S.

v.

IOM

141st Session **Judgment No. 5134**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr S. S. against the International Organization for Migration (IOM) on 2 August 2022, IOM's reply of 14 November 2022, the complainant's rejoinder of 13 April 2023 and IOM's surrejoinder of 12 July 2023;

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 non-renewal of his contract based on his unsatisfactory performance.

The complainant was employed by IOM from 21 September 2018 as Facility Coordinator at the Volvi Long-Term Accommodation Centre (LTAC) in Greece under successive short-term contracts. On 1 July 2019, following the departure of the former Team Leader, he was assigned to the position of Team Leader and was granted a six-month contract until December 2019. He continued to receive monthly special short-term contracts and was separated from service on 15 November 2020 due to the non-renewal of his contract based on performance.

In late 2019, pursuant to Instruction IN/181, "Staff Evaluation System Policy" (SES), the complainant received a SES performance rating of "Needs Improvement". His manager cited shortcomings in professionalism, accountability, integrity, teamwork, and transparency, noting that the complainant struggled with self-control, constructive criticism and accountability. She added that he often deflected personal responsibility and used irony towards supervisors. The complainant rejected this evaluation, asserting his performance was "fully satisfactory".

A Special SES Report was initiated to monitor his performance from 1 October 2019 to 1 February 2020 and resulted in another performance rating of "Needs Improvement". On 4 February 2020, the complainant was placed on a Performance Improvement Plan (PIP), or "development performance plan" as it was presented at first focused on cooperation, communication, and following guidance. The complainant disputed the need for the PIP, but his second-level supervisor reiterated that he displayed a non-cooperative attitude and emphasized the performance issues and expectations. The formal PIP objectives were sent on 8 February 2020, addressing improved communication with stakeholders, accuracy in population mapping, and team coordination, to which the complainant responded positively.

On 9 July 2020, a follow-up meeting was scheduled, and the complainant responded on 12 July, disputing the negative feedback and asserted that he would improve his performance. Nonetheless, IOM received additional complaints from his team members about his behaviour and his refusal to cooperate. A warning letter was issued on 3 August 2020 referencing these complaints, but these allegations were disputed by the complainant in an email on 10 August. Two more complaints followed from camp managers, alleging non-compliance with site procedures.

On 26 October 2020, the PIP was formally concluded and the final Special SES Report rated the complainant's performance as "Needs Improvement" in ten out of eleven areas. The report cited continuing deficiencies in coordination, leadership, communication, and adherence to guidance.

On 5 November 2020, the complainant submitted his response. He accepted that there was room for improvement but denied most of the criticism of his performance. He also challenged the fairness of the evaluation and complained that he had received insufficient feedback.

Meanwhile, on 4 November 2020, he had received a letter, dated 30 October 2020, notifying him that his contract would not be renewed upon its expiry on 15 November 2020. On 5 November 2020, he met with Human Resources Management (HRM) and the Programme Manager, who confirmed the non-renewal. He signed the report indicating that he disagreed with the evaluation.

On 29 December 2020, the complainant submitted a request for review, arguing that the non-renewal of his contract was unlawful, procedurally flawed, and not properly justified. The Director of HRM rejected his claims on 1 March 2021, noting consistent feedback had been provided throughout the SES and the PIP, respecting their due process. He conceded, however, two errors: that the non-renewal letter was issued before the complainant's comments were received and that the latter should have received 60 days' notice instead of 15 days. Compensation was provided in lieu of the 45 remaining days of the notice period.

On 18 March 2021, the complainant appealed to the Joint Administrative Review Board (JARB), asking that the decision be set aside and that he be reinstated within another programme of IOM, in Greece or in another country office, with retroactive effect from the last day of his last contract. He also sought full payment for failure to observe the notice period with 5 per cent interest from the date of separation, regardless of reinstatement. He requested an investigation into the false allegations that harmed his reputation and the removal of all references to unsatisfactory performance from his record. He claimed at least one year's salary in damages for breach of rules, harm to his dignity, and loss of career opportunities, plus an additional three months' salary for the hardship caused. He also claimed 15,000 euros in exemplary damages for bad faith and at least 8,000 euros in costs.

