The Tribunal notes that such a plan rests on a negative performance appraisal and can result in the termination of the employee's employment. Paragraph 6.4.4 of HR Regulation 11 states as follows: "The Global Fund may terminate an employee's contract on the basis of unsatisfactory performance or if he/she proves unable to meet the expected level of performance or unsuitable for a position, despite the provision of appropriate support [...]". It cannot therefore be considered that the imposition of a performance improvement plan is not a measure that entails potentially serious consequences for those subjected to it (see Judgment 3610, consideration 8).

17. Nor will the Tribunal accept the defendant's objection that, since the complainant was entitled to challenge the decision to subject him to a performance improvement plan, it cannot be considered that he signed the separation agreement under duress. As the Tribunal recalled in Judgment 3610, consideration 8, such an objection is not convincing. Every unlawful action vitiating consent, by its very nature, can be challenged, but even if it is not challenged, this does not exclude the possibility that the consent may be vitiated. The conditions for proposing a performance improvement plan were not fulfilled, but this proposal was a fundamental element of the process which led to the signing of the separation agreement. The complainant's consent was

vitiated by the fact that the organization led him to believe that if he did not sign the agreement in question, he would have to undergo a performance improvement plan. Therefore, the Tribunal considers that the Global Fund placed the complainant under undue pressure which persuaded him to accept the separation agreement.

18. In light of the foregoing and on account of the lack of both transparency and information (see consideration 8, above) and the undue pressure exerted on the complainant (considerations 9 to 17, above), the plea that the consent to the separation agreement was vitiated is well founded. The impugned decision must therefore be set aside on this ground alone.

19. Furthermore, the Tribunal is bound to note the manifest unlawfulness of the conditions in which the signature of the separation agreement was obtained. The findings of the Appeal Board, reproduced above, show that the complainant was called to the meeting of 20 March 2012 without any prior notice or agenda, that he had only about 12 hours for reflection before the meeting of 21 March and that he was denied the possibility of being accompanied by another staff member during the latter meeting. The organization's attempts to deny these facts do not convince the Tribunal. Moreover, these facts are also such as to vitiate the complainant's consent to signing the agreement in question.

20. In view of the fact that the complainant does not ask to be reinstated and that the Tribunal considers that there are no grounds for requiring that the parties renegotiate the terms of his separation, the complainant shall keep the sums paid to him under the separation agreement, and he is entitled to moral and material damages and to costs. The complainant, who held a permanent contract, could reasonably have expected to pursue a career since his post had been mapped into the new structure. Taking into account the sum that he received under the separation agreement, the Tribunal will award him material damages, for the loss of income and career prospects, in an amount equivalent to three months' gross salary at the rate of his last salary. For the Global Fund's violation of its duty of care and the undue

pressure exerted on the complainant culminating in the termination of his appointment, the Tribunal will award him moral damages in the amount of 50,000 Swiss francs, without there being any need to award punitive or exemplary damages. Since the complainant has largely succeeded, he is entitled to the sum of 5,000 Swiss francs in costs.

21. In the rejoinder, the complainant's counsel asks the Tribunal to deduct amounts for his benefit from the monetary awards made to the complainant. However, it is not for the Tribunal to concern itself with private arrangements made between complainants and their counsel. This request must therefore be rejected.

DECISION

For the above reasons,

1. The impugned decision of 14 October 2015 and the separation agreement of 21 March 2012 are set aside.
2. The Global Fund shall pay the complainant the equivalent of three months' gross salary in material damages.
3. It shall pay him 50,000 Swiss francs in moral damages.
4. It shall also pay him 5,000 Swiss francs in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 13 November 2018, Mr Patrick Frydman, Vice-President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

(Signed)

PATRICK FRYDMAN FATOUMATA DIAKITÉ YVES KREINS

DRAŽEN PETROVIĆ