

**EUROPEAN CENTRE FOR MEDIUM-RANGE WEATHER FORECASTS**

**APPEALS BOARD**

**DECISION**

**In Case No 5**

**X v ECMWF**

**The Appeals Board of the European Centre for Medium-Range Weather Forecasts**

Comprising

Michael Groepper, Chair,  
Kieran Bradley, Vice Chair,  
Spyridon Flogaitis, Member,

Assisted by Susan Dunning, Secretary to the Appeals Board,

Having considered

1. The Appeal dated 16 August 2018 lodged by  
the Claimant, X,

assisted by Ludovica Moro, Counsel, Bretton Woods Law, 1 King Street, London  
EC2V 8AU,

2. the Comments dated 12 October 2018 lodged by  
the Defendant, the European Centre for Medium-Range Weather Forecasts  
(ECMWF or Centre), represented by its Director General, Florence Rabier,

assisted by Bertrand Wägenbaur LL.M, lawyer, Avenue de Cortenbergh, 66/11, B-  
1000, Bruxelles,

3. the Claimant's Reply dated 7 November 2018,

4. and the Defendant's Rejoinder dated 30 November 2018,

Has reached on 9 February 2019 the following decision:

**A. Facts**

1 The Claimant, aged 60 years, began his employment at the ECMWF in September 2001 under a fixed-term contract with a duration of four years. His contract

was renewed for five years in 2005 and in 2010. In 2015, his contract was renewed for a duration of two years and ten months until 30 June 2018 (i.e. the end of the month when he reached the age of 60).

2 The Claimant is affiliated to the Budgetised Pension Scheme (“BPS”) providing that he is eligible to receive a pension at the age of 60.

3 In 2017, the Claimant challenged before the Appeals Board the Director General’s decision not to extend his contract beyond 30 June 2018 until 30 June 2021. In its Decision No. 4 of 21 March 2018, the Appeals Board dismissed the Appeal as unfounded. Thus, at the expiry of the last contract of employment on 30 June 2018, the Claimant became a pensioner of the Centre effective as of 1 July 2018.

4 In a letter dated 26 April 2018 to the Director-General, the Claimant requested to be paid an indemnity for loss of job on his leaving the service. By letter dated 3 May 2018, the Director-General refused such payment. The Claimant’s request of 21 May 2018 to review this decision was rejected by the Director-General in her letter dated 15 June 2018. The Claimant appealed against this decision on 16 August 2018.

## **B. The Claimant’s Position**

5 To justify his appeal, the Claimant submits:

6 a) The primary reason for the non-extension of the Claimant’s contract was that his services were no longer required by the Centre. This triggered the Director-General’s decision not to offer him a contract renewal.

7 Article 27 of the Staff Regulations stipulates that the “termination” of a contract may give rise to an “indemnity for loss of job” under further conditions set out in Annex V. The Claimant fulfils all the necessary criteria in order to be eligible for the Indemnity. The Claimant disagrees with the Defendant’s view that the concept of “termination” of a staff member’s services does not apply to the Claimant’s case. The distinction made by the Defendant between extension and renewal of contract is rather semantic and misleading.

8 b) The fact that the Claimant’s last effective working day coincides with the expiration date of the contract is without incident concerning the nature of the administrative decision. Article 12.1(b) Staff Regulations reads “*Termination of contract: when a further contract is not offered (see Article 5) or on the initiative of the appointing authority during the period of contract*”. In the Claimant’s case, “retirement” is the direct consequence of an action undertaken by the Director-General. The “termination of contract”, as defined in Article 12.1(b), is a direct consequence of the fact that the Director-General decided not to renew the Claimant’s contract beyond its stipulated duration. Therefore, a decision of terminating the Claimant’s employment with the ECMWF was taken and later justified by the Centre.