On 21 March 2022, the JARB issued its report recommending that the decision not to renew the complainant's contract be maintained, as it found the evidence insufficient to reverse it, but it emphasised the need for a review of performance processes, better communication, and more realistic timelines for staff members to respond. It accepted the Administration's decision not to disclose certain complaints to the complainant for confidentiality reasons but requested that they be produced for its own review. The JARB raised concerns about procedural flaws, including the informal transmission of the warning letter, inconsistencies between evaluations by different supervisors, and the limited time given to respond to the non-renewal decision. The JARB noted a lack of guidance and unclear communication while the SES and the PIP were implemented, especially during a difficult period in the mission. The PIP was initiated by a supervisor with only three months of oversight, despite earlier satisfactory SES ratings. The JARB also criticised the Administration's issuance of the non-renewal letter before receiving the complainant's response to the SES report, breaching Instruction IN/181, paragraph 11.3.

On 4 May 2022, the Director General issued a final decision maintaining the decision not to renew the complainant's contract but awarding him 5,000 euros in material damages for loss of the opportunity to have his contract extended and 5,000 euros in moral damages for the procedural flaws in both the PIP process and the final Special SES Report. He rejected the other claims, including reinstatement on the ground that a payment had already compensated the inadequate notice for non-renewal, exemplary damages on the ground of insufficient evidence of bad faith or improper motivation within the performance appraisal or non-renewal processes, and opening an investigation into the complaints made by colleagues and external actors about his performance and behaviour on the ground that it did not concern allegations of misconduct. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision as being unlawful and, accordingly, to order that references to the non-renewal of his contract "for performance" be removed from his administrative file. He requests the payment of material damages for

the loss of "opportunity and disappointed expectation for continuous and future employment" with IOM equivalent to six months' salary, moral damages in an amount not less than 50,000 euros for the damage suffered due to the illegality of the decision not to renew his contract, the violation of his due process rights and the violation of IOM's duty of care and duty to act in good faith. Lastly, he seeks the reimbursement of costs incurred in bringing the present complaint in an amount not less than 7,000 euros.

IOM asks the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS

1. The complainant impugns the decision of 4 May 2022 by which the Director General, accepting the recommendation of the JARB, maintained the decision not to renew his fixed-term contract on grounds of unsatisfactory performance, while awarding him compensation for certain procedural flaws. The complainant contends that the impugned decision is unlawful, that the performance evaluation process was tainted by breaches of the SES Policy, misuse of the Special SES Report, and an improper PIP process, and that the conclusions drawn were clearly mistaken. He also alleges the violation of due process rights including inadequate notice, failure to justify the non-renewal, and improper motives and bad faith.

2. Before considering the merits of the complaint, two procedural issues must be addressed. First, the complainant requests the Organization to produce key reports and complaint letters containing allegations used against him during the non-renewal process. This request is rejected as these documents were provided by the Organization in the annexes of its reply before the Tribunal. Second, his request for documents to be examined *in camera* is also rejected as the Tribunal will not base its decision on these documents.

3. It is useful to introduce the applicable legal framework with respect to IOM's performance evaluation. Rules 1.2.2 and 4.4.1 of the IOM Unified Staff Regulations and Rules provide the following:

"**Rule 1.2.2 Performance of Staff Members**

(a) Staff members are required to uphold the highest standards of integrity, competence and efficiency in the discharge of their functions.

(b) Staff members' performance will be appraised periodically through performance appraisal mechanisms to ensure that the required standards of performance are met.

[...]

Rule 4.4.1 Types of Contracts

(a) The term 'regular contract' refers to contracts with no fixed period of employment.

(b) The term 'fixed-term contract' refers to contracts initially issued for a fixed period of one year or more. [...]"

Instruction IN/181, which is mandatory, sets out the SES as the formal mechanism for staff evaluation. The relevant provisions are as follows:

"**1.0 SCOPE AND PURPOSE**

[...]

