A.

v.

IOM

139th Session **Judgment No. 4935**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr M. A. against the International Organization for Migration (IOM) on 29 June 2021 and corrected on 17 August, IOM's reply of 22 December 2021, the complainant's rejoinder of 11 March 2022 and IOM's email of 13 June 2022 informing the Registrar of the Tribunal that it did not wish to file a surrejoinder;

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 contests the decisions to abolish his position and terminate his appointment.

The complainant joined the IOM Office in Amman, Jordan, in March 2009 under a special fixed-term contract, at grade G-4. In January 2010, he was appointed to the position of International Caseworker, at grade P-1. He subsequently moved to the position of Resettlement Support Center (RSC) Team Leader, also at grade P-1. In December 2013, he was promoted to the position of Field Supervisor in Baghdad, Iraq, at grade P-2. He subsequently moved to the position of Project Officer, Case Management, also at grade P-2. In June 2015, he was

granted a one-year fixed-term contract. In February 2017, he was appointed to the position of Project Coordinator, at grade P-3, in the IOM Office in Ukraine. In December 2017, he was reassigned to the position of Deputy Project Manager, RSC Eurasia, also at grade P-3, in the same Office. His one-year fixed-term contract was subsequently renewed twice, initially until 31 January 2019, and then until 31 January 2020.

On 21 May 2019, the United States Refugee Admissions Program (USRAP) Global Coordinator informed the complainant that the Administration had decided to place him on a three-month Performance Improvement Plan (PIP) and, if he had not improved his performance at the end of the three-month period, his contract would be terminated for unsatisfactory performance. The proffered reasons were that the complainant's Staff Evaluation System (SES) overall performance appraisal had been rated "Needs Improvement" and that the United States Department of State Bureau of Population, Refugees and Migration, which funded the RSC Eurasia project including the complainant's position, had raised concerns about his performance. In the event, the complainant successfully completed the PIP by achieving the performance objectives set therein.

In an email of 2 August 2019, the USRAP Global Coordinator advised the complainant that in the course of the USRAP programme and budget review for 2020, the USRAP Global Management Team had decided to restructure RSC Eurasia so as to "better meet the needs of current activities". The USRAP Global Coordinator also advised that the restructuring entailed the creation of a P-4 Senior Project Coordinator position in Kyiv, alongside the RSC Project Manager position, as a result of which the complainant's position would no longer be funded and would be abolished in early November 2019. He added that the complainant would receive official notification in due course and he encouraged him to apply for any vacant posts and to consider all options available in IOM during this time.

By a letter of 6 August 2019, the Chief, Human Resources (HR) Operations and Administrative Services, informed the complainant that the project to which he was assigned would be restructured and the

position he held would be abolished as of 6 November 2019, at which point his service with the IOM Office in Ukraine would come to an end. While indicating that IOM would make efforts to assist him in finding another position and encouraging him to update his Personal History Form and to actively apply for suitable vacancies, the Chief, HR Operations and Administrative Services, informed him that, if he was not successful in being appointed to another position through a competitive selection process before 6 November 2019, that letter served as a formal notice that his service would come to an end on that date. On 6 November 2019, the complainant separated from the service of IOM.

Prior to that, on 2 October 2019, the complainant had submitted a request for review of the decision to abolish his position. This was rejected on 29 November 2019 and, on 15 January 2020, the complainant lodged an appeal with the Joint Administrative Review Board (JARB) requesting, among other things, that the decision to abolish his position be quashed. In its report, signed on 1 March 2021, the JARB recommended that the appeal be rejected.

By a letter of 31 March 2021, the Director General informed the complainant of his decision to endorse the JARB's recommendations and thus to reject his appeal along with all his requests for redress. This is the impugned decision.

