

**F.**  
**v.**  
**WHO**

**140th Session**

**Judgment No. 5024**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms J. F. against the World Health Organization (WHO) on 28 April 2023 and corrected on 15 June 2023, WHO's reply of 25 September 2023, the complainant's rejoinder of 24 November 2023, WHO's surrejoinder of 26 February 2024, the complainant's additional submissions of 2 April 2024 and WHO's final comments thereon of 9 July 2024;

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

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

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

The complainant challenges the decision to reassign her in the context of a reorganisation.

The complainant first joined WHO in 1997 serving under various capacities until 2008. In 2015, she joined WHO again working in its Regional Office for Europe (EURO) in Copenhagen, Denmark. In February 2017, she was appointed to the P-6 position of Coordinator, Diabetes, Noncommunicable Diseases (NCD) in the Health Promotion Division.

In early 2020, EURO was reorganised to optimise the use of available resources to ensure financial sustainability and establish a structure with fewer hierarchical layers. Guidelines on the process of reorganisation were issued. Suffice it to say that the process established a planning phase, which concerned the finalisation of the new organizational structure, and an implementation phase, which concerned the assignment of staff members to positions in the new organizational structure through the “mapping” or “matching” procedure. A Task Force was established to review the reassignments’ recommendations made by Divisional Directors, and to submit a report to the Regional Director for decision.

In February 2020, the Regional Director informed the complainant and other staff members that, in the context of the reorganisation, all current P-6 positions would be abolished, new P-5 positions may be created, and qualified staff members would be considered for reassignment to these positions. Staff members were encouraged to seek other employment opportunities outside EURO. The complainant applied for the P-5 position of Medical Officer, NCD, in Geneva, Switzerland, and was selected.

In September 2020, EURO presented its new structure. On 28 October 2020, the Task Force submitted its report to the Regional Director on the first round of the mapping and matching procedure. The Task Force noted inter alia that the complainant had “accepted” a position in Geneva and that discussions were ongoing as to her start date. On 6 November 2020, the Regional Director approved the complainant’s reassignment to Geneva, and, on 27 November 2020, she received her reassignment letter, which stated inter alia that she was reassigned to Geneva effective 1 December 2020. However, WHO rescinded that reassignment on 30 November 2020. This decision is contested by the complainant in her second complaint, Judgment 5025, also delivered this day.

On 11 December 2020, the Task Force met and submitted its report to the Regional Director on the second round of the mapping and matching procedure. After noting that the offer to reassign the complainant to Geneva had been rescinded, it held that she was a match

for two P-5 positions: the position of Regional Adviser, NCD Management and Cancer, and the newly created position of Regional Medical Officer, Cardiovascular Diseases and Diabetes. On 21 December 2020, the complainant was notified that the Regional Director had decided, based on the recommendations of the Division Director and the Task Force, to match her to the aforementioned P-5 position of Regional Medical Officer, and that she would maintain her grade on a personal basis if she accepted the proposed reassignment. She accepted the offer while expressing some reservations about the process.

In mid-February 2021, she requested a review of the decision to match her to the Regional Medical Officer's position. By a memorandum dated 16 June 2021, the Assistant Director-General, Business Operations (ADG/BOS), informed her that he could not conclude that she should have been matched to the Regional Adviser's position instead of the position to which she was matched. He therefore rejected her request to be reassigned to the Regional Adviser's position and to be granted moral damages or legal expenses. However, the Assistant Director-General requested the Regional Director to again fully consider her suitability for reassignment to the positions of Regional Adviser and Regional Medical Officer, which were both recommended as a match by the Task Force, and to provide her with a substantive justification for the decision as he had not initially done so. The Assistant Director-General added that, in the meantime, EURO should suspend the recruitment process for the Regional Adviser's position until the decision had been communicated to her. By a memorandum dated 13 July 2021, the Regional Director confirmed his decision to reassign the complainant to the position of Regional Medical Officer adding that no decision had been made, at that stage, regarding the position of Regional Adviser.

In September 2021, she initiated the internal appeal process contesting the decision of 16 June 2021 as confirmed on 13 July 2021 to reassign her to the position of Regional Medical Officer.