1.2 [...] The SES will standardize evaluation criteria throughout the Organization and help identify high performance and address underperformance in an equitable manner.

1.3 The SES provides a means of setting objectives, planning work in advance and promoting two-way communication between the Staff Member and the supervisor. It will also assist in planning career development and in identifying training requirements.

1.4 The SES is not a substitute for communication between the Staff Member and Manager. Moreover, reporting lines found within SES have no impact on personal grade and do not constitute a means of re-classification of one's own position.

[...]

4.0 APPLICABILITY

4.1 All Staff Members with accrued or expected continued service of at least six months will be subject to the SES.

4.2 For the situations where an SES form is not available for evaluation, a Special Report documenting the performance of the Staff Member can be provided by the Functional Manager under the following circumstances:

4.2.1 The Staff Member is not subject to the SES (as per 4.1);

4.2.2 The Staff Member is leaving their position after less than six months in the present evaluation cycle;

4.2.3 The Staff Member's performance needs to be formally documented before and between two phases of an evaluation cycle.

[...]

9.0 SES PROCESS

9.1 The SES cycle is annual. It begins each year on the 15th September and ends on the 14th September of the next year.

9.2 Staff Members who become subject to the SES (as defined in 4.1) between September 15 and March 15 will receive the evaluation form under the ongoing evaluation cycle. [...]

Form received between	**Initial Phase Deadline**	**Midpoint Review Deadline**	**End of Cycle Evaluation Deadline**
Sep 15 and Nov 14	Dec 15	May 15	Oct 15
[...]	[...]	[...]	[...]

[...]

9.8 The annual SES cycle consists of three phases: the Initial Phase, the Midpoint Review Phase, and the End-of-Cycle Evaluation Phase.

9.8.1 During the Initial Phase, objectives and competencies for the upcoming evaluation cycle are set jointly by the Staff Member and the Manager. The default deadline for the Initial Phase in December 15.

9.8.2 During the Midpoint Review, progress to date is reviewed jointly by the Staff Member and the Manager. The default deadline for the Midpoint Review is May 15.

9.8.3 During the End-of-Cycle Evaluation, the Staff Member and the Manager jointly perform an evaluation of the Staff Member's performance in the evaluation cycle. The default deadline for the End-of-Cycle Evaluation is October 15.

9.9 The SES cycle provides an opportunity for the Staff Member and the Manager to reflect on the Staff Member's personal development. [...]

11.0 DEALING WITH DISAGREEMENTS

[...]

11.2 Any disagreement between the Staff Member and the Manager during the End-of-Cycle Evaluation must be discussed before the Manager advances the form in the system.

11.3 The SES allows divergent evaluations to be recorded. [...] In the event that the Special Report is used as per paragraph 4.2, it shall be shared with the Staff Member, who may comment on an evaluation made in the Special Report.

11.4 In the event that the Staff Member disagrees with any aspect of the evaluation and seeks further discussion, he/she can apply the following two-step process:

11.4.1 The Staff Member and the Manager organize another meeting to discuss their disagreements and attempt to reach a mutually acceptable solution.

11.4.2 In the event the meeting in Step 1 does not produce a satisfactory result, the Staff Member and/or the Manager can arrange a meeting together with the Manager's Supervisor who will attempt to mediate the disagreement. The decision reached by the Manager's Supervisor will be final.

11.5 Only 'Needs Improvement' ratings can be grounds for the process described in paragraph 11.4. Moreover, any such disagreements must be dealt with before the Manager saves their input into the system by releasing the form back to the Staff Member. This allows the Staff Member to record their disagreement with the outcomes of the evaluation processes in the event that the process described previously did not yield results deemed acceptable by the Staff Member.

11.6 Administrative decisions resulting from the SES may be subject to appeal under the relevant provisions of Staff Regulations."

