Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

T. F. (No. 2)
v.
CERN

138th Session **Judgment No. 4904**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr J. T. F. against the European Organization for Nuclear Research (CERN) on 27 July 2021 and corrected on 26 August 2021, CERN's reply of 31 January 2022, the complainant's rejoinder of 19 May 2022 and CERN's surrejoinder of 22 August 2022;

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 decision not to recognise that he was suffering from disability.

The complainant joined CERN's General Infrastructure Services Department on 1 March 2011 as a professional firefighter in the Fire and Rescue Service, on secondment from the Fire and Rescue Service of Haute-Savoie (France) under a fixed-term contract for an initial period of five years. His duties consisted of providing an emergency response in connection with various risks on the CERN site, as well as other responsibilities relating to the ongoing training of his colleagues, maintaining response equipment, in particular fire extinguishers, and acting as operator in the fire service control room.

On 30 April 2013 the complainant sustained an accident while handling fire extinguishers. On 24 June 2013 this accident was recognised by CERN as an occupational accident, that is, as being of occupational origin as referred to in paragraph 13 of Administrative Circular No. 14 (Rev. 4) concerning “Protection of members of the personnel against the financial consequences of illness, accident and incapacity for work” (hereinafter “AC 14”). After a period of sick leave, the complainant resumed work on 10 July 2013 but was assigned solely duties that were not physically demanding.

On 1 March 2016 the complainant’s contract was extended for three years, thereby reaching a total of eight years, which is the maximum duration of service under a fixed-term contract in CERN under the applicable rules. After an operation on his injured shoulder on 28 July 2016, the complainant was left with after-effects that made it necessary to keep him in non-physically demanding duties in the Fire and Rescue Service, namely non-operational duties in the control room.

As a result, the complainant remained assigned to such duties before being placed on sick leave again from 26 March 2018 until the end of his appointment at CERN on 28 February 2019, when he reached the maximum possible duration of eight years.

In a report of 21 October 2018, drawn up in the context of the complainant’s extended sick leave, CERN’s Consulting Medical Practitioner found that the complainant did not suffer from incapacity for work in an appropriate post. However, the complainant challenged this medical opinion through the dispute resolution procedure laid down in paragraph 49 of AC 14.

Given that on 14 June 2018 the complainant had reached 548 calendar days of sick leave in a period of 36 months, the Head of CERN’s Human Resources Department (hereinafter “the HR Department”) should have, pursuant to Annex 2 to AC 14, referred the case to the Joint Advisory Rehabilitation and Disability Board (JARDB) so that it could consider whether the complainant suffered from permanent incapacity for work. However, this procedure was not immediately initiated owing to an administrative error acknowledged by the Organization. After the complainant had pointed out that delay in

writing on 10 December 2018 and then on 11 February 2019, the case was referred to the JARDB on 27 February 2019 and the procedure provided for in Annex 2 to AC 14 was initiated the next day, that is on 28 February.

The complainant's contract ended the same day, on 28 February 2019. From that date, the complainant rejoined the Fire and Rescue Service of Haute-Savoie, but without resuming active service.

The first stage of the procedure before the JARDB consisted of seeking the opinion of a standing working group, comprising a doctor from the Organization and representatives of the HR Department, tasked with compiling a report outlining the complainant's functions and the possibilities for rehabilitation within the Organization, in accordance with paragraph 16 of Annex 2 to AC 14. This group issued its report on 19 July 2019. In particular, it stated that the doctors from CERN's Medical Service as well as CERN's Consulting Medical Practitioner "[did] not recommend that disability be recognised" in the complainant's respect. The report, which, as a result, did not mention any rehabilitation measures that might be envisaged within the Organization, was sent to the complainant on 19 August 2019 for comment. He submitted his comments on 25 September 2019 and asked the JARDB to kindly recommend his redeployment within CERN, pursuant to paragraph 31(b) of AC 14, relating to temporary incapacity for work.