In its report of 4 July 2022, the Global Board of Appeal (GBA) considered that the 13 July 2021 memorandum was part of the same decisional continuum as the contested decision of 16 June 2021, and

that the appeal was therefore receivable. It found no flaw in the reassignment process. The GBA considered that, although the process followed in her case deviated from the procedure described in the guidelines, WHO did not violate its duty of care because the deviation was due to exceptional circumstances created by the rescission of the offer for the Medical Officer's position in Geneva and the short period between the rescission of the offer on 30 November 2020 and the Task Force's meeting on 11 December 2020. However, the GBA found that the new position was not commensurate with the complainant's former position and recommended awarding her moral damages in that respect because WHO violated its duty of care in that respect.

On 20 December 2022, the Director-General accepted the GBA's findings that the process leading to her reassignment complied with the applicable regulatory framework and the "principles of applicable jurisprudence", that no essential facts were overlooked and that there was no abuse of authority. The Director-General also endorsed the finding that WHO had breached its duty of care in reassigning her to a position that was not commensurate with her previous functions. He therefore awarded her 4,000 Swiss francs in moral damages and accepted to reimburse her legal fees up to 2,000 Swiss francs upon production of invoices and proof of payment. The Director-General further decided to consider the complainant for any current or future positions arising at the P-5 and P-6 levels, which would entail a level of responsibility similar to the duties of her former position. This is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision, except regarding the award of 4,000 Swiss francs in moral damages and 2,000 Swiss francs in legal fees, and to restart the mapping and matching procedure to consider her for reassignment to the position of Regional Adviser, NCD Management and Cancer. She seeks an award of moral damages and costs together with interest at a rate of 5 per cent per annum on all sums awarded to her from 21 December 2020 (the date on which she was reassigned to the Regional Medical Officer's position) until their full payment date. Lastly, she asks the Tribunal to grant her such other redress that it deems necessary, just and fair.

WHO asks the Tribunal to reject the complaint as devoid of merit.

## CONSIDERATIONS

1. The complainant applies for the joinder of this complaint and her second complaint. She submits that, in accordance with the case law, the Tribunal may join cases that are based on the same material facts and raise the same issues of fact and law. However, as WHO points out, in effect, the two complaints involve different and discrete claims and questions of fact and law which warrant individual consideration by the Tribunal. As the Tribunal has cautioned, in consideration 10 of Judgment 3427, it is not sufficient for cases merely to share a contextual background. The Tribunal therefore considers it appropriate to deal with the two complaints separately and to render a separate judgment for each of them.

2. In the decision, dated 20 December 2022, which the complainant impugns, the Director-General accepted the findings and conclusions of the GBA that the process leading to the complainant's reassignment to the position of Regional Medical Officer at EURO complied with WHO's regulatory framework and the Tribunal's case law; that no essential facts had been overlooked and that there was no abuse of authority. The Director-General also took note of the GBA's acknowledgement of his authority to reassign staff members in the interest of the Organization including to positions of a lower grade, whilst at the same time recommending that such a reassignment should be to a position with similar functions as the position the staff member previously encumbered. On its finding that WHO violated its duty of care to the complainant by reassigning her to the position of Regional Medical Officer which did not carry the same level of responsibilities as her Coordinator position she previously encumbered, the Director-General further noted that the GBA had recommended that the Organization considered reassigning the complainant "to a position that entail[ed] a level of responsibilities similar to the duties of [her] previous position". For this violation, the GBA further recommended that she be awarded 4,000 Swiss francs in moral damages. In the impugned decision, the Director-General agreed with this award, as well as with the GBA's recommendation to reimburse the legal fees the

complainant incurred in the internal appeals procedure, up to a maximum of 2,000 Swiss francs, subject to her providing invoices and proof of payment.

3. The complainant challenges the impugned decision on six grounds, which the Tribunal conveniently sets out as follows:

- (i) The Director-General wrongly concluded that WHO's mapping and matching procedure did not violate the Tribunal's case law and WHO's policies.
- (ii) The Director-General wrongly concluded that the contested decision to reassign her to the position of Regional Medical Officer was not tainted by abuse of authority.
- (iii) The contested decision amounted to a "[d]emotion" from her position as Coordinator which had management, budgetary and supervisory responsibilities, to the post of Regional Medical Officer with no supervisory responsibilities and violated WHO's duty of care and the obligation to act in good faith towards her.
- (iv) WHO has failed to implement the impugned decision regarding possible actions to reassign her to a position commensurate to her former position of Coordinator.
- (v) There was delay in the internal appeal procedure.
- (vi) The amount of damages she received (4,000 Swiss francs) did not sufficiently remedy the injury she suffered as a result of WHO's unlawful actions.