- 9 c) Even if reaching the age of 60 was the only reason why the Claimant's contract was not renewed, this would still constitute a valid ground for the entitlement to the indemnity for loss of job as it occurred before reaching the age limit as defined in Article 5.11 Staff Regulations (65 years). The indemnity for loss of job is a statutory indemnity aimed at compensating the staff member for the termination of his services on the initiative by the Centre before the staff member reaches the statutory age limit of 65. Upon introduction of the age limit of 65, the parameters and calculation of the Indemnity have been clarified. In Annex V the reference to the age limit is found at paragraph 1.(a), 7<sup>th</sup> bullet, where it excludes the entitlement to an indemnity for loss of job if the services of the staff member were terminated "*on grounds of [...] reaching the age limit*", and at paragraph 6, where it reads "*Furthermore, the amount of the indemnity shall not represent a number of months, or fraction of month, in excess of the period which the staff member would still have to serve before reaching the age limit.*"
- 10 d) The Defendant's view on the purpose of the indemnity does not derive any justification or support from the Centre's regulatory framework. The indemnity is an entitlement, it is not an *ex gratia* payment or a compassionate measure to help staff facing financial hardship. The indemnity's purpose is not merely that of compensating for a financial loss but is to compensate staff members when the Director-General, by exercising her rightful and legitimate discretionary power, decides to terminate their services for any of the reasons listed in the Annex V, prior to their reaching the statutory age limit for service which is set at 65.
- 11 e) Moreover, the said provision of Annex V does not exclude from the entitlement to the Indemnity staff who, following their termination of service, are in receipt of a retirement or early retirement pension and who are below the age limit. The only exclusions listed concern the cases where services are terminated because of: (i) health reasons, (ii) unsatisfactory performance, (iii) discipline and (iv) the staff has reached the age limit; none of which apply to the Claimant's case. Nowhere do the Staff Regulations or the Pension Rules provide that receiving a retirement pension excludes the right to the indemnity for loss of job. This may clearly be inferred from Article 32 ("No double entitlements") and Implementing Instruction 32.1 ("Double entitlement as regards retirement or invalidity pensions") of the BPS Rules, which excludes the concurrent payment of a pension and of an indemnity for loss of job **only** when the latter is paid in monthly instalments and not as a lump sum.
- 12 f) In only two cases an early retirement leads to the entitlement to the indemnity for loss of job: Early retirement on the initiative by the Centre (termination of employment as per Article 12.b of the Staff Regulations) which can occur after 10 years of service, but before reaching the age of entitlement to a retirement pension, as well as retirement on the initiative by the Centre because of non-renewal of contract. In both cases, there can be several legitimate "operational" reasons for which the Centre may decide not to renew a contract. In the Claimant's case there are both legitimate "operational" (abolition of his post) and "regulatory" reasons for non-renewal. A non-renewal of contract on the Centre's initiative because a staff member has reached the age of entitlement to a retirement pension would clearly fall under a legitimate regulatory reason.

- 13 g) The Claimant, in his experience as HR Business Partner, had witnessed three cases in which the Indemnity was granted following the termination of services due to non-renewal of contract. In two cases, the staff member left the Centre with an entitlement to a Deferred Pension and in one case the staff member left with the entitlement to an Early Retirement Pension. In all cases, the Indemnity was paid for termination of service due to non-renewal of contract, independently from the entitlements to a pension or the eligibility to it and in two out of the three cases the concerned staff members decided to validate the Indemnity and were credited with the corresponding reckonable years of service for the calculation of their retirement pension.
- 14 The case law of the Co-ordinated Organizations and of other International Administrative Tribunals (e.g. UNAT) is quite clear in recognizing the indemnity as a staff member's separation entitlement in cases of non-renewal of contract.
- 15 h) The Claimant was never informed or consulted regarding the abolition of his post. The decision to discontinue (hence abolish) the Claimant's post was finally taken in May 2017. As soon as this decision was taken, in accordance with the Charter of Ethics of the Centre, the Claimant should have been informed.
- 16 The Appeals Board shall compensate the Claimant for the non-material damage suffered due to the lack of transparency and information by the Centre in dealing with the abolition of his post. The Centre unlawfully breached its duty of transparency and information towards the Claimant.