A panel of three doctors was then set up in order to provide, in accordance with paragraphs 14 and 15 of Annex 2 to AC 14, a "medical opinion" to the JARDB on the complainant's possible "incapacity for work" and the date from which his state of health could be considered to have been consolidated. The panel comprised a member selected by the Organization, another member chosen by the complainant and a third member selected by the two members already chosen, in compliance with paragraph 18 of Annex 2 to AC 14. Thus, CERN appointed the Head of its Medical Service on 29 May 2019, the complainant designated a doctor, Dr R., who accepted his appointment on 17 October 2019, and these doctors jointly agreed to appoint a doctor who had previously had the complainant among his patients, who

accepted his appointment on 26 November 2019. However, the member appointed by CERN had to be replaced twice, which eventually led it to appoint the Organization's Consulting Medical Practitioner, Dr L., on 28 May 2020. On 30 June 2020 the complainant requested the latter's recusal on the grounds of a conflict of interest, since he had carried out the complainant's examination in October 2018 which the complainant contested, resulting in another doctor from CERN's Medical Service, Dr B., being appointed on 3 July 2020. On 10 July 2020 the complainant requested the recusal of the doctor appointed by joint agreement of his two colleagues, on the grounds that he regularly cooperated with another doctor who, according to the complainant, had issued "an ambiguous diagnosis" in his regard and that he had been his treating doctor between 2013 and 2016. His replacement, Dr G., accepted this appointment on 23 October 2020.

On 10 December 2020 the panel of doctors met and adopted a medical opinion setting the date of consolidation of the complainant's state of health as 8 October 2020, finding that the complainant "[was] not affected [...] by a permanent disability rendering [him] incapable of performing his duties or duties commensurate with his experience and qualifications" and including the following remark: "[t]he person concerned has full capacity for work in an appropriate activity compatible with the functional restrictions relating to the pathology". This opinion was forwarded to the complainant for comment. He submitted his comments by a letter of 28 January 2021 after an extension of the time limit.

Having both examined the complainant before the panel of doctors met, Dr G., appointed by his two colleagues, issued a medical certificate on 28 December 2020, and Dr R., appointed by the complainant, drew up a medical certificate dated 29 January 2021.

On 22 February 2021 the JARDB, in accordance with paragraph 11 of Annex 2 to AC 14, held a hearing at the complainant's request. After receiving the minutes of this hearing, the complainant submitted his comments on 8 March 2021. He challenged the findings set out in the medical opinion issued by the panel of doctors and observed, inter alia, that two of the doctors sitting on the panel had, in separate medical

reports drawn up after examining him and after the panel of doctors had drafted its medical opinion, found both that he was 100 per cent unfit for work as an "operational firefighter", to use the complainant's term, and that he suffered a 15 per cent permanent partial incapacity.

On 11 March 2021 the Chairwoman of the JARDB asked the rapporteur of the panel of three doctors, namely Dr B., a member of CERN's Medical Service appointed by the Organization, for clarifications in respect of the findings contained in the medical opinion compared to what had otherwise been considered by two members of the panel in their separate medical reports. On 15 March 2021 Dr B. therefore sent a "supplementary report" to the medical opinion issued by the panel of doctors, referring to this opinion and to the aforementioned medical certificates drawn up by his two colleagues. He also made the following comments on behalf of CERN's Medical Service:

> "**Comments by CERN's Medical Service:**
>
> Permanent partial incapacity (PPI) or deterioration of mental or physical health is determined independently of occupation, age and sex; it grants entitlement to an indemnity in the form of a lump-sum payment at the end of treatment (consolidation). It is distinct from capacity for work and therefore from any entitlement or not to a disability pension.
>
> [Drs R.] and [G.] concluded that there was no reduction in professional capacity (full capacity is expected in an appropriate activity) and established a PPI of 15 per cent, which theoretically represents an entitlement to an indemnity for deterioration of physical or mental health (calculated according to the scale in effect) and no entitlement to a disability pension for the person concerned."

