

NINETY-NINTH SESSION

Judgment No. 2468

The Administrative Tribunal,

Considering the complaint filed by Mr B.Q. against the International Labour Organization (ILO) on 22 January 2004 and corrected on 10 May, the Organization's reply of 26 August, the complainant's rejoinder of 22 October and the ILO's surrejoinder of 15 December 2004;

Considering Article II, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant was born in 1952 and has Jordanian and Swiss nationality. He was recruited by the International Labour Office, the ILO's secretariat, in September 1982 as an Arabic language translator, at grade P.3, in the Official Relations Branch (RELOFF) of the Relations, Meetings and Document Services Department (RELCONF), where he was assigned to the Governing Body section (RELOFF/CA). He obtained an appointment without limit of time with effect from 1 July 1989 and was promoted to grade P.4 as a translator/reviser in April 1993.

In June 1994, when RELOFF/CA merged with the former Translation and Meetings Branch to form the Official Documentation Branch (OFFDOC), the complainant, who had enjoyed considerable responsibility as the most senior linguist in the Arabic unit to which he had until then belonged, was joined in the new Arabic unit by a translator/reviser of equal grade, Mr H. Working relations between the complainant and Mr H. were tense. In a minute of 27 February 1997 to his supervisor, the complainant protested that the distribution of work in the unit was unfair, particularly in that he was having to translate whilst most of the revision work was being allocated to Mr H. In the event, Mr H. left the unit in January 1998 to take up a field assignment. From that time until February 2000, the complainant was *de facto* responsible for the work of the Arabic unit. He received a merit increment with effect from 1 January 1999.

In February 2000 Mr H. returned to Headquarters and was appointed Head of the Arabic unit at grade P.5, thus becoming the complainant's immediate supervisor. The tensions between Mr H. and the complainant resurfaced immediately. In April 2000 the new Chief of OFFDOC, Mr B., issued the complainant a warning under Article 12.3 of the Staff Regulations of the ILO, referring to the latter's unwillingness to report directly to Mr H., his refusal of particular items of work and his attempts to "impose general conditions regarding the nature of the work assigned to [him]".

The complainant's performance appraisal report for the period June 1997 to May 1999 was written in September 2000. The Chief of OFFDOC, his supervisor during the first nine months of that period, wrote that "[t]he reporting period was not a very happy one for the Arabic unit" and referred to the warning the complainant had been given. On reviewing this appraisal report, the Reports Board expressed concern regarding the manner in which it had been established and decided not to draw any conclusions from it. However, it indicated that it would carefully examine the next appraisal, which was to cover the period from 1 June 1999 to 31 May 2001, and invited Mr H. to prepare work plans so that the complainant would know precisely what was required of him.

In March 2001 the complainant submitted a grievance to the Human Resources Development Department (HRD) alleging discrimination and harassment by Mr H. and by the Chief of OFFDOC.

In his next performance appraisal report, which was written in June 2001, the complainant's overall performance was described as "not satisfactory" and the Chief of OFFDOC recommended that consideration be given to the possibility of transferring him. The Director of RELCONF supported this recommendation and advised HRD to act on it as a matter of urgency. The appraisal report was reviewed by the Reports Board, which engaged an

independent expert to assess the quality of the complainant's translation and revision work. According to the expert, it was "below normal standards and [l]e[ft] much to be desired". In September 2001 the Board heard Mr H. and the complainant. The latter objected, in particular, that not all the documents examined by the expert were his work. After these hearings, the Board asked its secretary to make further investigations for the purpose of establishing, inter alia, the origin of the documents examined by the expert. In its report dated 27 February 2002 the Board concluded that there were "legitimate, serious concerns with respect to unacceptable performance in the areas of quality, productivity and attitude and conduct" and that there was "little hope for an improvement in [the complainant's] attitude or performance". Regarding the possibility of transferring him, it stated that "the combined affect [sic] of sub-standard quality, low productivity and unacceptable attitude result in an unacceptable level of service and suggest that a transfer to another unit is not a viable option". The Board unanimously recommended that the complainant's contract be terminated for unsatisfactory services.