### **C. The Defendant's position**

- 17 The defendant submits that the appeal is partly inadmissible and, in any event, unfounded.
- 18 a) The Claimant's request to *revert the Director-General's decision and grant him the Indemnity which he intends to validate as provided for in Article 4.2 of the BPS Rules* is inadmissible in so far as it aims at the replacement of the Director-General's decision by another one. While it is clear that the Appeals Board may choose to award damages as a result of an annulment of a given decision, it is equally clear that the Appeals Board may not substitute itself for the Centre. Similarly, the Appeals Board does not have jurisdiction for ordering the Centre to adopt a specific decision in lieu of the annulled decision.
- 19 b) As to the merits, the Claimant's view that he would be entitled to an "indemnity for loss of job" is based on an erroneous attempt to challenge if not to negate the judgment of 21 March 2018 by which the Appeals Board rejected his action for annulment of the decision not to extend his contract of employment, and on his equally erroneous view that by said decision his contract would have been "terminated" within the meaning of Article 1 of Annex V of the Staff Regulations.
- 20 c) The mere fact that the Claimant decided not to retire, even though he was eligible to do so, does not turn the Centre's decision of non-extension of his contract into a "termination" within the meaning of Annex V of the Staff Regulations.

On the contrary, retirement at the age of 60 (in the case of the Claimant who is associated with the Budgetised Pension Scheme (“BPS”)) and the end of the contract is a *de jure* consequence of reaching that age. The retirement age as such constitutes a point in time after which the practice of the Centre in relation to the *renewal* of contracts no longer applies.

- 21 d) The Claimant’s separation from the Centre is not a direct consequence of the non-extension of his contract beyond the age of 60 and therefore does not constitute “termination” within the meaning of Article 12 (b) Staff Regulations. His separation from the Centre is a *de jure* consequence of his reaching the retirement age, at which point the Director-General had to address the question whether there was any service requirement to extend the Claimant’s contract of employment, and if so, for how long. Since there were no such reasons, the Director-General abstained from extending the Claimant’s contract and thereby decided not to intervene in what is the natural course of a career at this stage i.e. retirement under Article 12 (d) Staff Regulations. The Claimant’s contract came to an end by law, not upon an “initiative” by the Centre.
- 22 e) As to the alleged “abolition” of the Claimant’s post being the cause of the non-extension of his contract, the Claimant reverses the sequence of events. When the Claimant’s career at the Centre came to its natural end, the Centre made use of its right to adapt the organization of the HR function. It cannot be held against the Respondent that it decides, within its own discretion, to utilize no longer occupied posts in a way that corresponds to its best interest.
- 23 f) The Centre did not breach its duty of information set out in the Centre’s Charter of Ethics as it did not inform the Claimant of the reasons behind the non-extension of contract. The Claimant since 2016 has been thoroughly involved on the project for the introduction of a new ERP (Electronic Resource Planning) tool in the organization. He thus knew that the introduction of this tool would enable an important decrease of manual transactions and impact a number of posts in Finance and Human Resources, including the claimant’s post. The Claimant was informed about the fact that his contract was not extended due to his retirement on at least two occasions i.e. in the letter Director-General of 29 August 2017 and the Director-General’s letter of 15 June 2018.
- 24 g) The Respondent does not dispute that in certain circumstances a staff member might be simultaneously awarded a retirement pension and an indemnity for loss of job. This can and did occur if a staff member’s contract is terminated or not renewed prior to retirement age, but after that the staff member became eligible for an early pension and chose to take up an option for early receipt of pension, with a consequent reduction in pension entitlements. Nevertheless, the very purpose of the indemnity for loss of job is to compensate the staff member for the discontinuity of his salary caused by one or several external factors mentioned in Article 1 of Annex V to the Staff Regulations, in order to alleviate the financial hardship that is inherent to such loss of job. The Claimant’s separation from the Centre was not the result of a “loss of job”. Therefore, there is simply no objective reason for which the Claimant would have to be compensated.
- 25 h) As to previous cases of indemnity granted at ECMWF and Co-ordinated Organizations, mentioned by the Claimant, the Respondent does not dispute that

indemnity was indeed granted in the three cases. However, none of those three cases concerned a staff member who, at the time of the separation, had reached their retirement age, and therefore their careers at the Centre ended prematurely which was considered by the Centre as a loss of job.