On 26 March 2021 the JARDB submitted its recommendation to the Director-General, appending, among other documents, the report of the standing working group and the complainant's comments thereon, the medical opinion of the panel of three doctors and the complainant's comments in its respect, the minutes of the hearing before the JARDB and the complainant's comments, as well as the supplementary report drawn up by the doctor on the panel appointed by CERN. The JARDB did not recommend that "total disability" be recognised and observed that the complainant suffered from a "permanent partial incapacity relating to his medical condition which limits his operational capacity

and requires his professional activities to be adjusted", but that he did not have a "disability rendering him permanently incapable of performing duties commensurate with his experience and qualifications". Consequently, the Board concluded that it was not able to recommend one or more of the rehabilitation measures referred to in paragraph 1 of Annex 2 to AC 14, namely redeployment, reduction of working hours and recognition of "partial disability", or recognition of "total disability", which, in the last case, could grant entitlement to a disability pension following termination of the contract of the person concerned.

By a letter of 21 April 2021, the Director-General informed the complainant that she had decided to accept the JARDB's recommendation, and that therefore it was not appropriate to apply one of the rehabilitation measures referred to in paragraph 1 of aforementioned Annex 2. However, she noted that Dr G., the member of the panel of three doctors appointed by joint agreement of his two colleagues, had found a 15 per cent deterioration of mental or physical health. She informed the complainant that she had therefore asked the HR Department "to contact [him] as soon as possible to explain to [him] the procedure set out in Annex 3 to AC 14".

On 27 July 2021 the complainant filed his complaint with the Tribunal.

The complainant asks the Tribunal: (1) to set aside the decision of 21 April 2021; (2) to order CERN to recognise that he is suffering from "total disability"; (3) to award him full compensation for the material injury suffered, that is the income he would have received from a disability pension from 1 March 2019, as well as financial compensation for his untaken leave, after deducting the sums actually received since 1 March 2019; (4) to order CERN to allow him to benefit from the social insurance measures referred to in Article R IV 2.01 of CERN's Staff Rules and Regulations; (5) subsidiarily to points (2), (3) and (4), to order that the procedure before the JARDB be re-started; (6) to award him moral damages of 20,000 Swiss francs at least; and (7) to award him compensation of 20,000 Swiss francs for the cost of legal representation.

CERN asks the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS

1. The complainant asks the Tribunal to set aside the Director-General's decision of 21 April 2021, to order CERN to recognise that he suffers from "total disability" and consequently to award him full compensation for the material injury he considers he has suffered, and to order CERN to allow him to benefit from the social insurance measures referred to in Article R IV 2.01 of CERN's Staff Rules and Regulations. Subsidiarily, the complainant asks that the Organization be ordered to re-start the procedure before the Joint Advisory Rehabilitation and Disability Board (JARDB).

2. In respect of the refusal to recognise disability, as conveyed by the impugned decision of 21 April 2021, and the opinion issued in that respect by the JARDB, the Tribunal recalls firstly that, according to its case law, while it may not replace the medical findings of a body such as an invalidity board with its own assessment, it does have full competence to say whether there was due process and to examine whether the board's opinion shows any material mistake or inconsistency, overlooks some essential fact or plainly misreads the evidence (see, in particular, Judgments 4709, consideration 4, 4585, consideration 10, 4473, consideration 13, 4237, consideration 5, 3994, consideration 5, 2996, consideration 11, 2361, consideration 9, and 1284, consideration 4).

3. In the present case, the complainant disputes whether there was due process and argues in that respect that the "report" delivered by the panel of three doctors did not constitute the requisite "medical opinion". To this effect, he observes, firstly, that this opinion was restricted to a final finding ticked in a list of three possible choices and without a precise explanation; secondly, that the panel did not provide the JARDB or him with a proper medical file; and, thirdly, that of CERN's various Consulting Medical Practitioners who examined his case, only one of them, Dr L., who was not the doctor appointed by CERN to sit on the panel, had actually examined the complainant, but without drawing up a medical report.

