The Administrative Tribunal,

Considering the complaint filed by Ms S. R. against the World Health Organization (WHO) on 15 October 2004 and corrected on 18 January 2005, the WHO's reply of 20 April, the complainant's rejoinder of 24 June, and the Organization's surrejoinder of 23 September 2005;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for the hearing of witnesses;

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

A. The complainant, a Canadian citizen born in 1950, was appointed by the WHO from 10 February 1997 to the grade D.1 position of Technical Secretary of the United Nations Administrative Committee on Coordination/Sub-Committee on Nutrition, which later became the United Nations System Standing Committee on Nutrition (SCN). The WHO serves as host organisation of the SCN Secretariat for administrative purposes, under a Memorandum of Understanding (MOU). The complainant was initially employed under a two-year secondment agreement between the Canadian International

Development Agency and the WHO. At her request, her secondment ceased with effect from 1 December 1999. Her appointment was extended until 30 June 2001 and then until 30 June 2003.

WHO Staff Rule 1040 specifies as follows:

"In the absence of any offer and acceptance of extension, fixed-term and temporary appointments shall terminate automatically on the completion of the agreed period of service. […]"

As in the case of previous renewals, in November 2002 the complainant drafted a letter addressed to the WHO requesting an extension of her appointment and forwarded it to her supervisor, the SCN Chairperson, for signature. The letter went unsigned, as her supervisor said she would consult the SCN Steering Committee about the complainant's contract extension.

The SCN's annual meeting was held in Chennai, in India, from 3 to 7 March 2003. A meeting of some UN Agency members of the SCN Steering Committee was convened in Chennai on 6 March 2003. During that meeting it was decided that the complainant's contract should not be renewed when it expired in June. Later the same day, the complainant was informed of that decision verbally by her supervisor.

On 17 February 2003 the Division of Personnel had issued form WHO 80.1 – a form headed "Extension/Termination of contract", containing a proposal to extend the complainant's contract for a period of two years. It was sent to the complainant on 5 March. She signed it on 10 March, upon her return from India, returning it to the relevant Management Support Unit (MSU).

The Chef de Cabinet of the Director-General's Office wrote to the complainant on 27 March 2003 to confirm formally that her contract would not be renewed beyond the end of June. He said that the decision had been taken by members of the SCN who represent the UN Agencies and that it was "based on the principle of rotation". Her appointment was to come to an end in accordance with Staff Rule 1040, and the letter thus served as three months' notice. He also said that the "proposed extension of contract (form WHO 80.1)" that had been sent to her on 5 March 2003 was null and void. The complainant was separated from service at the end of June 2003.

On 23 May 2003 the complainant had filed an appeal with the Headquarters Board of Appeal. In its report, issued on 14 May 2004, the Board recommended dismissing the appeal. By a decision of 15 July 2004, the Director-General endorsed that recommendation. That is the impugned decision.

B. The complainant contends that she was wrongfully removed from her post allegedly on the basis of a non-existent policy of rotation. Firstly, she contends that by sending her form WHO 80.1 the Organization made a valid offer to extend her contract for two years, and she duly accepted that offer by signing and returning the form on 10 March 2003. She believes that there was thus a legal and binding contract between herself and the WHO. By failing to extend her appointment and by declaring its offer null and void the Organization unilaterally breached that contract, thus entitling her to redress.

Secondly, she argues that the post she held was of indefinite duration and that the notice she was given was therefore invalid. Her contention is that staff who hold posts of unlimited duration can only be separated from service upon the abolition of their post, in which case a reduction-in-force exercise has to be conducted, in accordance with Staff Rule 1050. While her original contract stated that her post was "time-limited", the contract extensions she received contained no such mention. Her post was therefore ongoing, and because no reduction-in-force exercise was implemented the purported notice of non-renewal of 27 March was ineffective and her contract was thus renewed by implication for another two-year term.

Thirdly, citing the case law, she argues that her removal from the post of Technical Secretary was done in a way that was an affront to her dignity. She was denied the usual procedural safeguards. It was decided unilaterally, without consultation or warning. Although her supervisor did inform her verbally of the non-renewal on 6 March 2003, she did so in a "public lunchroom".