The Director of HRD informed the complainant, by a letter of 26 June 2002 which, as he pointed out to the latter, constituted the proposal of termination required under Article 11.8 of the Staff Regulations, that the Director-General had approved the Board's recommendation. On 29 January 2003 the complainant appealed against that proposal to the Joint Panel, on which jurisdiction in the matter was conferred by agreement between the Office and the Staff Union. In the meantime, the harassment grievance he had originally submitted to HRD had been referred first to the Ombudsperson, who expressed the view that it could not be resolved informally, and then to the Joint Panel. In accordance with the complainant's wishes, the Panel joined the harassment grievance with his appeal against the proposal of termination for unsatisfactory services.

In a recommendation dated 23 September 2003 the Joint Panel concluded, with regard to the harassment grievance, that no evidence had been produced to show that the tensions between the complainant and Mr H. were part of a pattern of harassment in the meaning of the Collective Agreement on the Prevention and Resolution of Harassment-related Grievances of 26 February 2001. Regarding the proposal of termination, after expressing reservations concerning not only the complainant's appraisal reports but also the findings of the Reports Board, the Panel found that the evaluation of the complainant's performance at the material time was "not erroneous" and that, although that evaluation had been made "in the context of the entrenched rivalry" between the complainant and Mr H., "the proposal of termination was not made for reasons unconnected with his performance". However, noting that the complainant's performance had been deemed satisfactory until Mr H. became his supervisor, and that he was willing to take up any new assignment that might be offered to him, the Panel recommended that the Director-General consider alternatives to the proposal of termination under Article 11.8, particularly a transfer or, failing that, an agreed termination, which it considered would be both fair to the official and in the interest of the Office.

The Director-General's decision on the Panel's recommendation, which is the impugned decision, was conveyed to the complainant in a letter of 27 October 2003 from the Director of the Office of the Director-General, who, after recalling the Panel's findings, stated the following:

"[...] a comprehensive review of current vacancies conducted following the Joint Panel's recommendation failed to identify any posts for which you would be suited, either in Geneva or the field. In addition, the Director-General understands that, in a meeting with the Director of HRD, you indicated your rejection of an agreed termination. If the above-mentioned understanding is incorrect or incomplete, please inform the Office in writing before 30 October 2003.

Otherwise, given the circumstances, the Director-General considers that it is in the best interests of the Office to implement the proposal of termination for unsatisfactory services. Your employment with the ILO will therefore cease on 31 October 2003. In conformity with article 11.8(3), you are hereby awarded three months' salary in lieu of notice. Further, in accordance with article 11.8(3) [...] in addition [...] you will receive one-half of the indemnity to which you would otherwise be entitled under article 11.6."

In a letter of 28 October 2003 to the Director of the Office of the Director-General the complainant wrote, without further explanation, that there was a "deep misunderstanding" regarding the statement in her letter of 27 October referring to his rejection of an agreed termination. On 20 November 2003 the Director of HRD wrote to inform him that the Office accepted his request to continue working during his three-month period of notice instead of receiving the equivalent salary in advance. He added that during that period HRD would undertake a further review of vacancies and assist him in finding a suitable position in the ILO or externally. He also asked the complainant to confirm by 31 January 2004 his formal acceptance or rejection of the offer of an agreed termination.

In the event, no such confirmation was received by the Office, and HRD's further review of vacancies proved unsuccessful. Consequently, the Director of HRD notified the complainant on 30 January 2004 that the decision of termination for unsatisfactory services would take effect the following day, which it did.

B. The complainant contends, firstly, that the impugned decision does not comply with the Office's obligation to protect the dignity of its staff members and to redress the harm caused to them. He asserts that Mr H., with the support of Mr B., subjected him to moral harassment. He was deprived of most of his duties and responsibilities without objective reasons as soon as Mr H. was appointed Head of the Arabic unit. When he informed his supervisors that he would be compelled to lodge an internal complaint if they failed to assign him duties and responsibilities commensurate with his post description, grade, qualifications and experience, he was warned that this "threat" was "completely unacceptable", in breach of his right to resort to internal remedies without detriment to his career.

Secondly, the complainant submits that the impugned decision is illegal because of "fundamental procedural flaws". He argues that it is based on a recommendation of the Reports Board which is vitiated by breach of due process, insofar as neither the name nor the method of selection of the independent expert was disclosed, and the latter made his assessment on the basis of documents chosen by Mr H. He also contends that the impugned decision was not properly substantiated. In his view, the Joint Panel did not recommend termination for unsatisfactory services, but a transfer or, failing that, an agreed termination. The Director-General asserted that a comprehensive review of vacancies had been undertaken, but since he gave no details of that review, he failed to give proper reasons for his decision not to follow the Panel's recommendation of a transfer.