4. After studying the opinion delivered by the panel of doctors dated 10 December 2020, the Tribunal considers that this document, although entitled “report”, does indeed correspond to a medical opinion for the purposes of paragraph 19 of Annex 2 to AC 14, in that it takes a view, briefly but clearly, on all the aspects required by that provision, namely:

> “a) whether a staff member [...], due to the deterioration of his physical and/or mental health resulting from an [...] accident, is suffering permanent incapacity for work, whether partial (degree of incapacity of less than or equal to 50%) or total, and which prevents him from performing his functions and/or any functions which the Organization may offer him;
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> b) whether a former staff member [...], due to the deterioration of his physical and/or mental health resulting from an [...] accident, is suffering permanent incapacity for work;
>
> c) whether the state of health of the person concerned can be considered to have been consolidated and, if so, from which date.”

Moreover, the panel of doctors took care to state in the “Remarks” section of the form that the complainant “has full capacity for work in an activity compatible with the functional restrictions relating to the pathology”. The “report” delivered by the panel of three doctors was therefore the medical opinion required by aforementioned paragraph 19 and the complainant’s first argument in support of his plea must be dismissed.

5. Concerning the medical file compiled in this case, the Tribunal notes that the complainant does not produce any tangible evidence to cast doubt on the Organization’s assertion that the panel of doctors was duly provided with an ad hoc medical file containing, inter alia, the documents specified in paragraph 20 of Annex 2 to AC 14. Moreover, Dr G., a member of the panel of doctors, expressly stated in the separate medical report that he drafted dated 28 December 2020 that he had been able to consult the complete medical file. Although the complainant submits that this was not the case and argues that some of the medical certificates that he provided to CERN’s Consulting Medical Practitioner appointed to sit on the panel of doctors were not placed in the file, the Tribunal observes that the email forwarding these documents

sent by the complainant to the rapporteur member of the panel dated 26 October 2020 states that they were also sent in copy to the two other members of the panel of doctors, which is sufficient to establish that the latter members were aware of them. The complainant's second argument is therefore also unfounded.

6. Lastly, in respect of the fact that Dr B., the member of the panel appointed by CERN, did not examine the complainant, it should be noted that paragraph 22 of AC 14 only provides that the panel "may request" – which thus merely constitutes an option – that the staff member concerned undergo a medical examination by one of its members. Therefore, an examination by the member of the panel appointed by CERN was not necessarily required. Moreover, it appears that the complainant was, as he acknowledges in his written submissions, examined by the two other members of the panel of doctors before the panel even met. The complainant's third argument must therefore also be dismissed.

7. It follows from the foregoing that the complainant's first plea is unfounded.

8. In his second plea, the complainant alleges a breach of the principle of collegiality by the panel of doctors in that the rapporteur member of the panel, in this case the Consulting Medical Practitioner appointed by CERN, submitted a supplementary report, drawn up on 15 March 2021 at the request of the Chairwoman of the JARDB, without referring it to the two other members of the panel. In connection with this plea, the complainant also alleges a breach of his right to be heard in that he was not invited to submit his comments in respect of this supplementary report drafted by the panel's rapporteur and that he was not informed of the existence of this document until the notification of the Director-General's final decision of 21 April 2021. He likewise submits that, in the circumstances, the assessment of his file was biased.

9. Under paragraphs 18 and 23 of AC 14, the panel is to appoint a rapporteur doctor from among its members and the opinion of the panel is to be adopted by a majority at a meeting between the three doctors. In the present case, it was the Consulting Medical Practitioner designated by CERN who was made rapporteur. A meeting of the panel was held on 10 December 2020, after which it submitted the opinion signed by its three members. Although this medical opinion was incorrectly entitled "report", the fact remains that the collegial nature of the panel's deliberations that preceded the delivery of its medical opinion was clearly observed in the present case.

