R.

v.

WHO

141st Session **Judgment No. 5153**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr R. R. against the World Health Organization (WHO) on 10 May 2022, WHO's reply of 28 September 2022, the complainant's rejoinder of 8 November 2022 and WHO's surrejoinder of 7 February 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 contests the non-renewal of his temporary appointment.

The complainant joined the WHO Country Office in Nigeria in 2010. In September 2018, he was appointed as National Officer, at grade NO-B, under a temporary appointment pursuant to Staff Rule 420.4. In January 2019, he was promoted to grade NO-C. He held, at the material time, the position of State Coordinator, based in Calabar, Nigeria, supporting the Government of Nigeria during the COVID-19 pandemic.

By an email of 4 December 2020, the Human Resources Unit of the WHO Country Office in Nigeria wrote to the complainant that he had "completed 24 months on Temporary Appointment on 02 September

2020 which was extended due to the COVID-19 to 31 December 2020 and so [he] will now be required to observe the mandatory 30+1 days break on expiration of the current contract on 31 December 2020". The complainant was also informed of the WHO Clearance Certificate that he needed to complete, and of the need to confirm his leave requests and travel claims and to finalize his performance report.

On 12 December 2020, an employee from the WHO Country Office in Nigeria asked the complainant to initiate a request for a renewal of his contract, attaching a template to her email.

By an email of 18 December 2020, approval was sought by a manager from the WHO Country Office in Nigeria to "deploy an officer to take over from the [complainant] and manage the affairs of the State office until [he] returns from a one month break in service".

On the same day, the WHO Representative in Nigeria (WR), taking note that the complainant had been on parental leave, annual leave, and certified sick leave between 5 October and 4 December 2020, asked him to clarify his absences "before any admin[istrative] action could be considered in [his] case". In response, the complainant provided a detailed explanation, attaching supporting documentation.

By an email of 19 December 2020, the WR replied that the complainant had been absent without authorization, which was "not admissible". He further stated that the complainant had been on leave most of the extension period from September to December 2020, which "could be treated as misuse of entitlements or even fraud". The WR indicated that he would "continue [his] investigations to establish responsibilities" and that "this may affect next admin[istrative] steps as no action will take place unless these investigations are finalized and [the complainant] will have to remain separated until a determination has been made".

On 23 December 2020, the WR completed the complainant's 2020 performance report, commenting that "[t]he overall performance is satisfactory for the normal contract period but there may be issues with integrity during the extension period. Staff member may proceed with mandatory break in service whilst additional investigations are under way".

By an email of 24 December 2020, the WR wrote the following to the complainant:

> "[Y]ou entered into duty on 3 September 2018 and you would have completed 24 months on 3 September 2020, hence the extension [...] which related to the period after you have completed 24 months clearly applies from 4 September to 4 December 2020. Otherwise, you would have been separated on 3 September 2020 for mandatory break in service. If you would like to appeal on this decision, you are also welcome to do so. [...] Unfortunately without convincing explanation, we will have no choice but to maintain that this is a case of misconduct and a breach of integrity not acceptable for a senior staff member working at State level."

On 27 December 2020, the complainant received an automatic message from the online workflow system, which stated that the initiation of a new contract should be discussed with the WR. On the same day, the complainant contacted the WR, who replied that he understood that the complainant was "proceeding with mandatory contract break in service" and that no further action was needed on the complainant's end "apart from the clearance procedures".

On 31 December 2020, the complainant separated from WHO. On the same day, he sent an email to the Regional Human Resources Office, requesting that the WR be investigated for harassment and that his 2020 performance report be reviewed. On 22 January 2021, the WR agreed to remove the reference to the complainant's integrity in the performance report.

After his separation, the complainant requested updates on the status of any investigation against him and a possible renewal of his contract. On 16 February 2021, the Regional Human Resources Officer confirmed to the complainant that no investigation was being conducted against him. On 19 March 2021, he wrote the following to the complainant:

> "Regarding the contract renewal, I remind you that you had reached the maximum of 24 months of temporary contract and in accordance with the provisions of Staff Rule 1040 and WHO eManual III.3.4 you were separated accordingly. I remind you that there was no obligation for a contract renewal on the part of WHO. Regarding the paperwork with the proposal to offer you a new contract for six months, the process required WR's approval. Upon his review of the overall staffing for the [Country Office] in line with the ongoing Polio ramp down and functional review, he has decided not to issue

> new temporary appointments until the staffing situation and related funding are well reviewed in line with new priority staffing needs. Once we start implementing the new structure of the [Country Office] stemming from the functional review, fixed term positions will be created and advertised and you can apply to any position which suits your profile. I therefore encourage you to keep checking for any vacancies that will come out while we implement the functional review for [the Country Office]/Nigeria and apply accordingly. Your application will be considered with others' on a competitive basis."