Fourthly, she argues that the so-called rotation policy was but a pretext to justify the non-renewal of her contract. She had disagreed with her supervisor over tax matters and believes that her supervisor was prejudiced against her and had orchestrated the non-renewal as a "disguised disciplinary sanction" against her. She alleges bias, ill will and malice on the part of her supervisor. She also alleges bad faith on the part of the Administration given that key witnesses, including her supervisor, refused to appear before the Headquarters Board of Appeal.

The complainant asks the Tribunal to order the Organization to produce correspondence and any other documents deemed relevant to the issue of her contract extension and claims the following redress. She asks the Tribunal to quash the impugned decision; award her damages in an amount equal to two years' salary; order a disciplinary investigation into "the conduct and actions of her former supervisor"; award her 100,000 United States dollars in moral damages; order the reimbursement of her legal fees; and award her interest at the rate of 8 per cent per annum on all amounts due to her. She also seeks such other relief as the Tribunal deems appropriate.

C. The Organization submits that the complaint is devoid of merit. The decision not to extend the complainant's contract was, it argues, lawful. The decision was taken for objective reasons and was based on SCN needs.

Moreover, the decision was a proper exercise of discretionary authority. There was a need for the post held by the complainant to be filled on a rotational basis. The complainant held a fixed-term contract, and Staff Rule 1040, which applied in her case, confers no right of automatic renewal on the holder of a fixed-term contract. It was clear from the forms signed in connection with her previous extensions that there could be no "expectation of further renewal". The Organization points out that the decision it took complied with the complainant's terms of appointment and the WHO Staff Rules. As required by Staff Rule 1040, she was given three months' notice; she was informed of the non-renewal orally and in writing. It maintains that personal prejudice and malice played no part in the decision not to renew her contract.

The Organization argues that form WHO 80.1 was not a binding contract, pointing out that that particular form is designed to enable the Administration to make proposals relating to the extension or termination of a staff member's contract. It constituted a proposal to offer her a two-year extension, and was not a final decision to extend her contract. The MSU, acting in good faith, had issued form WHO 80.1 in the mistaken belief that it had obtained all the required information from the complainant. When she signed the form on 10 March 2003 the complainant did not act in good faith. She had misled the Organization. Two elements were lacking. The SCN Chairperson had not yet confirmed whether there was a continuing need for the complainant's services, and it had not yet been established whether funds were available. Although the complainant had submitted a letter dated 13 February 2003, which purported to be an assurance of funding, it was signed by her and not by the SCN Chairperson and was premature, because at that date funding had not yet been confirmed. Furthermore, the complainant signed the form on 10 March 2003 without informing the MSU of the conversation she had had with the Chairperson of the SCN in India on 6 March, regarding the non-extension of her contract.

Replying to the complainant's argument regarding the reduction-in-force exercise, it points out that her post was not abolished and Staff Rule 1050 has no relevance to her case. On the issue of the internal appeal proceedings, it does not accept the complainant's allegations that her supervisor "refused" to testify before the HBA. It notes that her supervisor had agreed to submit her comments in writing.

It maintains that there are no grounds for any of the complainant's claims for relief, pointing out that the amount claimed in moral damages goes beyond that claimed in her internal appeal.

D. In her rejoinder the complainant contends that the WHO has not shown that the rotation policy, relied upon by the Organization to separate her from service, ever existed.

It appears to the complainant that if the MSU's paperwork was not in order, the WHO must bear the burden of its own negligence. She maintains that she acted in good faith, and was not bound to treat the verbal indications given by her supervisor in Chennai as formal notice of the alleged non-renewal of her contract. Rather, she acted within her rights in considering that the form forwarded to her by the MSU superseded anything conveyed to her by her supervisor.

E. In its surrejoinder the Organization maintains its position. It contends that the complainant was aware of the discussions regarding the need for the rotation of her post. It rejects her criticisms of the MSU, emphasising that in issuing form WHO 80.1 the MSU was misled by the complainant's own actions.