Subsequently, on 11 March 2021 the Chairwoman of the JARDB wished, on the Board's behalf, to obtain "clarifications" from the rapporteur in respect of an apparent contradiction between the panel's "report" of 10 December 2020 and the two expert reports issued by the two other panel members dated 28 December 2020 and 29 January 2021. The "supplementary report" drawn up in response to that request on 15 March 2021 shows that this document was drafted by the rapporteur doctor alone. However, this "supplementary report" was not a medical opinion for the purposes of AC 14. It merely recalled the findings of the certificates drawn up by Drs G. and R., as well as those of the report of the panel of doctors, and provided legal clarifications so as to better inform the JARDB as to the difference between "incapacity for work" within the meaning of paragraph 17 of AC 14 and Annex 2 thereto and "deterioration of physical or mental health" within the meaning of paragraph 19 of AC 14 and Annex 3 thereto. This document therefore merely summarised some evidence in the file and explained the relevant legal concepts, and did not alter the panel's medical assessment itself. There was therefore no breach of the principle of collegiality of the panel of doctors.

10. In respect of the breach of his right to be heard, the complainant submits, firstly, that this right, as provided for in Annex 2 to AC 14, was not observed and, secondly, that in any case there was a breach of the "general adversarial principle arising from the right to be heard laid down in the [Tribunal's] case law". He argues that he was not able to view the supplementary report drawn up by Dr B. until the

notification of the impugned decision, which did not allow him to submit his comments thereon before the Director-General took that decision.

However, the Tribunal observes, firstly, that paragraphs 10 and 11 of Annex 2 to AC 14 provide that the person concerned must be able to submit any comments on the medical opinion of the panel of doctors. Since, as stated above, the supplementary report of 15 March 2021 did not constitute a medical opinion, the fact that it was not sent to the complainant for comment before the notification of the impugned decision does not breach the aforementioned provisions.

Secondly, it appears that, as also stated above, this supplementary report did not contain any new medical assessments, but merely a reminder of preexisting findings and some legal clarifications. Since the reminder and the clarifications in question did not change the content of the medical evidence that had already been brought to the complainant's attention, it cannot be found that there was a breach of the right to be heard within the meaning of the Tribunal's case law.

11. Lastly, the Tribunal considers that, contrary to what the complainant submits, there was no bias in the assessment of his situation owing to the fact that the supplementary report of 15 March 2021 was taken into account. In this respect, it should be recalled that the complainant bears the burden of proving such an allegation. However, not only does he fail to prove that the JARDB's recommendation was in fact based on a biased assessment of his case, but it is also apparent from the file, firstly, that the complainant was fully heard and had full knowledge of all the evidence concerning his situation, in particular as regards the medical aspect, and, secondly, that the JARDB did consider what administrative functions the complainant could continue to perform as a professional firefighter.

12. It follows from the foregoing considerations that the complainant's second plea is also unfounded.

13. In his third plea, the complainant also contends that the time limit for referring the case to the JARDB and the time limit in which the Board should have delivered its recommendations, as prescribed by Annex 2 to AC 14, were not observed in the present case.

However, although that was indeed the case, as will be discussed in consideration 21 below, the Tribunal recalls its consistent case law that, unless there is an express provision to the contrary – which there is not in the present case – the failure to meet time limits of this nature, which are not intended to have a nullifying effect, does not in itself render the contested decision illegal (see, for example, Judgments 4777, consideration 2, or 4584, consideration 4).

The third plea therefore has no legal basis.

14. In order to challenge the merits of the impugned decision, the complainant observes that paragraph 17 of AC 14 defines "incapacity for work" as the "certified impossibility for a [...] former member of the personnel to perform his professional duties as a result of an illness or accident" (emphasis added). According to him, the JARDB misconstrued that definition and thereby committed an error of law in finding that he did not suffer from a "disability rendering him permanently incapable of performing duties corresponding to his experience" (emphasis added), while failing to take into account the fact that he could no longer carry out operational duties as a professional firefighter. Moreover, since the panel of doctors concluded unanimously that he was permanently unfit to perform the duties of an "operational professional firefighter", it follows, according to him, that he could no longer perform "his duties" within the meaning of the abovementioned provision (emphasis added). He adds that, as it must be considered that he can no longer perform functions "full-time", in the wording of paragraph 32 of AC 14, and that he meets the other conditions set out in that paragraph, he should be recognised as suffering from a disability within the meaning of the provisions thereof.