Thirdly, the complainant contends that the impugned decision is vitiated by false conclusions drawn from the facts and failure to take into account essential facts. Noting that the decision is based on his allegedly unsatisfactory performance during the period June 1999 to May 2001, he points out that his performance prior to February 2000 is "not at stake", given that he received a merit increment at the end of 1998 and a step increment in September 1999, and that he was not apprised of any concerns regarding his performance. Moreover, he continued to work in the Arabic unit until the end of 2003, and his performance during the period June 2001 to October 2003 was deemed satisfactory. This essential fact was not taken into account by the Director-General, even though the impugned decision was taken on 27 October 2003. Referring to his merit increment, he asserts that prior to the appointment of Mr H. he was considered to be an "especially meritorious" staff member. The criticism regarding his productivity arose because his supervisor gave him less work, and sometimes none at all, even when there was work to be done. As for his attitude and conduct, after having received a warning, he never again refused to perform any tasks.

The complainant asks the Tribunal to set aside the impugned decision and to order his reinstatement with effect from 1 February 2004, with all the consequences thereof, particularly in terms of salary, benefits, pension and insurance coverage, or, failing that, to order the Organization to pay him an amount equal to five years' gross salary, including pension entitlements and all corresponding benefits. He also claims damages for moral injury, in an amount to be determined by the Tribunal, and costs.

C. In its reply the Organization submits that no breach of its obligation to protect the complainant's dignity has been established. Referring to the case law, it recalls that where an internal appeal body has heard evidence and made findings of fact based on its appreciation thereof, the Tribunal will only interfere in the case of manifest error. The complainant has failed to demonstrate any manifest error in the Joint Panel's finding that there was no evidence of harassment.

The Organization states that the impugned decision was based on the Joint Panel's recommendation, which upheld the findings of the Reports Board. Despite its reservations regarding the selection of the documents submitted to the independent expert, the Panel concluded that the evaluation of the complainant's performance based on the Reports Board's report was not erroneous. Moreover, the expert's assessment, which was only one of the factors considered in evaluating the quality of his work, was taken into account by the Reports Board only in relation to the documents which the Board deemed relevant in the light of the complainant's objections.

Contrary to the view expressed by the complainant, the Organization submits that the Joint Panel did uphold the Reports Board's recommendation of termination for unsatisfactory services. Nevertheless, the Director-General did not reject the Panel's recommendation to seek alternatives, and indeed the complainant was actively involved in the efforts made to that end.

The Organization considers that the Director-General's decision was amply supported by the facts, and that it was not vitiated by any false conclusion or omission of essential facts. It was based on the full record of the complainant's performance over the years, which showed "a pattern of inconsistent quality and output and persistent difficulties with supervisors and colleagues" from 1983 until the termination of his appointment. Even after the warning he received and the subsequent steps taken by the Reports Board and his supervisors to avert a further negative performance appraisal, the complainant persistently rejected the need to improve his attitude and output and the quality of his work. Contrary to the complainant's assertion, his performance from June 2001 to May 2003 was likewise unsatisfactory; the absence of negative comments in his appraisal report for that period was merely intended to minimise tensions.

With regard to the redress claimed by the complainant, the Organization submits that, far from having engaged in any act which caused him injury, it exercised great consideration and forbearance in his case: it gave him ample opportunity to improve his performance, sought every reasonable alternative to termination and even granted him, on termination, the discretionary indemnity provided for in Article 11.8(3) of the Staff Regulations.

D. In his rejoinder the complainant presses his pleas. He considers that as a senior translator/reviser – a title he held as from May 2001 – he was legally entitled to be given work matching his qualifications. He points out that the Organization's assertion that a comprehensive review of vacancies was carried out is unsubstantiated. Noting that he was apprised only on 20 February 2001 of the criteria on which his performance during the period June 1999 to May 2001 would be assessed, he submits that the impugned decision is based on an assessment relating to a period of only three months.

E. In its surrejoinder the Organization observes that the complainant's rejoinder contains no new fact or argument liable to make it alter its position. It recalls that in the department in which the complainant was employed, revision was considered not as an entitlement but as a function to be carried out as needed. It produces further evidence of its review of vacancies and emphasises that the complainant failed to respond to its offer of an agreed termination. Dismissing his argument that the impugned decision was based on his performance during a three-month period beginning in February 2001, it submits that the clarifications given to him at that time by his supervisors, on such issues as his output, his working hours and his duty to cooperate with his supervisor, could not be considered as new information or expectations since they already constituted standard procedure.