The complainant asks that both the impugned decision and the earlier decision to abolish his position be set aside, that he be retroactively reinstated in a position commensurate with his experience and qualifications, and that he be paid all salary and allowances from the date of his separation from service until the date of reinstatement. Alternatively, he asks that he be granted material damages for loss of opportunity in an amount equivalent to what he would have earned if his appointment had not been terminated, including salary, emoluments, allowances and benefits. He further asks that he be granted moral damages and the full amount of the costs he incurred in pursuing his claims.

IOM asks the Tribunal to dismiss the complaint in its entirety and to deny all requests for redress.

CONSIDERATIONS

1. This complaint is the culmination of the complainant's challenges to the decisions to abolish his post and subsequently to terminate his one-year fixed-term appointment, which was due to expire on 31 January 2020. At the material time, he held the P-3 position of Deputy Project Manager at the Resettlement Support Center (RSC) Eurasia, situated in Kyiv, Ukraine. The complainant was first informed, in an email of 2 August 2019, of the proposed restructuring of the RSC that would have resulted in the abolition of his post. This was confirmed in a letter of 6 August 2019, which informed him that his position would be abolished on 6 November 2019 and, if by that date he had not been successful in his applications to be appointed to another position through a competitive process, his service with IOM would come to an end on that same date. It transpired that his applications to fill other positions were unsuccessful and he separated from IOM on 6 November 2019.

2. The submissions the complainant proffers in this complaint essentially mirror those he made in his internal appeal, which the Joint Administrative Review Board (JARB) unanimously concluded were unfounded and recommended that his appeal be dismissed. The complainant also essentially seeks the same remedies, which the facts reveal.

3. As in his internal appeal, the complainant refers to the Performance Improvement Plan (PIP) on which he had been placed for three months from May 2019 and successfully completed. He states that the Administration had initiated it as a first attempt to terminate his appointment, without any previous warning about his performance and while he was on certified sick leave, and that when that attempt failed, it tried another means "to get rid of him through the unjustified abolition of his position". By this, the complainant does not challenge the imposition of the PIP. He states that he refers to it to support his submission that the decision to abolish his post was taken for an improper purpose and its imposition is evidence of IOM's first attempt

to get rid of him. He also refers to his 2018 performance appraisal in the same light. The complainant did not challenge these decisions within the applicable time limits and in neither case does he raise these as claims in themselves. Rather, he raises them as pleas which are receivable only to the extent that they support the complainant's centrally receivable claim that the termination of his contract was unlawful. These pleas are however unfounded, inasmuch as he provides no evidence that links the imposition of the PIP and/or his 2018 performance appraisal report to the decision to abolish his position and terminate his appointment.

4. Firm precedent has it that in order to achieve greater efficiency or to make budgetary savings international organisations may undertake restructuring entailing the redefinition of posts and staff reductions. However, each and every individual decision adopted in the context of such restructuring must respect all the pertinent legal rules and in particular the fundamental rights of the staff concerned (see, for example, Judgment 3238, consideration 7). The case law also states that decisions concerning restructuring within an international organisation, including the abolition of posts, may be taken at the discretion of the executive head of the organisation and are consequently subject to only limited review. Accordingly, the Tribunal will ascertain whether such decisions are taken in accordance with the relevant rules on competence, form or procedure, whether they rest upon a mistake of fact or law, or whether they constituted abuse of authority. The Tribunal will not rule on the appropriateness of the restructuring, as it will not substitute the organisation's view with its own (see, for example, Judgment 4004, consideration 2). Nevertheless, any decision to abolish a post must be based on objective grounds and its purpose may never be to remove a member of staff regarded as unwanted. Disguising such purposes as a restructuring measure would constitute abuse of authority (see, for example, Judgment 3582, consideration 6). Moreover, a decision to abolish a post must be communicated to the staff member occupying the post in a manner that safeguards that individual's rights. These rights are safeguarded by giving proper notice of the decision, reasons for the decision and an opportunity to contest the decision. The

Tribunal has further stated that the need to give reasons in support of adverse administrative decisions arises precisely because the affected staff member must be given an opportunity of knowing and evaluating whether or not the decision should be timely contested (see, for example, Judgment 3041, considerations 8 and 9).