4. Ground (iii), in which the complainant contends that the decision to demote her from her position as Coordinator to the position of Regional Medical Officer violated WHO's duty of care and its obligation to act in good faith, is moot since, in the impugned decision, the Director-General accepted the GBA's recommendation that by reassigning the complainant to the position of Regional Medical Officer, WHO violated its duty of care towards her.

5. Ground (ii), in which the complainant contends that the decision to reassign her to the position of Regional Medical Officer constituted abuse of authority, is unfounded. In arriving at its conclusion that the decision to reassign the complainant to the position of Regional Medical Officer did not constitute abuse of authority, the GBA referred to the Tribunal's case law in consideration 12 of Judgment 4427. The Tribunal therein recalled, among other things, that in order for there to be misuse of authority, which cannot be presumed, a complainant must establish that the contested decision rested on considerations extraneous to the organization's interests and that the staff member alleging abuse of authority bears the burden of establishing the improper purpose for which the authority was exercised. The Tribunal is satisfied with the Director-General's decision to endorse the GBA's analysis of the evidence that was provided and its finding thereon that it "did not find elements demonstrating that the [Regional Director of EURO]'s decision was taken for an improper purpose". The complainant presents no evidence in these proceedings and consequently does not advance her case on this issue any further.

6. Regarding ground (i), in which the complainant alleges that the mapping and matching procedure violated the Tribunal's case law and WHO's policies, the Tribunal has stated, in consideration 3 of Judgment 4844, for example, that a decision concerning the restructuring of an international organization's services, including one involving the abolition of a post, lies at the discretion of the executive head of the organization and is therefore subject to only limited review. The Tribunal must verify whether this decision was taken in accordance with the rules on competence, form or procedure, whether it involved an error of fact or law, whether it constituted misuse of authority, whether it failed to take account of material facts or whether it drew clearly incorrect conclusions from the evidence.

The case law further states, in Judgment 4841, for example, that the Tribunal does not rule on the appropriateness of a restructuring process, unless and until it negatively affects a staff member in breach of staff rules and regulations. A line must be drawn between restructuring directions and decisions, which fall within the discretion

of an organization, and individual decisions adopted as a consequence of a restructuring process. The Tribunal will assess whether such individual decisions comply with staff rules and regulations and the Organization's duty of care.

The case law, as recalled in consideration 10 of Judgment 4397, further states that "any authority is bound by the rules it has itself issued until it amends, suspends or repeals them. The general principle is that rules govern only what is to happen henceforth, and it is binding on any authority since it affords the basis for relations between the parties in law. [...] A competent body adopts rules in order to regulate its exercise of discretionary power in making specific decisions. It would radically contrast with the finality and essence of a rule [...] to allow that in making a decision the authority can disregard a rule that was adopted in order to limit the authorities' power concerning particular subjects and instead create an opportunity for expanding one's power."

The Tribunal also stated, in consideration 12 of Judgment 4397, that an organization's wide discretion still requires it to be exercised within the limits of the general principles of law and the existing provisions; otherwise, it becomes a way to circumvent the provisions in force, leading to arbitrariness.

7. The complainant contends, in effect, that the Director-General erred when he accepted the GBA's conclusion that the decision to reassign her did not violate WHO's own rules and the Tribunal's case law, when the GBA stated that "[a]lthough not optimal, [...] the process leading to the reassignment of the [complainant] to the position of Regional Medical Officer complied with the Organization's regulatory framework and the principles set out in the applicable jurisprudence". She cites, among others, the case law stated in considerations 10 and 12 of Judgment 4397 mentioned in the foregoing consideration, as well as the statement, in consideration 9 of Judgment 3159, that an organization is obliged to explore with a staff member whose position has been abolished other employment options prior to her or his separation.

8. The applicable provisions for EURO's restructuring process were set out in three guidelines or policy documents, which were entitled: (i) Aligning the Regional Office with Core Priorities: Human Resources Process ("the HR Process"), which stated that the primary objective of the restructuring of the Regional Office was to align functions to the organizational priorities as embodied in the European Programme of Work and the General Programme of Work; (ii) EURO Task Force for "Mapping" and "Matching" Reorganization 2020, under which a Task Force was constituted to review recommendations from the Directors on "Mapping" and "Matching" eligible staff to longer term positions in the new structure ("the Task Force"); and (iii) EURO Task Force for "Mapping" and "Matching" Reorganization 2020: Mode of Work ("the Task Force Mode of Work").