However, the Tribunal notes that it is clearly apparent from the medical opinion of the panel of doctors, as well as from the separate certificates issued by Drs G. and R., that the three doctor members of

the panel by no means found that the complainant was incapable of performing his duties as a professional firefighter. On the contrary, they plainly discounted the possibility that the complainant could be regarded as being in a situation of disability within the meaning of aforementioned paragraph 32 of AC 14. Although the three doctors agreed that the complainant’s duties had to be adjusted as the state of his shoulder no longer allowed him to perform operational tasks, they were unanimous in considering that he was fit to perform duties specific to a professional firefighter, albeit of an administrative type. The complainant, who puts forward a long line of argument in this respect, seeks to establish a distinction between the duties of an “operational firefighter” and those of a “non-operational firefighter”, as if these were two completely different professions. However, the Tribunal notes that such a distinction, which is not self-evident, is not based on any specific provision applicable in this area.

The complainant adds that, owing to constant pain, he is not in any event able to perform duties full-time, including purely administrative duties. However, the fact remains that the unanimous assessment of the panel of doctors is that the complainant is fully capable of assuming appropriate duties, even as a professional firefighter, and the Tribunal may not substitute its own assessment in this respect for that of the doctors appointed to do so. In this regard, the Tribunal observes incidentally that the circumstance that the complainant applied for other posts at CERN tends to corroborate the fact that he considers himself fit to work full-time in posts that involve administrative duties alone.

It follows from the foregoing that the fourth plea must also be dismissed.

15. The complainant argues, in a fifth plea, that the JARDB’s assessment of his situation was arbitrary, since it led to a result that was, in his view, contrary to the applicable framework, and incomplete, in that it omitted relevant facts and was based only on a theoretical assessment of his functional capacity.

However, first of all, the Tribunal does not see, in view of the evidence, in what respect the JARDB failed in this case to take due account of relevant facts demonstrating that the complainant was incapable of "performing duties commensurate with his experience and qualifications". Moreover, in considerations 11 and 14 above, the Tribunal has already rejected the arguments based on a lack of impartiality in the JARDB's assessment and on an error of law in the assessment of the complainant's functional capacity as a professional firefighter, a concept that is indeed distinct from that of operational firefighter.

The fifth plea is consequently unfounded.

16. The complainant considers, in his sixth plea, that the findings of the panel of doctors are wrong and contradictory.

This plea is also unfounded since, contrary to what the complainant submits, there is no contradiction between the recognition of the fact that he suffered deterioration of his physical health within the meaning of Annex 3 to AC 14 and the previous finding that this deterioration did not have the effect of rendering him unfit for work within the meaning of Annex 2 to that administrative circular.

Contrary to what the complainant also asserts, in the medical opinion that it delivered on 10 December 2020, the panel of doctors did confine itself to the task assigned to it pursuant to Annex 2 to AC 14, and it is irrelevant in that regard that two of the members of the panel, each in an individual capacity, subsequently issued an opinion concerning the recognition of "deterioration of physical health" within the meaning of paragraph 19 of AC 14 and Annex 3 thereto.

The sixth plea must be rejected.

17. In his rejoinder, the complainant contends, in a seventh plea, that, although he had authorised the doctors initially appointed to sit on the panel of doctors to have access to medical information on his state of health, two members of that panel were subsequently replaced, without him being requested to authorise the new members appointed to have access to that information.

However, the Tribunal notes that the complainant had been informed of the appointment of these new members, to which he did not object, and considers that the authorisation in principle that he had given to waive medical secrecy, even though it originally concerned other doctors, must be considered valid for the members of the panel of doctors who were appointed subsequent to that authorisation. The position would only be different if the complainant had expressly stated his opposition in this respect – which he did not. It also appears that the complainant himself sent copies of medical certificates to the three doctors who comprised the panel of doctors, which implies in any event that he had also agreed to waive medical secrecy in their regard.