5. The complainant contends that the Director General erred by not holding that the decisions to abolish his post and terminate his contract were unlawful on the grounds that: first, IOM did not give him complete notification of the decision to abolish his position thereby violating its duty to respect his due process rights; second, IOM failed to substantiate objective grounds for the decision to abolish his position; third, contrary to the Tribunal's case law, the decision to abolish his position was illusory in character; fourth, IOM violated its duty to find suitable reassignment options for him; fifth, the JARB's report is fundamentally flawed, as it failed to examine the substance of his allegations thereby violating its duty to provide him with an effective internal appeal process.

6. Regarding the first ground, Regulation 9.4(b)(ii) of the IOM Unified Staff Regulations and Rules empowered the Director General to terminate the appointment of a staff member owing to the abolition of her or his post. However, Regulation 9.4(a) mandated that a staff member whose appointment was to be terminated be given such written notice as applicable under the terms of her or his appointment. The parties are in accord that the complainant was given three months' notice.

7. To support his contention on the first ground, the complainant cites the Tribunal's statement in consideration 4 of Judgment 4196 that the principle of good faith and the concomitant duty of care demand that international organisations treat their staff with due consideration in order to avoid causing them undue injury; an employer must consequently inform employees in advance of any action that may imperil their rights or harm their rightful interests. The complainant also cites the Tribunal's case law, in consideration 15 of Judgment 3264,

that a staff member must, as a general rule, have access to all evidence on which the authority bases or intends to base its decision against the staff member so that a decision cannot be based on a material document that has been withheld from the concerned staff member. However neither of these cases involve notification of the abolition of a post. The complainant also refers to the case law in consideration 15 of Judgment 3928, that a decision to abolish a post must be communicated to the staff member who occupies the post in a manner that safeguards her or his rights, such as by giving proper notice of the decision, reasons for the decision and an opportunity to contest the decision.

8. The complainant submits that, although he was involved in the transfer of the RSC Eurasia hub from Moscow, Russia, to Kyiv commencing in 2017, IOM did not inform or consult him about the "alleged reorganization" which violated his due process rights and IOM's duty to properly inform him of the restructuring process that led to the abolition of his position. The complainant does not identify any provision in IOM's rules, or any case law, which required the Organization to consult the complainant about the reorganization. IOM was required to notify the complainant about the decisions to abolish his post and to terminate his appointment and it did so.

9. The complainant states that the 2 August 2019 notification email suddenly informed him that his post would be abolished, but did not include any other relevant documentation which would have allowed him to verify the processes underlying that decision. He also states that IOM had not informed him of the restructuring prior to 2 August 2019 and that it failed to involve him in the restructuring effort. Moreover, he argues that in breach of the principle that a decision cannot be taken against a staff member on the basis of withheld material documents, the 6 August 2019 notification letter did not include the formal decision to abolish his post, any steps that led up to it, the relevant documentation that supported that decision, or any reasons for that decision. It only invited him to contact the Head, Talent Management, Human Resources Management Division (HRMD), as well as the Recruitment Unit, to explore reassignment options, while at

the same time it put him on notice of the termination of his employment should he not be reassigned to another post by 6 November 2019. He submits that the decision to abolish his position was therefore presented to him as a *fait accompli*, which shocked him, and that IOM thereby breached its duty to inform him prior to taking that decision adverse to him in violation of his right to due process and his right to be heard. He also argues that IOM also thereby violated its duty to notify him of the decision to abolish his post in a manner that safeguarded his rights and allowed him to fully contest the decision.