#### **D. The Parties' requests**

- 26 I. The Claimant requests the Appeals Board
1. To recommend the Director-General to reconsider her decision and grant him the Indemnity, which he intends to validate as provided for in Article 4.2 of the Budgetised Pension Scheme Rules,
  2. To grant him non-material damage to compensate him for the lack of fairness, transparency and information surrounding the abolition of his post, as appropriate, and
  3. To award reasonable legal costs.
- 27 II. The Defendant requests the Appeals Board
- To reject the appeal, and  
To order the Claimant to bear his own costs.

#### **E. Grounds for the Decision**

- 28 Having heard the Parties, the Appeals Board deems the facts undisputed and an oral hearing not essential. Both Parties have agreed to waive their right to hearing and in application of Article 4(1) of Annex VII to the Staff Regulations, the Appeals Board thus has decided to judge the case without holding an oral hearing.

##### **I. On admissibility**

- 29 a) According to Staff Regulations Article 39.2, "the Appeals Board shall have the authority to settle disputes arising out of these Staff Regulations or of the contracts provided for in Article 5. To this end, it shall have jurisdiction with regard to appeals brought by staff members or by former staff members or by their heirs and assigns against a decision of the Director-General". According to Annex VII Article 1 No. 2, "the Appeals Board shall annul any decision against which there was an appeal, if the decision is directed against the Claimant and affects his or her personal rights, and if the decision is contrary to the Staff Regulations, a policy or instruction, or to the Claimant's terms of appointment. The Appeals Board may not replace a decision which it has annulled with an alternative decision of its own, or order the Respondent to take any particular action in respect of the Claimant or any potential claimant, but can recommend the Respondent to reconsider its decision in the light of the decision of the Appeals Board. However, if a decision was annulled, the Appeals Board may order the Respondent to compensate the Claimant for damages suffered as a result of the annulled decision".

30 b) In the course of the proceedings, the Claimant has re-worded his demand from a “request to order the Director-General” to a request “to recommend the Director-General”. To make such recommendation – provided the Appeals Board annuls the challenged decision – is within the Appeals Board’s power.

31 c) The Appeals Board does not share the Defendant’s view that the Appeal is inadmissible on the ground that the Claimant could have included his claim in his first appeal which he had lodged against the Director-General’s decision not to extend his contract. At that time, the Claimant had not yet asked for a compensation for loss of job, and the Director General had not yet refused it.

32 d) As for damages, the Claimant does not rely on the disputed decision not to extend his contract but on the allegation that he was not duly informed of the reasons. This is not covered by the cited provision. The question whether the Appeals Board has jurisdiction to award damages in other cases shall be dealt with later.

## **II. On the merits**

33 a) Article 27 of the Staff Regulations provides:

34 “Termination of a contract by the Centre may, in certain circumstances, give rise to the payment of an indemnity for loss of job. The regulations governing the payment of this indemnity are set out in Annex V.”

35 Article 1 of Annex V (Regulations on the indemnity for loss of job) to the Staff Regulations reads as follows:

36 “1. The Director-General of the Centre shall have the power to award an indemnity for loss of employment to any staff member of the Centre working on core activities (STF-C) who satisfies all three of the conditions below:

(a) The staff member holds a firm contract.

(b) The staff member’s services are terminated for any one of the following reasons:

- Suppression of the budget post occupied by the staff member
- Changes in the duties of the budget post occupied by the staff member of such a nature that he or she no longer possesses the required qualifications
- General staff cuts including those due to a reduction in or termination of the activities of the Centre
- The withdrawal from the Centre of the member country of which the staff member is a national
- The transfer of the headquarters of the Centre or any of its units to another country and the consequent transfer of the whole staff
- The refusal by the staff member, where his or her contract does not cover the point, to be permanently transferred to a country other than that in which he or she is serving
- A specific staff policy as agreed by the Council or as provided for in these Staff Regulations (excluding cases where the services of a staff member are

terminated on grounds of health, unsatisfactory service, discipline or reaching the age limit), after not less than ten consecutive years of service in one or more of the Co-ordinated Organisations and/or ECMWF, including periods of service as a consultant before appointment as a staff member which have been validated for pension purposes.