CONSIDERATIONS

1. The complainant impugns the decision of the Director-General of the WHO not to renew her appointment as Technical Secretary (at grade D.1) of the United Nations System Standing Committee on Nutrition (SCN), whose secretariat is housed and administered, but not funded, by the WHO.

2. The complainant was appointed to her position, initially on secondment from the Canadian International Development Agency, in February 1997. The appointment was for a fixed initial term of two years. It was extended twice, in February 1999 and in July 2001. The last extension was until 30 June 2003.

3. On 15 November 2002 the complainant sent a package to the Chairperson of the SCN, Ms B., who was in New York; it contained a draft letter to the WHO for Ms B. to sign, requesting a two-yearcontract renewal for the complainant. The package also contained the complainant's work plan for the coming contract extension period and her performance appraisal for the two past years. Ms B. advised the complainant on 21 November 2002 that she would consult the SCN Steering Committee about the proposed contract extension.

4. In February 2003, the complainant initiated discussions with the appropriate MSU in the WHO about her contract extension. Without advising the Chairperson of the SCN or obtaining specific authorisation to do so (her November letter requesting an extension had still not been approved) the complainant wrote a letter to the WHO on behalf of the SCN advising of the availability of funding for the extension of her contract. Previous practice had been that such letters – an administrative requirement of the WHO, since it was not paying the contract costs – were written by the SCN Chairperson. On 5 March 2003 the MSU sent to the complainant's office in Geneva a proposal (form WHO 80.1) for contract extension duly signed by WHO officials. The complainant was at that time in India for the SCN's annual meeting and on 6 March 2003, while there, she was advised by Ms B. that it had been decided not to renew her contract upon its expiry on 30 June 2003, and that this decision was final and non-negotiable. The reason for the decision was stated to be that the members of the SCN Steering Committee were pursuing a policy of rotation of which, as the Headquarters Board of Appeal (HBA) later found, the complainant had been advised in person by the former SCN Chairperson in early 2001.

5. Notwithstanding the information she had received from Ms B. on 6 March 2003, upon her return to Geneva the complainant signed the proposal form on 10 March and returned it to the MSU.

6. On 20 March the complainant was formally advised that the proposal for contract extension had been sent to her in error and one week later she received a written notification that her fixed-term contract would not be renewed upon its expiry.

7. On 23 May 2003 the complainant appealed the decision not to renew her contract (in her view a decision to terminate her appointment) to the HBA but the latter, finding that she had not acted in good faith, recommended dismissal of the appeal. The Director-General concurred on 15 July 2004, which is the impugned decision.

8. The complainant's first argument is that, as a matter of law, form WHO 80.1 when signed by both herself and the WHO constituted a binding contract. In this she is supported by the view expressed by the HBA. While it is not strictly necessary for the Tribunal, in view of its conclusions below, to take a final position on the question, it may be noted that the form is, on its face, no more than a proposal and the text shows that even when completed it requires to be followed up by personnel action. Dealing with a very similar form, the Tribunal, in Judgment 1406, found that by itself the form was not enough to give rise to a contract of employment for the full term of the proposed extension.

9. Of more critical importance for present purposes, however, is the HBA's finding that the complainant was not in good faith when she signed the form. The Tribunal will not disturb that finding since there was undoubtedly evidence to support it. Indeed, the undisputed facts give rise to the strong inference that the complainant, prior to 6 March 2003, at a time when she knew very well that her request for an extension had not been approved by the SCN or its Chairperson, had taken steps to induce the WHO to offer her the extension. Worse still, following 6 March, when she had been definitively informed that a final decision not to extend her contract had been taken in pursuance of a rotation policy of which she was aware, she signed and returned the proposal form knowing that it must have been sent to her in error. In those circumstances, and whether or not the proposal form could be said to have constituted a binding contract, it had been obtained by her as a result of her bad faith and she can claim no rights flowing from it. The complainant's second argument is that she held a fixed-term post of "unlimited duration" and could only be separated from service if her post was abolished, in which case she was entitled to benefit from a reduction-in-force exercise. She is wrong. Her counsel fails to distinguish between the post and the complainant's appointment to it. The post was not abolished. The complainant was appointed to that post for a series of fixed terms and at their conclusion, while her appointment came to an end, the post did not.