10. The foregoing submissions are unfounded. The central question the first ground raises is whether IOM gave the complainant the required notification of the abolition of his post and the termination of his appointment. As IOM submits, the Tribunal does not impose on international organizations a duty to provide staff members whose positions are abolished with the full set of internal documents used as a basis for such decision. Rather, the Tribunal requires an organization to give such staff members notice within the required time and sufficient reasons for the decision to abolish their post and for any subsequent decision, including the termination of their appointment. This is the expressed purport of Regulation 9.4. It also accords with the well-settled case law that an international organization necessarily has power to restructure, and, in so doing, may abolish posts. As well, it accords with the case law stated, for example, in consideration 7 of Judgment 3234, that a decision to abolish a post must be communicated to the staff member occupying the post in a manner that safeguards that individual's rights and that these rights are safeguarded by giving proper notice of the decision.

11. It is obvious that the JARB correctly concluded that, pursuant to Regulation 9.4, the complainant received written notice of the termination of his contract within the required time. It also correctly concluded that he was informed of the reasons for it, as well as for the abolition of his post, in the email of 2 August 2019 and the letter of 6 August 2019. Accordingly, the Director General did not err by

accepting these conclusions in the impugned decision. The first ground is therefore unfounded.

12. Regarding the second ground, namely whether the reasons for the decision were adequate to afford the complainant the opportunity to contest it properly, the facts reveal that the contents of the email of 2 August 2019, and the official letter of 6 July 2019, informed the complainant of the abolition of his post due to the restructuring of RSC Eurasia and advised him that he should actively apply for suitable positions, and that, failing successful selection, his appointment would be terminated on 6 November 2019.

13. In submitting that the decision to abolish his post was not based on objective grounds, the complainant cites the case law, in consideration 3 of Judgment 3940, that the abolition of a post in the context of a restructuring process must be based on objective grounds and must not serve as pretext for removing a staff member regarded as unwanted, as that would constitute abuse of authority. He also cites the case law, in consideration 12 of Judgment 3929, that whether a post is abolished for financial reasons is a question of fact that is within the knowledge of the organization which must show that its advancing of financial reasons as a ground for the abolition of a post is genuine and that, in the absence of that evidence, it will be determined that the staff member's post was unlawfully abolished. However, the Administration did not state that the complainant's post was abolished for financial reasons because of budgetary constraints, notwithstanding that the complainant attempts to re-characterize the reasons as such. The JARB correctly did not accept that re-characterization and neither does the Tribunal. The Administration stated that the decision was taken because of the operational needs of the RSC Eurasia in Kyiv, which required a higher level of expertise in the management of refugee case processing, primarily within the areas of case management and data integrity, to address this management gap. IOM notes that the communications informed the complainant that it was necessary to abolish his post, as it was determined that a P-4 Senior Program Coordinator for Case Management and Data Integrity should be placed in RSC Eurasia

alongside the RSC Project Manager. This, according to IOM, was already the case in similar sized RSCs.

14. The complainant points out that the decision to abolish his position was taken after the transfer of the RSC Eurasia hub from Moscow to Kyiv. He states that this resulted in an expansion of the hub in terms of personnel and that, since his position was the only one being abolished, the decision appears less as a genuine "downsizing exercise" and more as a "surgical strike" aimed at directly separating him from service. However, as IOM submits, the fact that the decision to abolish the complainant's post was taken after the hub was transferred to Kyiv does not show that the need for a higher level of expertise was not an objective reason, and, additionally, the fact that the complainant's position was the only one abolished does not show that the abolition decision was not warranted. The Tribunal finds that the JARB did not err when it recognized that the decision to restructure the RSC, and the resulting abolition of the complainant's position, were taken because of operational needs which required a level of expertise at the higher P-4 grade than the P-3 grade the complainant held, which was an objective reason. It follows that the Director General did not err by accepting this conclusion in the impugned decision. The second ground is therefore unfounded.

15. Regarding the third ground, the complainant cites the case law in consideration 15 of Judgment 4009 that, although the abolition of a post may arise from restructuring, it must be justified by real needs and not be immediately followed by the creation of equivalent posts. He further notes the Tribunal's statement in considerations 17 to 23 of Judgment 3688 to the effect that an organization would breach its duty of care to a staff member by abolishing her or his post while at the same time recruiting someone to undertake duties similar to those attached to the abolished post or to fill an alternative post it created the duties of which the staff member, whose post was abolished, was qualified to undertake.