CONSIDERATIONS

1. The complainant was recruited by the ILO in 1982 as an Arabic language translator at grade P.3. He obtained an appointment without limit of time starting 1 July 1989 and was promoted to grade P.4 as a translator/reviser in April 1993. He challenges before the Tribunal a decision notified on 27 October 2003 by which the Director-General, referring to a recommendation by the Joint Panel dated 23 September 2003, rejected the harassment-related grievance filed by the complainant against two of his supervisors and terminated his appointment. He asks the Tribunal to order his reinstatement with effect from 1 February 2004 or, failing that, to order the Organization to pay him an amount equal to five years' salary as well as damages for moral injury, and costs.

2. Before considering the complainant's pleas and the defence put forward by the Organization, it is worth recalling the main stages of the complainant's career and then considering the replies given successively by the Reports Board and by the Joint Panel on the issues that were brought before them.

3. At the start of his career, that is, in the years 1982-84, the opinions expressed concerning the complainant's work were mixed. Although his linguistic ability and translating skills were considered fully satisfactory, his output was judged to be irregular and it was stated in his performance appraisal for the period 1 June 1983 to 31 May 1984 that an improvement in punctuality was expected of him combined with more regular and higher output. In the performance appraisal for the period 1 June 1984 to 31 May 1985, his supervisor reported marked improvement – even though punctuality was still somewhat unsatisfactory – and described him as an "excellent translator" and a "keen linguist". Subsequent performance appraisals noted further improvements and praised the "first-class linguistic capacities" of this "highly competent" translator. His contracts were renewed apparently without any problem until he was offered an appointment without limit of time starting 1 July 1989. He continued to receive satisfactory appraisals – either good or very good – and was promoted to grade P.4 on 1 April 1993. However, the appraisal written in May 1996, covering the period from 1 June 1993 to 31 May 1995, noted that, while he had

fully accepted the changes resulting from the merger between his section and another branch, he ought nevertheless to continue his efforts to improve his relations with other members of the Arabic unit. In addition, friction arose between him and one of his colleagues, Mr H., which he reported in February 1997 to his then supervisor, complaining in particular at the way revision work was distributed within the unit. The performance appraisal for the period from 1 June 1995 to 31 May 1997 does not mention any particular difficulties and is on the whole favourable to the complainant. Mr H. having taken up a new assignment in the field in January 1998, no further incidents appear to have occurred. On 1 January 1999 the complainant received a merit increment, which, according to Article 6.5(1) of the Staff Regulations, is granted to officials whose performance during the period under review has been appraised as being “especially meritorious”, followed by a step increase in September 1999.

The situation deteriorated when Mr H., the complainant’s former colleague, returned to Headquarters and was appointed Head of the Arabic unit on 15 February 2000. From that time onwards, relations between the complainant and his new supervisor were execrable; the former complained that he was no longer being given any revision work and refused to do certain translation jobs, while the latter apparently preferred to resort to external collaborators – who were not the ones selected by the complainant – rather than rely on the complainant. After having been admonished on 14 April 2000 by the Chief of OFFDOC, Mr B., the complainant received a warning on 20 April. His performance appraisal for the period from 1 June 1997 to 31 May 1999, which was drawn up only in September 2000 and which was signed by Mr. H. – despite the fact that the latter was not his supervisor for the period concerned – and by Mr B., reflects the difficulties that existed within the unit since, without mentioning the merit increment awarded to the complainant during the appraisal period, it refers to the warning issued to him in April 2000, which was one year after the said period had ended. The Director of RELCONF finalised that appraisal in October 2000, emphasising that the problems with the complainant’s performance had existed well before Mr H.’s return or Mr B.’s appointment as Chief of OFFDOC and appealing to the complainant to stop being “antagonistic” and instead invest his energies on improving his output. On 8 December 2000 the Reports Board, to which this appraisal was referred, expressed reservations regarding the delay with which the appraisal had been prepared and decided not to draw any conclusions from it, while calling on the staff members concerned to show more cooperation and understanding. The Board decided that it would carefully review the complainant’s next appraisal, which was to cover the period from 1 June 1999 to 31 May 2001 and which it required by the end of June 2001. The situation did not improve: the complainant was given specific instructions on 20 February 2001, notably regarding his punctuality and output. On 26 March 2001 he filed a harassment-related grievance against Mr H. and Mr B., complaining in particular that he was being excluded from revision work and that his translations were being revised by his supervisor. In the final version of his performance appraisal of June 2001, his performance was rated “not satisfactory” and it was pointed out, by Mr B. for the period June 1999 to February 2000 and by Mr H. for the period February 2000 to May 2001, that the complainant was poorly organised and had an unpleasant tendency to aggress his colleagues verbally, that his translation work was below standard in terms of both quantity and quality, that he still kept irregular hours and that he was making little effort to improve his working relationship with his supervisor, which continued to be characterised on his side by a pronounced tendency towards confrontation and verbal aggression. Mr B. concluded that consideration should be given to the possibility of transferring the complainant, on the understanding that if he remained in OFFDOC his aggressive attitude and his limited commitment to his work ruled him out as a successor to Mr H., who was due to retire in 2003. The Director of RELCONF supported that recommendation and advised the Human Resources Development Department to act on it as a matter of urgency.