9. The HR Process states, in point iii, that the process consists of two main phases: planning and implementation. Point iv states that the planning phase covers the finalization of the new organizational structure by the Regional Director with the support of "ECO", the input of the Working Groups, Human Resources Services (HRS), and in discussion with the Staff Association of EURO. It also states that the Divisional Directors, supported by the HR business partners, are responsible for completing the functional reviews by reviewing divisional structures and identifying, in consultation with their team leaders and programme managers, the priority functions needed to deliver the work in their mandate. Point iv further states that the review may also result in certain functions being relocated outside "CPH", to optimize delivery, and that a detailed organigram, including the assignment of posts, will be developed and used for the mapping and matching procedure and that once completed, the detailed organigram will be reviewed by "ECO" to ensure consistent application of the purpose and key principles of the restructure, approved by the Regional Director, and communicated to staff by the end of August 2020.

10. The complainant submits (as she did in her internal appeal) that the foregoing provisions were violated during the HR Process in that the position of Regional Medical Officer to which she was

appointed was not created during the planning phase but during the “implementation phase” after the completion of the functional review of EURO. She points out that the Task Force, which was in charge of reviewing the proposed reorganisation to make its recommendations to the Regional Director, met for the first time on 11 December 2020 to examine the mapping and matching possibilities and that the position was created on the eve of that meeting because WHO had placed her back into the mapping and matching procedure since it had rescinded her original reassignment to WHO Headquarters in late November 2020.

11. In its opinion, the GBA recalled that the complainant had “accepted” the original reassignment offer to the Medical Officer’s post at WHO Headquarters before the Task Force began its deliberations on the first round of the mapping and matching procedure and before her post had been abolished. It considered, correctly in the Tribunal’s view, that after she had accepted that post, she was not an “affected staff” for the mapping and matching exercise and that under the applicable policy, EURO was not required to perform two parallel processes, one releasing the complainant from her original reassignment to the Medical Officer’s post at WHO Headquarters while considering her for available positions within EURO’s new structure. The Tribunal therefore also accepts the GBA’s further reasoning that it considered that EURO did not act in bad faith or with an improper motive when it removed the complainant from the first round of the mapping and matching procedure and the complainant as well as the releasing and receiving units had all agreed with her transfer. Notably, the GBA went on to state that as a matter of transparency, it would have been preferable if the complainant had been informed earlier about her exclusion from the first round. This, in the GBA’s view, was the result of a lack of proper communication within EURO and between EURO and HRS at WHO Headquarters. The GBA also noted “with concern” that the email the complainant sent following her notification that she had been excluded from the first round “remained unanswered”. It however concluded that the complainant’s exclusion from the first round did not result in the loss of an opportunity. This, it stated, was because, save for the two positions, which were identified for possible

reassignment after the first round for which the complainant along with others were considered in the second round, but to which no one was reassigned, the complainant did not identify which positions she would have liked to be matched to as part of the first round of the mapping and matching procedure.

12. The complainant submits, in effect, that the Director-General further erred in accepting the GBA's finding that the decision to reassign her to the Regional Medical Officer's position did not violate point vi of the HR Process regarding information sharing during the said process. This provision relevantly states that when the functional reviews are completed, Directors and HRS will inform affected teams and individuals where functions are to be reassigned, or where programmes will cease to exist in their current form. Directors, supported by HRS, will have one-on-one discussions with staff proposed for matching before finalizing their recommendations for submission to the Task Force. Similar discussions will be held where a staff member is recommended for mapping to a position in a different geographical location. If the original recommendation discussed with the staff member is modified during the process, the Director will meet with the staff member to discuss the modified recommendation.

13. In this complaint, as in her internal appeal, the complainant states that in violation of this provision, she was not involved in the matching procedure that led to her reassignment to the Regional Medical Officer's position because she did not have a one-on-one discussion with her director prior to the Task Force's meeting of 11 December 2020. The GBA concluded that the one-on-one discussion did not take place. It stated that "[a]lthough it acknowledges the exceptional circumstances that led to the late inclusion of the [complainant] in [the] second [phase], the Panel takes issue with the fact that the Organization did not take steps to ensure that a one-on-one discussion took place. The Panel considers that the absence of a discussion before the Task Force's deliberations under the restructuring process policies resulted in the [complainant] losing an opportunity to raise potential legitimate objections to the proposed reassignments