16. The complainant's submission, in effect, that the P-4 position, which the Administration created, served the same overall functions as those attached to his P-3 position it replaced "though ostensibly with a few heightened responsibilities", suggests, in line with IOM's submission, that his abolished position and the created position were different in terms of the overall scope and expertise required. The complainant's further suggestion that he could have occupied the created position, as he was qualified to do so, does not advance his case further. As IOM points out, he could have applied for the position but elected not to and he had no right to be directly promoted to it, as he suggests. It was within the discretion of the Director General to determine, as he did, that IOM's interests required that new positions be filled through competition. The Tribunal finds no reason to depart from the JARB's conclusion that it (the JARB) recognized that the decision to restructure RSC was based on operational needs, which required a position with a higher level of expertise at the higher P-4 grade, and that IOM had no obligation to promote the complainant to that position for which he had not applied. The third ground is therefore unfounded.

17. For reasons which will become clear later, it is convenient at this juncture to consider the fifth ground, in which the complainant submits that, contrary to the case law, the internal appeal process was flawed and the Administration violated its duty to provide him with an effective internal appeal remedy because the JARB failed to examine the substance of his arguments. He cites the case law in consideration 4 of Judgment 4027 that the internal appeal body's consideration of an appeal is vitally important, and, in particular, enables the official to decide whether or not to bring further proceedings, notably before the Tribunal; that one of the main justifications for the mandatory nature of such a procedure is to enable the Tribunal, in the event that a complaint is ultimately lodged, to have before it the findings of fact, items of information or assessment resulting from the deliberations of appeal bodies, especially those whose membership includes representatives of both staff and management, as is often the case; and that the appeal body plays a fundamental role in the resolution of disputes, owing to

the guarantees of objectivity derived from its composition, its extensive knowledge of the functioning of the organisation and the broad investigative powers granted to it. He also cites the Tribunal's observation, in consideration 5 of Judgment 4027, that the Appeal Board's very succinct report in that case, which consisted of five essential points, did not provide full details of the disputed competition procedures, since the Board merely presented its findings without listing the complainant's arguments or providing a preliminary discussion allowing its position to be understood, and did not enable the Tribunal to ascertain whether the Board considered the disputed competition procedures in sufficient depth. The complainant further refers to the Tribunal's statements, in consideration 5 of Judgment 4169, that the allegations which the complainant had made in that case against her supervisor were summarised in the presentation of the parties' arguments, but that after noting that the complainant had made reference to a number of incidents surrounding the drawing up of the impugned performance report, the Appeals Board merely stated that the statements of the complainant's supervisors, her own statement and that of her counsel before the Board were taken into account. Further, that that sweeping generalisation did not allow the Tribunal to understand the reasons for which in that case the complainant's allegations concerning the attitude of her supervisor were accepted or dismissed, and to what extent, if at all. Since the Appeals Board did not respond to the complainant's allegations, it was impossible for the Tribunal to determine whether the Board gave due consideration to the question of whether the complainant's partly unfavourable performance rating and the deferral of her within-grade increment was a result of prejudice or other extraneous factors, as required under the Board's Statute, which was hence breached.

18. Against this background the complainant argues that the JARB "explicitly refused" to rule on whether the Administration violated its duty to reassign him, with the result that the impugned decision which accepted the JARB's report was incomplete and flawed. He requests the Tribunal to assess itself the lawfulness of IOM's "alleged efforts to reassign [him]".

19. It is obvious that the issues, which the internal appeal bodies were required to address in Judgments 4027 and 4169, were different from the issues that engaged the JARB in the present case, which required different treatment. For example, the critical aspect for resolution in Judgment 4027 concerned disputed competition procedures which the Appeal Board in that case did not adequately address in light of the parties' submissions. In the present case, the JARB considered the pleas the complainant proffered in his internal appeal and rejected his submission that the obligation to find a possible reassignment for him had not been met by IOM. Notwithstanding that the JARB's analysis of the complainant's pleas was brief and concise, it was sufficiently clear, understandable and adequate to permit the complainant to pursue his complaint before the Tribunal. The fifth ground is therefore unfounded.