4. Having reviewed this latest performance appraisal on 20 and 26 September 2001, the Reports Board heard the complainant and his supervisor and invited them to comment on a number of documents, including statistics produced by each party concerning the complainant’s productivity. The documents shown to the latter included the report of an independent expert who had been mandated by the Reports Board to assess the quality of his translation and revision work on the basis of 14 documents which he was presumed to have translated or revised and which had been selected by Mr H. After the hearings the Reports Board instructed its secretary to carry out further investigations, in particular to establish whether 80 per cent of the documents evaluated by the expert had really been translated or revised by the complainant, to ask the department concerned to correct the productivity statistics which it had submitted and to ascertain how work was normally distributed to the translators.

5. According to the report by the secretary of the Reports Board dated 25 January 2002, only three out of the 14 documents submitted to the independent expert could be considered to have been actually translated by the complainant and covered by the expert’s general statements; two had been revised by him and were specifically mentioned in the report, but the other nine could not be attributed with certainty to the complainant, whether or not they had been specifically referred to in the independent expert’s report.

6. The Reports Board met again and on 27 February 2002 recommended terminating the complainant's appointment for unsatisfactory services. Concerning the quality of his work, the Board referred to the conclusions of the independent expert, according to whom the translations were "below normal standards and le[ft] much to be desired", and commented that even though not all the documents could be attributed to the complainant those conclusions confirmed Mr H.'s negative assessment. The Board pointed out that the previous assessments of the complainant's work had not been made by Arabic speakers. Concerning the complainant's productivity, the Board, after rejecting the methodology proposed by him, found that his relative performance was consistently lower than that of the other members of his group and that, even though his productivity had decreased since the arrival of Mr H., who according to the complainant gave him little work to do, the combination of his work habits and attitude contributed to a below standard level of productivity. Lastly, regarding the complainant's attitude and conduct, the Reports Board examined the relationship between him and his supervisor in detail and found that the complainant's resistance to cooperating with Mr H. constituted unacceptable behaviour.

7. By a letter of 26 June 2002 the complainant was informed that the Director-General had decided to approve the Reports Board's recommendation and that he was entitled to appeal the "proposal of termination" in accordance with Article 11.8(2) of the Staff Regulations. He received a copy of the recommendation of 27 February 2002 only on 12 July 2002. He approached the Ombudsperson without success and on 11 September 2002 submitted his harassment grievance against Mr B. and Mr H. to the Joint Panel. On 29 January 2003 he lodged an appeal against the termination proposal, not with the Joint Advisory Appeals Board, which had jurisdiction under the terms of Article 11.8(2) of the Staff Regulations, but again with the Joint Panel, the Office having offered him this choice. To that end an agreement was reached between the Office and the Staff Union conferring jurisdiction on the Joint Panel to review this appeal jointly with the harassment-related grievance, and providing that "the relevant provisions of Annex IV to the Staff Regulations [would] not be applied in this particular case". While the Tribunal is somewhat surprised that the applicable regulations were disregarded in this way, it notes that the complainant mentions no formal flaw and that the procedure followed did not in fact cause him any injury.