4. The first issue is whether the Organization complied with its rules in conducting the performance appraisal. The complainant submits that the decision lacked a lawful basis because the PIP was an undocumented practice not anchored in Instruction IN/181, lacked objective SMART criteria (objectives, feedback, support) to improve his performance, and was overseen by a supervisor who had only known him for a brief period. He emphasizes that the use of the Special

Report instead of the SES contravened paragraphs 4.1, 4.2, 4.3, 9.1, 11.3 and 11.4 of Instruction IN/181, that no objectives were agreed upon, documentation was lacking, and the complainant's comments were ignored. IOM contends that the SES process provided by Instruction IN/181 and the parallel PIP procedure (though undocumented) constitute established practice for performance management, that initiating the PIP was lawful, timely, and consistent with the Tribunal's jurisprudence on institutionalized practices, that the PIP process for the complainant began in February 2020 after sequential SES ratings of "Needs Improvement" with defined objectives and multiple opportunities for feedback, and that before finalizing the non-renewal decision the complainant's comments on the Special SES Report were received and reviewed.

5. At this juncture, the Tribunal recalls that, according to its consistent case law, the wide discretion an international organization enjoys in deciding whether or not to renew a fixed-term appointment is subject to only limited review, as the Tribunal respects the organization's freedom to determine its own requirements and the career prospects of staff (see, for example, Judgment 4503, consideration 7). However, this discretion is not unfettered, and the Tribunal will set aside such a decision if it was taken without authority, in breach of a rule of form or of procedure, based on an error of fact or of law, if some essential fact was overlooked, if there was abuse of authority, or if clearly mistaken conclusions were drawn from the evidence (see, for example, Judgments 4372, consideration 8, and 4000, consideration 3). The Tribunal also stated in Judgment 4513, consideration 5, that the decision not to renew a fixed-term contract is a discretionary decision, but if the decision rests on poor performance, the assessment of that performance has to be made in accordance with the rules established for that purpose; allied to this is an obligation to afford an opportunity to improve (see, in particular, Judgment 4289, consideration 7, and the case law cited therein).

6. Similarly, with respect to decisions relating to performance evaluation, the Tribunal has emphasized that it has a limited power of review. It stated the following in Judgment 4666, consideration 4, and confirmed it in Judgment 4840, consideration 7:

> "[T]he Tribunal recalls first of all that, under its settled case law, the assessment of an employee's merit during a specified period involves a value judgement and it cannot substitute its own opinion for the assessment made by the competent bodies of the qualities, performance and conduct of the person concerned. The Tribunal will interfere only if a decision was taken in breach of applicable rules on competence, form or procedure, if it was based on a mistake of law or of fact, if an essential fact was overlooked, if a clearly mistaken conclusion was drawn from the facts, or if there was abuse of authority (see, for example, Judgments 4543, consideration 4, 4169, consideration 7, 4010, consideration 5, 3268, consideration 9, and 3039, consideration 7). (See also Judgments 4713, consideration 11, and 4564, consideration 3.)"

7. Also, the Tribunal recalls the following in Judgment 4666, consideration 4:

> "An examination of a staff member's assessment report before taking any decision not to renew that person's contract on the basis of unsatisfactory performance is a fundamental obligation, non-compliance with which constitutes a procedural flaw that has the effect of an essential fact being overlooked (see, in particular, Judgments 2992, consideration 18, 2096, consideration 13, and the case law cited therein)."

8. The Tribunal finds that the record establishes the Organization's failure to abide by its own policies and procedures, thereby violating the principle by which an organisation is bound by its own rules. As quoted in consideration 3 above, Rule 1.2.2(b) provides in unambiguous terms that staff members' performance will be appraised periodically to ensure that the required standards of performance are met. Paragraphs 1.2 and 1.3 of Instruction IN/181 make clear that the SES standardizes evaluation criteria and provide a means of setting objectives, planning work, and fostering two-way communication between the staff member and the manager. The SES cycle comprises three phases – Initial, Midpoint Review, and End-of-Cycle Evaluation – with default deadlines of 15 December, 15 May, and 15 October. Paragraph 11 of Instruction IN/181 also provides