before the decision was imposed on her (see e.g. ILOAT Judgement 4240, consideration 16).” The GBA further concluded, correctly, that a telephone discussion on 18 December 2020 in which the Regional Director for EURO informed the complainant of the reasons for the decision to reassign her to the Regional Medical Officer’s position did not provide her with a genuine opportunity to articulate and express her views regarding the different reassignment options in an open setting raise potential legitimate objections to the proposed reassignment before the decision was imposed on her. Against this background, the GBA should have concluded (and the Director-General should have accepted) that the decision to reassign the complainant to the position of Regional Medical Officer violated point vi of the HR Process. Moreover, as the complainant submits, these circumstances further suggest that the decision to reassign her to the position also violated the Tribunal’s case law which requires an international organization to allow an employee whose position is abolished, to actively participate in the reassignment process (see, for example, Judgment 2191, consideration 2). WHO’s statement in these proceedings that it could not verify if a one-on-one meeting had been held because its Divisional Director was on long-term sick leave is disingenuous, the more so as the complainant points out that the Director returned to work in February 2022 so WHO could have verified whether the discussion took place.

14. In the foregoing premises, the Director-General erred by accepting the GBA’s conclusion that the decision to reassign the complainant to the position of Regional Medical Officer (of which she was notified on 21 December 2020) was not unlawful as it violated point vi of the HR Process and should have been set aside. The Tribunal will therefore set aside that decision. It will also set aside the impugned decision of 20 December 2022, except to the extent that the Director-General accepted the GBA’s recommendation to take steps to reassign the complainant to a position that is commensurate to her skills and experience and at the level of her previous responsibilities, as well as the decision to award her 2,000 Swiss francs in costs in the internal appeals procedure.

15. Regarding ground (iv), in which the complainant contests WHO's failure to implement the impugned decision regarding possible actions to be taken to consider her for a position commensurate to her former position, the Tribunal notes that WHO does not contest the complainant's right to raise this issue in the context of challenging the impugned decision itself.

It also notes WHO's apparent admission that up until it filed its surrejoinder in 2024, little progress had been made to implement that aspect of the impugned decision to consider her for a position that was commensurate to her skills and experience and at the level of her previous responsibilities. There is no indication that this had changed up to July 2024 when WHO filed its further submissions. The reasons WHO gives for its failure to implement this aspect of the impugned decision does not convince the Tribunal that it has diligently taken the necessary steps to do so.

16. In the normal course of events, the Tribunal could, in theory, order the resumption of the flawed procedure. However, because of the time which has elapsed it would not be feasible or practicable to order WHO to restart the mapping and matching procedure to consider the complainant for reassignment to the position of Regional Adviser, NCD Management and Cancer. Notwithstanding this, it is apparent to the Tribunal that an award of 4,000 Swiss francs was inadequate compensation for the moral injury the complainant sustained in the circumstances for the finding that WHO breached its duty of care towards her. The Tribunal determines that an award of 12,000 Swiss francs would fairly redress the breach and for the aggravated circumstances caused by WHO's failure to implement the subject aspect of the impugned decision.

17. The complainant's request to be awarded moral damages for delay in the internal appeals procedure is rejected. In the first place, there is no legal basis on which to award moral damages for delay in the internal appeals procedure because WHO had failed to implement that aspect of the impugned decision to reassign her to a position that was commensurate to her qualifications, skills and experience and at

the level of her previous responsibilities, as she submits. In the second place, although, as the complainant further submits, the Director-General “inexplicably violated the statutory deadline set forth in GBA Rule 670, which obliges a final decision on the staff member’s internal appeal to be notified to the staff member within 60 calendar days” and there were other delays, resulting in inordinate delay in the internal appeal procedure, the complainant has not articulated what impact the delay had on her (see, for example, Judgment 4147, consideration 13).

18. Inasmuch as the complainant substantially succeeds in this complaint, she is entitled to costs in these proceedings, for which she will be awarded 10,000 Swiss francs.

#### DECISION

For the above reasons,

1. The initial decision of 21 December 2020 is set aside, as well as the impugned decision, except to the extent stated in considerations 15 and 16 of this judgment.
2. WHO shall pay the complainant 12,000 Swiss francs in moral damages.
3. WHO shall pay the complainant 10,000 Swiss francs costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 8 May 2025, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 3 July 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

RENÉ M. VARGAS M.