(c) The staff member is not offered a post in the same grade in the Centre, or is not appointed to a vacant post in one of the Co-ordinated Organisations at a comparable remuneration, or if employed in the public service, is not offered re-integration into his or her national civil or military administration. If the staff member is offered but declines re-integration into his or her national civil or military administration, which need not to be at a level comparable to that of the position held at ECMWF, the staff member will not be entitled to the payment of an indemnity for loss of job.”

37 These conditions may be summarized as follows: The staff member is entitled to an indemnity of loss if (1) he held a firm contract; (2) his services were terminated under one or more of the grounds listed in paragraph 1(b) of the Annex V to the Centre’s Staff Regulations; and (3) he was not offered any alternative post.

38 b) On 30 June 2018, the Claimant’s contract expired in accordance with clause (i) thereof:

39 “Duration and Termination of Contract  
This contract will take effect on 1 September 2015 to 30 June 2018, the end of the month when you reach the age of 60 years, unless previously terminated in accordance with the provisions of the Staff Regulations. The contract may be terminated by either party giving three months’ notice in writing”.

40 The legality of this provision has been confirmed by the Appeals Board in its decision No 4 of 21 March 2018.

41 The Defendant is of the opinion that his contract ended by operation of law, namely as a result of the fact that the Claimant, who is affiliated to the Budgetised Pension System, reached the age of 60, at which age he became eligible for his retirement pension (Article 8(1) of the Budgetised Pension Scheme). The age of 60 is also the age of retirement as set out in Implementing instructions 5.5 (“The retirement age shall be 60 years for staff members affiliated to the Budgetised Pension Scheme and 63 years for staff members affiliated to the Funded Pension Scheme, as a general rule”). From this the Defendant concludes that the end of the contract did not result from a decision to terminate the contract but simply from the applicable law.

42 The Appeals Board does not agree with this view.

43 According to Article 5.1 of the Staff Regulations, a staff member shall be appointed on a fixed-term renewable contract with a minimum duration of two, and a maximum duration of five, years. Article 5.3 and 5.4 provide that the contract



shall state, i.a., the starting date and the duration of the contract. The Implementing Instruction defining the retirement age does not say that a contract should automatically come to an end if the employee reaches that age. There is no automatism between reaching the retirement age and the end of the contract.

- 44 In the Claimant's contract, the abovementioned clause (i) provides two possible events which might bring to an end the "effect" of the contract: either the end of the stipulated duration (30 June 2018) or termination declared by "either party giving three months' notice in writing".
- 45 In the case of the Claimant, the first event brought the contract to an end. There was no termination (declared by the Defendant) but simply the expiry of the stipulated duration. The contract did not expire by operation of law (i.e. because the Claimant reached the statutory pension age) but by virtue of the contractual stipulation. The end date of the Claimant's contract was fixed so as to fall at the end of the month in which the Claimant would reach 60 years. The clause does not contain any reference to his pension age or to any legal provision related thereto. It simply referred to his reaching the age of 60, which is a matter of time (calendar) without any reference to legal provisions. Of course, this date was intentionally chosen, being the date on which the Claimant reached his pension age and became eligible to a pension, as foreseen in No 5.5. of the Implementing instruction and Art. 8.1 of the Pension Scheme. This was not part of the clause, but only the motivation for its wording.
- 46 c) Article 27 of the Staff Regulations and the provisions of Annex V give the right to an indemnity in case of "Termination of a contract by the Centre". The Claimant's contract did not end by virtue of such "termination".
- 47 The Claimant alleges that the term "termination" is the general term comprising all possibilities which may set an end to a contract. He especially relies on Article 12.1 (b) of the Staff Regulations stating:
- "Apart from death, separation from the Centre may take one of the following forms: (b) Termination of contract: when a further contract is not offered (see Article 5) or on the initiative of the appointing authority during the period of contract" ...
- 48 The Appeals Board does not share this view.
- 49 The term "termination" is widely used in the Staff regulations and may have different meanings according to the context in which it is placed. A contract may "terminate" or "be terminated". In some provisions, the term "termination" or "terminate" means simply the end of the contract as an effect of the occurrence of a particular event. In other provisions, it means a voluntary act either of the appointing authority or of the staff member deliberately bringing to an end a contract which would otherwise (if there were no such termination) continue to run. The true meaning in each provision must be determined by interpretation.
- 50 In Article 27 and Annex V, the term "termination" means a voluntary act of the appointing authority to put an end to an ongoing contract. It is only if the termination is motivated by one or more of the reasons listed in Article 1 (1) (b) of Annex