20. In the fourth ground, the complainant submits that IOM violated its duty to find reasonable reassignment options for him.

The case law states that an organisation has a duty to explore possible options or to make reasonable efforts for the reassignment of a staff member whose post has been abolished (see, for example, Judgments 2902, consideration 14, and 4097, consideration 9). In consideration 16 of Judgment 3908, the Tribunal stated that, while it has long recognized the right of an international organization to abolish positions, which will imperil the continuing employment of the occupants of those abolished positions, a concomitant of that right is an obligation to deal fairly with the staff who occupy those abolished positions. This obligation extends to finding, if they exist, other positions within the organization for which those staff have the experience and qualifications.

21. Historically, the Tribunal generally considered the extent of an organization's duty to reassign staff members whose positions were abolished mainly in relation to the type of contract they held, the nature of the post and/or the role to which they were assigned, their length of service with the organization, and recognized a greater duty in respect of staff who held permanent positions (see, for example, Judgment 3754,

consideration 16). Nonetheless, in consideration 10 of Judgment 4097, the Tribunal stated that it does not follow that other classes of staff of differing status should be afforded no protection by principles it has developed in circumstances where their post is abolished and attempts are being made to reassign them.

22. In the letter of 6 August 2019 to the complainant, the Chief, Human Resources (HR) Operations and Administrative Services stated:

> "Between now and 06 November 2019, the Organization will make efforts to assist you to find another suitable position. We encourage you to update your online [Personal History Form], actively apply to suitable vacancies that will be advertised and contact both the Head of Talent Management [...] and the Recruitment Unit [...] for further advice."

The complainant however argues that IOM did not initiate a formal reassignment process for him. He does not explain what a formal process should have entailed or the authority for it. He states that the Administration's "so-called 'job search'" took the form of a few informal emails by the Head, Talent Management, HRMD, to senior staff members who had advertised for open positions, that no list of available positions was drawn up, and that only a few of the recipients of the email messages participated in the exchange. In his view, this was an informal "off-handed" management of his reassignment which was not in keeping with IOM's duty to seriously and formally explore all possible avenues to reassign him, and, moreover, he was not copied in the email communications between the Head, Talent Management, HRMD, and the concerned senior staff members. According to him, several senior staff members did not reply to the request for reassignment options, while others replied through vague and "off-handed" statements and, in October 2019, the Director, HRMD, rejected his candidacy for the position of Project Coordinator, Case Management, in Jordan, for the sole reason that the duty station for that position was located in his country of nationality, which reason was not based on an IOM rule or policy and was also contradictory given that, in November 2015, IOM had offered him a position there. He states that he was only provided with general information on the status of the process through two Skype conversations with the Head, Talent

Management, HRMD, and that the Administration failed to provide him with specific information options that might have helped him to find a suitable position.

23. The Tribunal is cognizant of the nature of the IOM's funding structure as a project-based organization, which is significant, among other things, in that the employment of a large number of staff members is linked to the duration of the specific projects for which they are engaged. The Tribunal finds that in light of this, and IOM's then discernible operational needs at that time, the Administration made reasonable efforts to reassign the complainant, thereby discharging its obligation and its duty towards him. Specifically, IOM invited the complainant to apply for vacant positions matching his qualifications and experience. IOM also considered other positions and reached out to eight other Missions and Regional Offices for the purpose of finding suitable reassignment options, but no available position matching the complainant's qualifications and experience could be found. In the result, the complainant unsuccessfully applied for other positions. Against this background, the Tribunal cannot conclude that IOM violated its duty of care towards the complainant. The fourth ground is therefore unfounded.

24. In the foregoing premises, this complaint will be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 15 October 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

MIRKA DREGER