safeguards in the event of disagreement, including the staff member's right to comment and record divergent views before the form is finalised. These rules create binding procedural steps that the Organization must follow before adopting adverse measures for underperformance. However, in the present case, the PIP is not mentioned anywhere in IOM's Unified Staff Regulations and Rules or in Instruction IN/181. Rather, it is an unwritten practice developed by the Organization. The Organization does not show how the PIP fits within the SES phases. Specifically, the PIP was improperly imposed and relied upon as the primary mechanism for assessing underperformance, rather than as a complementary tool to the SES. The record further reveals that after the PIP's initiation in February 2020, there were no substantive discussions, regular meetings or structured feedback until 9 July 2020. The Director General conceded that during this period "[i]nsufficient action [...] was taken to implement [the PIP's] contents between March-July 2020 and [the complainant] did not receive regular feedback from [the complainant's] supervisors". Assertions by the Organization that discussions took place during coordination visits to the Volvi site are unsupported by documentary evidence. On the contrary, the complainant has credibly explained that the only contact he had with IOM in February 2020 was limited to technical queries on verification issues, and that thereafter no systematic guidance was provided. Moreover, following this prolonged hiatus, the Organization abruptly concluded the process by issuing a final Special SES Report, despite failing to meet the preconditions provided in paragraph 4.2 of Instruction IN/181 for triggering such a report. This irregular application of both the PIP and the Special Report deprived the complainant of a genuine opportunity to improve his performance and the procedural safeguards built into the SES system, rendering the entire process procedurally flawed.

9. The Tribunal has held in Judgment 4840, consideration 17, that Instruction IN/181 "does not refer to an evaluation process outside of the SES process", and any practice, such as a PIP, cannot be treated as a substitute for the SES process without IOM breaching its internal rules on performance evaluation. In Judgment 4072, consideration 14,

the Tribunal recognizes that international organizations have the discretion to manage their performance management objectives, but it highlighted as well that they must do so "using the tools they have in the manner in which they are designed". In Judgment 3026, consideration 8, the Tribunal stated that "[a]n opportunity to improve requires not only that the staff member be made aware of the matters requiring improvement, but, also, that he or she be given a reasonable time for that improvement to occur". By not undertaking in due course the required periodic appraisal of the complainant's performance, through combined use of a SES, a Special SES and a PIP, the Organization not only violated Rule 1.2.2(b) and Instruction IN/181 but also breached its duty to act in good faith by failing to provide adequate time for the complainant to improve his performance.

10. The Tribunal further notes the fact that the non-renewal decision was dated 30 October 2020, whereas the complainant's comments on the final Special SES Report were submitted on 5 November 2020. Paragraph 11.2 of Instruction IN/181 requires disagreements to be discussed before the form is advanced, paragraph 11.3 allows divergent evaluations to be recorded, and paragraph 11.6 permits the administrative decisions resulting from the SES to be appealed under the relevant provisions of the Staff Regulations. By pre-emptively deciding the matter before the complainant's comments were received, the Organization breached its duty of due process and rendered these safeguards meaningless.

The complainant's argument of unlawful performance evaluation is well founded.

11. The second issue is whether the Organization violated the complainant's due process rights. The complainant further argues that he was denied access to crucial complaints and reports underpinning his performance evaluation and subsequently the non-renewal decision. He argues that the JARB relied on undisclosed *in camera* documents without providing him the nature of these materials, in violation of paragraph 58 of Instruction IN/217, entitled "Request for Review and Appeal to the Joint Administrative Review Board". IOM replies that the

complainant had no right to the full disclosure of documents containing sensitive witness testimonies due to substantiated risks of retaliation. It cites Judgments 3640, considerations 18 to 20, 3052 (*recte* 3287), considerations 15 and 16, and 1756, consideration 10(b), to argue that the Tribunal's case law confirms that in certain circumstances summaries may suffice, and the complainant received detailed summaries allowing him to respond meaningfully to the substance of the allegations. It stresses that before the Tribunal he received copies of relevant material in the reply when the risk of retaliation no longer existed.