V that the staff member “loses” his job and is entitled to a loss of job indemnity. The Claimant’s contract was not “terminated” and thus he is manifestly not entitled to the indemnity which he claims. This is so irrespective of whether or not the Director General’s decision not to extend the Claimant’s contract was motivated in the sense of the abovementioned provision. Retirement is not a “specific staff policy” but an inevitable occurrence in the career of a staff member, unless one of the incidents listed in Article 1(b) occurs to bring the employment relationship to a premature end.

51 This interpretation is consistent with the purpose of the provision (ratio legis).

52 The Appeals Board does not share the Claimant’s view that the purpose of the indemnity is not merely that of compensating for a financial loss but is to compensate staff members when the Director-General, by exercising her legitimate discretionary power, decides to terminate, for any of the reasons listed in Annex V, the employment relationship of a staff member which would otherwise continue under the existing contract, prior to their reaching the statutory age limit for service which is set at 65. This would mean that the indemnity would be a regular payment due to almost every staff member upon cessation of service, except for those members who have reached the statutory age of 65 or leave the service for some special reason. On the contrary, the Appeals Board considers the very purpose of the indemnity for loss of job is to compensate the staff member for the (unplanned) discontinuity of his salary caused by one or several external factors mentioned in Article 1 of Annex V of the Staff Regulations, in order to alleviate the financial hardship that is inherent in such loss of job. The use of the terms “indemnity” and “loss” of job” clearly indicates that the payment means compensation for a loss resulting from an event that was not to be expected as normal.

53 Moreover, this interpretation is in line with Article 1 of Annex V which gives a comprehensive list of the reasons why the contract is “terminated”. What these reasons have in common is that it was not the normal expiry of a fixed term contract that led to its end but an unexpected event outside of the contractual sphere between staff member and Centre. In addition, one of the other prerequisites for awarding the indemnity for loss of job is that the staff member is not offered a post in the same grade in the Centre, or is not appointed to a vacant post in one of the Co-ordinated Organisations. This prerequisite only makes sense on the assumption that the member’s contract would otherwise still be running.

54 Finally, this interpretation is confirmed by Article 3 of Annex V, providing that “the amount of indemnity for loss of job shall be equal to half the product of the monthly emoluments of the staff member (...) multiplied by the number of months remaining up to the expiry of the term of the contract, provided that it shall in no case, exceed the following limits: ...” By virtue of this clause, the date of the expiry of the contract enters into the calculation. If there is no remaining time between the “termination” and the expiry of the contract, the “number of months remaining up to the expiry of the term of the contract” would be zero, thus reducing the product to zero.

55 It is true that in the Claimant’s case this clause is not applicable since his indemnity (if he were entitled to one) must be computed according to another rule

(Rule No 10<sup>1</sup>), but this only because the Claimant has been in the service of the Centre for more than ten years. The general rule for calculating the indemnity in the case of fixed-term appointments shows that it is exactly meant to fill the time gap between the date of the premature termination of the contract and the date of its stipulated expiry.

56 It is true that Article 12.1(b) of the Staff Regulations reads “Apart from death, separation from the Centre may take one of the following forms: (b) *Termination of contract: when a further contract is not offered (see Article 5) or on the initiative of the appointing authority during the period of contract*”. This provision, however, serves a different purpose; it is not meant to define the term “termination” but to define what is meant by “Separation”. It does so by including in this notion the situation in which a further contract is not offered. Article 12 is specifically meant to give staff members additional protection while they are on authorized sick leave. That is why here – and only here – the separation includes the case when a further contract is not offered. It may not be concluded from this provision that “termination” always comprises the case of non-extension of a contract.

57 d) The Director-General’s decision not to extend the Claimant’s contract was not a “termination” in the meaning of Article 27 and Annex V.

58 The Appeals Board notes that there is no material difference between “extending” and “renewing” a contract. Both mean – and have the effect – that a contract continues to be effective after the expiry of its stipulated duration.