8. The Joint Panel, to which the two disputes were thus referred, held hearings and gathered testimonies on 26 and 27 August 2003, and on 30 September 2003 sent the Director-General a long recommendation dated 23 September 2003. It found that the complainant, on whom the burden of proof rested, had not produced evidence of harassment in the meaning of Article 13.10 of the Staff Regulations. According to the Joint Panel, the distribution of translation and revision work clearly gave rise to tensions, but no witnesses had been produced to substantiate the harassment grievance. Regarding the proposal of termination, the Joint Panel expressed reservations regarding the conditions in which the complainant's performance appraisals had been finalised and the method used to select documents for submission to the independent expert appointed to assess the quality of the complainant's work. It also expressed concern at the fact that the Reports Board had failed to indicate whether alternatives to a proposal of termination had been considered, whereas the complainant's last performance appraisal had mentioned the possibility of transferring him to a unit in which his skills might be better used. Despite these reservations, the Joint Panel concluded that the proposal of termination "[had] not [been] made for reasons unconnected with his performance". However, recalling that over a long period the complainant's performance had been judged to be satisfactory and that the deterioration of his performance had been evidenced particularly when Mr H., with whom he had developed over the years a sense of rivalry, became his supervisor, the Joint Panel recommended that the Director-General consider alternatives to the proposal of termination, particularly the possibility of a transfer to another post outside OFFDOC. Failing that, it considered that it would be "both fair to the official and in the interest of the Office to proceed to an agreed termination under Article 11.16 of the Staff Regulations".

9. By letter of 27 October 2003, which constitutes the impugned decision, the complainant was informed that the Director-General had "taken note" of that recommendation but that no post for which he would be suited had been identified either in Geneva or in the field and that, since in a meeting with the Director of the Human Resources Development Department he had indicated his rejection of an agreed termination, it was in the best interests of the Office to implement the proposal of termination. The harassment grievance was implicitly rejected.

10. In challenging the rejection of his harassment grievance, the complainant contends that he was deprived, as soon as Mr H. was appointed Head of the Arabic Unit, of most of his responsibilities and that his translations were revised by one of his former subordinates. The Organization, he says, did nothing to protect his dignity and provide assistance. On the contrary, he received a warning based notably on the fact that his "threat" to lodge an internal complaint if he did not receive revision work was "completely unacceptable". In his view this constituted an act of "retaliation" which was contrary to his fundamental rights and which neither the Joint Panel nor the Director-

General found “abnormal”. In short, he alleges that he was subjected to measures designed to exclude or isolate him from professional activities, to persistent negative attacks without reason, and to unreasonable or inappropriate monitoring of his performance, all of which in his view constituted harassment as defined in the applicable provisions.

11. The defendant maintains on the contrary that the Joint Panel took all the evidence into account when issuing its recommendation, especially the results of the hearings, and that the complainant has provided no evidence which could lead the Tribunal to conclude that the Panel had committed an obvious error of judgement.

12. On this point the Tribunal agrees with the defendant. The Joint Panel gathered many testimonies and concluded quite rightly that none of these substantiated the harassment grievance. Undoubtedly, serious problems arose from the tensions between the complainant and his former colleague, who had become his supervisor, but the former’s refusal to recognise the authority of the latter largely accounts for a situation which, however regrettable, did not constitute harassment.

13. Regarding the legality of the decision to terminate his appointment, the complainant puts forward several pleas. According to him, the Joint Panel’s recommendation is unlawful because the Panel’s assessment of his performance was based on the findings of the Reports Board, which rested on the outcome of an expert procedure that was not adversarial. The Director-General’s decision did not follow that recommendation, which indicated that he should be transferred, and gave no reasons why it did not. In his view, no fact concerning either the quality of his work or his productivity or conduct supported the conclusion that his performance was unsatisfactory. The impugned decision, which was taken on 27 October 2003, was based on a performance appraisal, itself somewhat debatable, covering a period that ended on 31 May 2001, while his subsequent performance, with improved productivity and the award of a step increase in September 2003, were not taken into consideration.

14. The defendant submits for its part that no manifest error was committed when evaluating the work of the complainant, who constantly refused to improve either his performance or his conduct, and that the performance appraisal covering the period from June 2001 to May 2003 confirmed that the complainant’s work was not satisfactory. The delays affecting the termination procedure are due to the complainant himself, since he filed a grievance for harassment against his supervisors. Lastly, the Director-General followed the recommendation of the Joint Panel and gave sufficient reasons for his decision by referring to the unsuccessful efforts made to find a post to which the complainant could be transferred. In fact those attempts continued after the decision of 27 October 2003 since, at the request of the Staff Union, exceptional efforts were made to identify suitable posts for the complainant, both within the Organization and with other agencies.