On 15 April 2021, following extensions of deadlines, the complainant requested an administrative review of the decision not to renew his temporary appointment. His request for an administrative review was rejected on 16 June 2021.

On 5 July 2021, the complainant lodged an appeal with the Global Board of Appeal (GBA) against the 16 June 2021 decision.

In its report dated 8 December 2021, the GBA recommended to dismiss the complainant's appeal. The GBA concluded that WHO had no obligation to offer a new temporary appointment to the complainant. While noting that "[s]ome of the communications [to the complainant] convey[ed] an assumption that [he] would return after the mandatory break-in-service", it found that the complainant did not have a reasonable expectation of a new contract. Lastly, the GBA did not find evidence of unequal treatment, bias or prejudice affecting the decision not to offer him a new temporary appointment.

On 18 March 2022, the Director-General informed the complainant of his decision to follow the GBA's recommendation and to dismiss his appeal. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision. He seeks material damages equivalent to six months' salary, inclusive of all related allowances and applicable step increases. He further claims moral damages in the amount of 10,000 United States dollars. Lastly, he claims 5,000 United States dollars in costs as well as any other relief deemed just and fair.

WHO asks the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS

1. The complainant joined the staff of WHO in 2010. In September 2018, he secured a temporary appointment due to conclude on 2 September 2020 though it was extended to 31 December 2020. In the latter part of 2020, a question arose about a further temporary appointment for the complainant and the time at which he should have taken a mandatory 30 + 1 days break at the conclusion of his then current contract.

2. It is unnecessary to detail the steps taken by the complainant to seek internal redress for the decision not to provide him with a further temporary appointment in December 2020. Suffice it to note that in a request for administrative review of 15 April 2021, the complainant identified the decision founding his grievance as a "[d]ecision contained in the email of 19 December 2020 from the [WR], indicating the non-renewal of [his] temporary contract [...] confirmed on 24 December 2020".

3. It should be noted that WHO does not dispute, in these proceedings, that a decision was made and communicated to the complainant by email on 19 December 2020 that his temporary contract would not be renewed and that this decision was confirmed on 24 December 2020, again by email.

4. Before focusing on the emails referred to in the preceding consideration, it is desirable to briefly discuss the Tribunal's case law concerning the renewal of temporary contracts. A convenient summary of the overarching principles is found in Judgment 4877, consideration 2:

> "It must be recalled that the Tribunal has consistently held that the decision not to renew the appointment of a staff member of an international organisation lies within the discretion of its executive head and is therefore subject to only limited review. It may be set aside only if it was taken without authority, or in breach of a rule of form or of procedure, or was based on a mistake of fact or of law, or if some essential fact was overlooked, or if clearly mistaken conclusions were drawn from the facts, or if there was abuse of authority (see, for example, Judgments 4654, consideration 16,

> 4172, consideration 5, 2148, consideration 23, or 1052, consideration 4). That is, a fortiori, the situation in a case such as this where the dispute concerns the non-renewal of a temporary appointment which expressly stated that the appointee was not guaranteed any renewal or conversion of his contract into any other type of contract [...]"

5. Notwithstanding that the grounds of review are limited, as just discussed, it is necessary for the decision not to renew to be based on objective, valid reasons, and not on arbitrary or irrational ones. Not only has this been recently affirmed in Judgment 4877, but was clearly expressed in Judgment 4654, consideration 16:

> "[W]hile a staff member employed under a temporary appointment is not entitled to have her or his contract renewed upon expiry, the fact remains that, under the Tribunal's case law applicable to contractual relationships generally, a decision not to renew such a contract must be based on objective, valid reasons, and not on arbitrary or irrational ones (see, in particular, Judgments 4495, consideration 15, 3769, consideration 7, 3353, consideration 15, and 1128, consideration 2)."

6. Moreover, a person whose temporary appointment is not renewed, is entitled to the reasons why (see Judgment 3838, consideration 7).

7. The Tribunal is satisfied that the reasons given in the present case by the WR were at least arbitrary, if not irrational as well.

8. The WR's involvement in the deliberations about the extension of the complainant's contract and when he should take, or should have taken, a mandatory 30 + 1 days break on the expiration of his current contract commenced with an email of 18 December 2020 to the complainant. In that email the WR drew attention to the fact that from the "absence dashboard" it appeared the complainant had been on special leave the whole month of October 2020, on annual leave the whole month of November 2020 and on sick leave the early days of December 2020. The WR noted that the complainant's delayed mandatory break date was approved in order for him to "provide support to the covid19 response in Calabar". The WR asked, effectively, for an explanation how this had come about.