59 As explained above, “termination” (in the technical sense) of a contract is a voluntary act bringing to an end to a contract which would otherwise (if there were no such termination) continue to run. Here, the Claimant’s contract ended because this was stipulated in the contract. The Director-General’s decision not to extend the contract did not terminate the contract but simply gave effect to the clause of the contract stipulating when it would end. The decision not to renew the contract did not disrupt the Claimant’s contract which otherwise would have continued to run. In the Claimant’s case, it would have been necessary to make a positive decision to extend the Claimant’s contract in order for it to run beyond its stipulated end. Here, there was no such decision, and consequently, the contract came to an end by the mere expiry of time. This is consistent with the ILOAT judgment No 3448 of 11 February 2015, consideration 6: “The non-renewal of a fixed-term contract is not the same thing as termination and does not give rise to any termination indemnity.”

60 e) The Claimant submits that in his case the Director-General’s decision not to extend his contract was based on one or more of the reasons mentioned in Annex

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<sup>1</sup> “Any staff member who has served not less than ten consecutive years with one or more Co-ordinated Organisations and whose services are terminated in the conditions specified in paragraph 1 hereof, shall be entitled to an indemnity for loss of job calculated under the provisions of paragraph 6 and, where appropriate, of paragraph 9 hereof, whatever the nature of the contract held by him or her at the time when the appointment is terminated.”

V No. 1, especially “Suppression of the budget post occupied by the staff member” and “Changes in the duties of the budget post occupied by the staff member of such a nature that he or she no longer possesses the required qualifications”. From this it follows, that the decision of the Director-General not to extend his contract was in fact a decision to terminate it.

61 The Appeals Board does not accept this view. The clause contained in Annex V to the Staff Regulations that “the Director-General of the Centre shall have the power to award an indemnity for loss of employment to any staff member of the Centre working on core activities (STF-C)” if, i.a., “The staff member’s services are terminated for any one of the following reasons” does not imply that if one of these reasons is fulfilled, then the contract has been terminated. On the contrary: the first and paramount condition is that the contract has been terminated in the technical sense of this term, and only if this condition is fulfilled, granting the indemnity depends on whether or not the termination is due to one of the reasons listed in the provision.

62 f) The Claimant further submits that the fact that at the cessation of his contract he was immediately entitled to a pension cannot be opposed to his claim for the indemnity for loss of job, since both payments may be made simultaneously. This is not a valid argument. A rule concerning concurring payments may apply if the staff member is entitled to receive both of them, but cannot itself grant the right to such double payment.

63 g) The Claimant invokes the principle of equal treatment, alleging that in three other cases staff members were awarded the indemnity for loss of job after their contract were not renewed. The Defendant has not disputed that the indemnity was indeed granted in the three cases at issue. However, none of those three cases concerned a staff member who, at the time of the separation, had reached their retirement age, and therefore their careers at the Centre ended prematurely which was considered by the Centre as a loss of job.

64 In the view of the Appeals Board, where the end of employment results from the expiry of the employment contract, this does not constitute a “termination” in the sense of Article 27 Staff Regulations. Therefore, the Defendant’s position in those three cases seems rather doubtful. However, it constitutes an important difference that in those three cases the staff members were not yet entitled to a pension. Therefore, the Claimant cannot rely on the principle of equal treatment.

h) Non-material damages:

65 The Claimant’s request to be awarded non-material damages is based on the allegation that he was not duly informed of the reasons why his contract would not be extended. He submits that this lack of information was contrary the Centre’s “Charter of Ethics”.

66 The said Charter provides that “The Centre’s management ensures that staff are kept well informed of all changes or issues that may affect them”. After the Claimant retired, the change no longer affected him. There was no obligation of the Centre to inform the Claimant of events that would happen after his retirement.

67 In the absence of any damage which might be compensated by the Defendant, the Appeals Board leaves open the question whether it would have the power to order the Defendant to pay such damages.

## **F. Conclusions**

68 For these reasons, the Appeals Board decides:

The Appeal is rejected.

The Claimant has to bear his own legal costs.

Groepper

Dunning