The seventh plea must therefore be rejected.

18. Again in his rejoinder, the complainant complains, in an eighth plea, that medical reports drawn up by doctors who were subsequently recused as members of the panel of doctors were kept in his medical file compiled for that panel.

However, the Tribunal sees no reason to consider that such certificates, which were drawn up lawfully, could not be included in the medical file. The question of the recusal of the doctors concerned relates solely to the impartial composition of the panel of doctors, whose members, once duly appointed and not recused, are plainly authorised to consult and consider all of the medical certificates included in the medical file.

The eighth plea is also unfounded.

19. Again in his rejoinder, the complainant also argues, as his ninth plea, that the impugned decision is unlawful insofar as it sets the rate of deterioration of his physical health at 15 per cent because it was taken in breach of Annex 3 to AC 14.

However, the Tribunal observes that, in her letter of 21 April 2021, the Director-General did not take a decision on that matter but merely stated that, following the medical opinion given by Dr G. to that effect, she had asked the HR Department to contact the complainant in order to explain to him “the procedure set out in Annex 3 to AC 14”. It should

also be noted that this aspect of the dispute is the subject of the complainant's third and fourth complaints, which gave rise to Judgment 4905, also delivered in public this day.

The plea is therefore irrelevant to the present complaint.

20. It follows from the foregoing that the impugned decision is not unlawful in any respect.

21. The complainant also appears to consider that the breach of the various procedural time limits set by Annex 2 to AC 14 caused him injury.

However, it should be recalled that, under the Tribunal's settled case law, firstly, the unreasonableness of a delay in examining an internal appeal must be assessed in the light of the specific circumstances of a given case and, secondly, the amount of compensation liable to be granted under this head ordinarily depends, in principle, on two essential considerations, namely the length of the delay and the effect of the delay on the employee concerned (see, for example, Judgments 4727, consideration 14, 4684, consideration 12, 4655, consideration 21, 4635, consideration 8, and 3160, consideration 17). In this respect, the burden of proof falls on the complainant, who must establish the injury complained of (see, for example, Judgments 4695, consideration 19, 4694, consideration 13, and 4306, consideration 19) and the Tribunal may, in particular, take account of her or his conduct when it considers the relevance of the injury alleged (see, for example, Judgment 2861, consideration 89).

Firstly, the Tribunal observes that, under paragraph 9.2 of Annex 2 to AC 14, the case should have been referred to the JARDB after "548 calendar days [of sick leave] in any period of 36 months", that is, in June 2018, whereas it was not referred until 27 February 2019. However, while noting that the Organization has itself acknowledged the existence of this delay and apologised to the complainant, the Tribunal considers that the abnormally long delay in referring the case to the JARDB had no tangible bearing on the impugned decision, since, as is clear from the foregoing considerations, it was reasonable for the

JARDB to conclude that the complainant was not suffering from a permanent incapacity for work within the meaning of Annex 2 to AC 14. This first aspect of the alleged injury has therefore not been established.

Secondly, the Tribunal observes that, under paragraph 12 of Annex 2 to AC 14, the JARDB should normally have made a recommendation "at the latest after the staff member [...] ha[d] been on sick leave for 700 days within a 36-month period". However, although this time limit was not observed and the procedure before the JARDB was indeed long, this length of time can largely be justified by the many procedural issues that arose during it, for which the complainant himself was sometimes responsible. In this respect, it is sufficient to refer to the complainant's various requests for recusal, whatever their legitimacy, and to the long period of time taken by the doctor chosen by him to accept his appointment to the panel of doctors. The Tribunal therefore considers that, in the present case, the Organization cannot be accused of wrongful conduct in that regard and, as a result, the second aspect of the alleged injury has also not been established.

22. In the light of all the foregoing considerations, the complaint must be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 24 May 2024, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 8 July 2024 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

MIRKA DREGER