9. It is probable that the WR was alerted to this, having been copied into an email chain on 18 December 2020 though the chain commenced with an email of 4 December 2020 from a staff member in the Human Resources Unit of the WHO Country Office in Nigeria to the complainant. The email of 4 December 2020 commenced: "As you are aware, you completed 24 months on Temporary Appointment on 02 September 2020 which was extended due to the COVID-19 to 31 December 2020 and so you will now be required to observe the mandatory 30+1 days break on expiration of the current contract on 31 December 2020". It is plain that the staff member in the Human Resources Unit considered that the mandatory 30 + 1 days break should be taken immediately after 31 December 2020.

10. The explanation referred to in consideration 8, was provided by the complainant in a lengthy email of 2 pages dated 18 December 2020. His explanation was credible and, it appears, appropriately documented. The leave he had taken had been authorized or the product of COVID-19 restrictions. It included him having travelled to the United States in October 2020 in order to assist his wife care for their young baby who suffered from "multiple complications of prematurity".

11. The WR replied on 19 December 2020 in two emails. The first was sent at 7:51 a.m. After thanking the complainant for his clarification and work he had done for the Organization, the WR said that "[s]ince [the complainant's] absence was beyond the reason for extension of [the complainant's] planned initial separation date, the correct way should have been for [the complainant] to be put on mandatory contract break for 30+1 day in September, or seek an extension through the [Regional Director] then be reinstated as appropriate". What the WR said about the "correct way" was plainly at odds with what the Human Resources Unit had said in the email of 4 December 2020.

12. The second email from the WR to the complainant on 19 December 2020 was sent at 3:24 p.m. In that email, the WR asserted that the "extension of date of mandatory break in service" should have

been used by the complainant to "support covid19 response without travelling out of place of assignment" and that "statutory entitlements like parental leave should [have been] exercised during the valid eligibility period", namely before 4 September 2020. The WR did not explain the legal foundation of these propositions. The WR then said that the taking of statutory entitlements during most of the extension period for COVID-19 "does not reflect good and could be treated as misuse of entitlements or even fraud, even though [he was] sure [the complainant] didn't mean it". The WR added that he would "continue [his] investigation to establish responsibilities". In his pleas, the complainant contends there was no subsequent investigation, and this is not contested by WHO.

13. This theme of the complainant having engaged in misconduct was repeated in an email of 24 December 2020 in which the WR said: "[u]nfortunately without convincing explanation, we will have no choice but to maintain that this is a case of misconduct and a breach of integrity not acceptable for a senior staff member working at State level".

14. On this issue of alleged misconduct, the WR assumed the role of prosecutor and judge. There was no basis identified by the WR for him doing so. Moreover, precisely what was the misconduct and what was the breach of integrity, was not explained and certainly not to the complainant. In those circumstances it can scarcely be something in respect of which the complainant might be able to provide a "convincing explanation". Furthermore, no explanation was sought from the complainant by the WR of the conduct believed to constitute misconduct and a breach of integrity.

15. Given these flaws in the justification advanced by the WR, the conclusion is open to the Tribunal that his decision that the complainant's temporary contract would not be renewed was arbitrary. This also means that the discretion was exercised in an arbitrary manner (see Judgment 4391, consideration 10). Also, the Tribunal made clear in Judgment 3948, consideration 2, that the reason for the non-renewal

of a contract "must be a valid one and not one that was given to conveniently get rid of a staff member". The inference can readily be drawn that the WR's unsubstantiated strong disapproval of the conduct of the complainant was the reason for the decision not to renew his contract and this provided a reason to get rid of him.

16. This leads to the question of remedy. The complainant seeks material damages on the basis, it appears, that he lost an opportunity to be appointed on a further temporary contract after the mandatory 30 + 1 days break. Without descending into detail, the normative legal framework governing temporary appointments in WHO, and the Tribunal's case law (see, for example, Judgment 4916, consideration 8), make it quite clear that there can be no expectation of appointment to a further temporary contract after the expiry of an existing one. Nonetheless, he lost the valuable opportunity to have his contract extended and is, accordingly, entitled to material damages equivalent to six months of net salary at the grade NO-C, step 2 level.

17. The complainant also seeks moral damages on the footing that the WR's conduct caused injury to his mental health and professional reputation. The unsupported characterization of the complainant's conduct as misconduct and a breach of integrity caused him obvious moral injury for which he is entitled to moral damages (see Judgment 4819, consideration 17). He seeks 10,000 United States dollars. This amount is appropriate in the circumstances.

18. The complainant was substantially successful. He was represented and seeks 5,000 United States dollars as costs. He is entitled to those costs.

DECISION

For the above reasons,

1. The impugned decision of 18 March 2022 is set aside.
2. WHO shall pay the complainant material damages as indicated in consideration 16.
3. WHO shall pay the complainant moral damages in the sum of 10,000 United States dollars.
4. WHO shall pay the complainant costs in the sum of 5,000 United States dollars.
5. All other claims are dismissed.

In witness of this judgment, adopted on 3 November 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.