10. In a third argument she contends that her dignity was impaired by the manner in which she was informed of the decision not to renew her contract. That information was conveyed to her during a meeting with Ms B. that took place during a meal break at the SCN's annual meeting in India. While that may not have been a pleasant occasion for the complainant she produces no persuasive evidence that the circumstances were such as to humiliate her. It will be recalled that, since the request for an extension of the complainant's contract had then been pending for some three and a half months, fairness required that the complainant be informed of the non-renewal decision as soon as possible and in any event in good time to comply with the three months' notice required by Staff Rule 1040 – which meant she had to be notified by 31 March 2003 at the latest.

11. Lastly, the complainant alleges that the decision not to renew her contract was motivated by prejudice and ill will held by Ms B. towards her. The HBA made a specific finding that there was no evidence to support this allegation and the Tribunal agrees. The complainant's counsel suggests that the source of Ms B.'s prejudicial feelings was the complainant's discovery of a so-called "tax evasion" scheme practised by Ms B., who apparently directed that a part of the sums due to her under a consultancy contract with the WHO should be paid to a specific American university. Counsel appears not to understand the distinction between tax avoidance, which is legitimate, and tax evasion, which is not, and uses both terms to describe the arrangement. While it is conceivable that such a scheme, assuming it to have existed, might have been intended to avoid taxes by directing that funds which would otherwise have gone to a taxpayer be paid to an educational institution rather than the taxpayer, which is not established, the Tribunal can see no basis for the complainant's criticism of it.

12. Indeed, as between the complainant and Ms B., the evidence of the present record indicates that it is the former who bears personal prejudice against the latter rather than vice versa. The complainant's counsel is unrestrained in his criticism of Ms B. and uses frequently intemperate language to ascribe bad faith to her. In one particularly egregious example he cites an earlier judgment – namely Judgment 1742 in which the Tribunal set aside a decision which originated from Ms B., who was at the time Executive Director of the World Food Programme, and which related to another staff member of that organisation – as evidence of Ms B.'s bad faith in her dealings with the complainant. The Tribunal unreservedly rejects the argument.

13. Counsel is also very critical of the fact that Ms B. said she was not able to attend the HBA hearing and attempts to build a "due process" argument upon it. The facts show quite the contrary. Prior to the date of the hearing, at the request of both parties, the HBA requested Ms B. – who by then had taken up a high-level position

with the United Nations in New York – to attend on the dates scheduled for the hearing. She replied in a letter whose tone, characterised by the complainant's counsel as "arrogant", was in the Tribunal's view both polite and respectful, indicating that she would not be available to attend and offering instead to answer any written questions that the HBA might wish to address to her. Thereupon, counsel, who had also requested the appearance of a number of other witnesses who as WHO staff members in Geneva would normally have been available to appear at the hearing, took the position that he had "no choice" but to withdraw his request for an oral hearing and to proceed on the written record only. But of course counsel did have other choices: he might have requested an adjournment; he might have drafted written questions for submission to Ms B. He might have proceeded with the oral examination of the other witnesses whose presence, he continues to argue, was so essential to his case. The course he chose was deliberate and gives no foundation to the argument urged before the HBA and again before the Tribunal that adverse inferences should be drawn from Ms B.'s failure to appear and from the fact that the other witnesses were not examined orally.

14. Counsel asks the Tribunal, as he has in a number of other cases, to order the Organization to produce a large number of documents and files without any evidence either that such materials exist or that, if they do, they would provide relevant evidence. The Tribunal has previously (see Judgment 2097), and at the present session (see Judgment 2484), characterised such requests as "fishing expeditions" which it will not countenance. It does so again.

15. The complainant having failed to establish any ground upon which the impugned decision should be overturned, the complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 October 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 1 February 2006.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 15 February 2006.