12. The Tribunal observes that in the final decision the Director General explained that the reason behind not sharing complaints with the complainant was "due to well-founded concerns about retaliation in light of prior incidents". The JARB, in its report, relevantly stated the following:

> "2. The JARB understands the point of the Administration to not disclose to the [complainant] 'all evidence related to information received regarding allegations made against him and used against him (and refer to in the impugned decisions)', for valid confidentiality concerns. However, the Board agreed to request the Administration to provide this evidence for its own understanding of the case. The Board also agreed not to share the evidence with the [complainant]."

The Tribunal finds the reasons for withholding evidence offered by both the Organization and the JARB not convincing. The Tribunal has its well-settled case law that organizations may withhold sensitive evidence to protect witnesses. However, safeguards must be in place to ensure that the staff member nevertheless receives sufficient disclosure to contest the substance of the allegations. In the present case, while summaries were provided, the complainant was denied access to the documents that were central to the contested decision. It is well established in the Tribunal's case law 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 him. Additionally, under normal circumstances, such evidence cannot be withheld on grounds of confidentiality (see, for example, Judgment 2700, consideration 6). It also follows that a decision cannot be based on a material document that

has been withheld from the concerned staff member (see, for example, Judgment 2899, consideration 23). Specifically, one of the main aspects underpinning the alleged unsatisfactory performance is complaints from the external partners. As found by the JARB in its report, "the complaints from the Government and [external] partners were withheld and not shared with the [complainant] [...] the [complainant was] aware that while there was positive feedback from external partners, there were also external partners who complained about him".

Paragraph 58 of Instruction IN/217 permits the JARB not to disclose the content of documentary evidence which is deemed highly confidential "(i) because it contains personal information relating to an individual other than the [complainant]". However, it would be sufficient to redact the identity of witnesses without violating the provision of paragraph 58. The Organization unlawfully deprived the complainant of the possibility of usefully challenging the decision. Even though the complainant was ultimately able to obtain summaries during the proceedings before the Tribunal, this does not remedy the flaw tainting the internal appeal process. As the Tribunal stated in Judgment 4217, consideration 4, regarding the disclosure of an investigation report in a similar situation, that "by refusing to provide the complainant with the report in question during the internal appeals procedure [the Organisation] unlawfully deprived [the complainant] of the possibility of usefully challenging the findings of the investigation. In this case, the fact that the complainant was ultimately able to obtain a copy of the report during the proceedings before the Tribunal does not remedy the flaw tainting the internal appeal process." The complainant's argument of denial of due process is therefore well founded.

13. As the violation of the principle by which an Organisation is bound by its own rules and the breach of due process alone warrant the impugned decision being set aside, it is unnecessary to examine the complainant's other arguments. In addition to the annulment of the impugned decision, references to the non-renewal of the complainant's contract "for performance" shall be removed from his administrative file.

14. The complainant does not request reinstatement but asks for material damages for the "loss opportunity [...] equivalent to six months' salary (all-inclusive fee)". The complainant lost a valuable opportunity to have his contract renewed due to procedural irregularities. While the complainant's contract might not have been renewed, this flawed process entitles him to 10,000 euros in additional material damages for the lost opportunity.

15. The complainant further seeks exemplary damages. As he has provided no evidence to demonstrate that there was bias, ill will, malice, bad faith, or other improper purpose on which to base an award of exemplary damages (see, for example, Judgment 4181, consideration 11), his claim for such damages will be dismissed.

16. The complainant's claim for moral damages is rejected owing to the lack of proof of injury.

17. The complainant, who is legally represented, is entitled to costs, which the Tribunal assesses at 7,000 euros, as he claims.

DECISION

For the above reasons,

1. The impugned decision of 4 May 2022 and the decision of 30 October 2020 are set aside.
2. IOM shall ensure that all references to the non-renewal of the complainant's contract "for performance" are removed from his administrative file.
3. IOM shall pay the complainant material damages in the amount of 10,000 euros.
4. IOM shall also pay the complainant's legal costs in the amount of 7,000 euros.
5. All other claims are dismissed.

In witness of this judgment, adopted on 23 October 2025, Mr Michael F. Moore, President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.