15. On this last point, the submissions do show that serious efforts were made to identify posts for which the complainant might have been suited, both inside and outside the Office. Even though these efforts became more thorough once the impugned decision had been taken, there is no indication that a vacancy was not actually sought in the interval between the recommendation of the Joint Panel and the Director-General’s decision, or that the alternative solution advocated by the Panel was not duly considered. The Director-General was therefore not obliged to enlarge any further on the reasons he gave for his decision in this respect. Consequently, the plea that insufficient reasons were given for the decision fails.

16. The assessments which led to the conclusion that the complainant’s performance was unsatisfactory raise more delicate issues. The defendant is not wrong to point out that, except in a case of manifest error, the Tribunal will not substitute its own assessment of a staff member’s services for that of the competent bodies of an international organisation. Nevertheless, such an assessment must be made in full knowledge of the facts, and the considerations on which it is based must be accurate and properly established. The Tribunal, which pays considerable attention to these issues in the case of complaints concerning dismissal at the end of a probationary period or the non-renewal of fixed-term contracts on the grounds of unsatisfactory performance, must be even more vigilant where an organisation terminates the appointment of a staff member holding a contract without limit of time, which in principle should secure him against any risk of job loss or insecurity. This applies particularly in the present case, since the staff member concerned by the termination for unsatisfactory services received on the whole satisfactory or even excellent appraisals over a period of 15 years.

17. While the considerations on which the complainant’s termination was based focused particularly on his conduct, which was deemed to be unacceptable in his personal relations, and while on this point it is difficult to detect any manifest error in the assessments made by the competent bodies of the Organization, it is clear from the

submissions that the quality of the complainant's work and his productivity met with unfavourable assessments by the Reports Board that were endorsed by the Joint Panel, which expressed the more qualified view that the evaluation of the performance of the staff member concerned was "not erroneous" and that the proposal of termination "[had] not [been] made for reasons unconnected with his performance". But the findings of the Reports Board concerning the complainant's performance were mostly based on the conclusions of an independent expert, who had assessed the quality of the complainant's translation and revision work on the basis of 14 documents, of which only five could be considered to have actually been translated or revised by him and some of which related to periods when apparently the linguistic abilities of the complainant were not in doubt. The procedures used to assess the performance of international civil servants must be both transparent and adversarial. While it may be accepted that in this case the Reports Board resorted to an independent expert to assess the accuracy of the evaluations appearing in performance appraisals drawn up in accordance with the applicable rules, this "expert assessment" should not have been undertaken in breach of the complainant's right to an adversarial procedure, which would have given him an opportunity to object in good time to the choice of documents used as a basis for the conclusions reached by the expert who, moreover, was appointed by a method which remains unknown. But that was not the case, and this failure to observe the principles which ought to have applied, even in the absence of any written rule, to an investigation which was being conducted outside the normal evaluation procedure, led to consequences which were clearly harmful to the complainant. Furthermore, the fact that the complainant's productivity was low during the period following Mr H.'s appointment may be explained by the fact that he was given few documents to translate and even fewer to revise. As soon as that situation was remedied, the complainant's productivity was restored to a satisfactory level and did not remain below standard, contrary to what the Organization maintains.

18. It may be concluded from all the circumstances of the case that, even though the complainant's conduct towards his supervisor was not what might be expected of an international civil servant and would probably have justified preventive action on the part of the Organization, the reasons given to establish that the complainant's abilities and performance were unsatisfactory did not suffice to justify terminating his appointment for unsatisfactory services.

19. The complainant's request for the quashing of the impugned decision is therefore well founded, as is his claim for retroactive reinstatement, with all legal consequences, within the Organization's staff. The payment of the corresponding salary and benefits must, however, be subject to the deduction of any earnings he may have received after 1 February 2004 and of his termination indemnities. He is also entitled to compensation for moral injury, which the Tribunal sets at 25,000 Swiss francs.

20. The Organization shall pay the complainant 15,000 Swiss francs in costs.

DECISION

For the above reasons,

1. The decision of the Director-General of the ILO of 27 October 2003 is set aside.
2. The complainant shall be reinstated within the Office's staff as from 1 February 2004, with all legal consequences.
3. The Organization shall pay the complainant 25,000 Swiss francs in moral damages.
4. It shall also pay him 15,000 francs in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 13 May 2005, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2005.

Michel Gentot

James K. Hugessen

Mary G Gaudron

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 14 July 2005.