

CSAT APL / 21

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IN THE COMMONWEALTH SECRETARIAT ARBITRAL TRIBUNAL

IN THE MATTER OF

THEODORA ADDO

Applicant

and

THE COMMONWEALTH SECRETARIAT

Respondent

Before the Tribunal constituted by

Mr Christopher Jeans QC, President; Mr Dheerendra Dabee SC, member and Justice Sandra Mason QC, member

JUDGEMENT

Introduction and overview

1. Ms Theodora Addo has worked for the Commonwealth Secretariat for nearly thirty years. Since 1989 her job has been in the library.
2. For staff relations, the library has not been a peaceful place in recent years. Ms Addo's is not the first library case to come before this Tribunal.
3. Particularly between 2007 and November 2010 Ms Addo had problems with successive managers, Mr Blake and Ms Hume. She felt marginalised and disrespected by them in various ways.
4. The problems did not disappear with Ms Hume's resignation in November 2010. One of Ms Hume's final acts on her departure had allegedly been to leave a file with personal material about Ms Addo in a place where it could be read by all. Moreover the vacancy created by Ms Hume's resignation created a vacancy for a member of library staff to "act up" for a period with a corresponding pay allowance. Ms Addo was unhappy that she was not selected for that role. It was initially allocated to a colleague, Ms McEwan . When Ms Addo complained, the "higher responsibility" allowance was shared between three staff. Ms Addo and Miss McEwan each being allocated 40% of the allowance (and the third member 20%). Ms Addo was dissatisfied with this outcome also.
5. Her complaints crystallized into a formal grievance covering the events going back to 2007. Mr Rustomjee, Director of the Economic Affairs Division, was appointed to investigate and report.
6. In substantial (but not all) respects, Mr Rustomjee upheld her grievance. He found that she had indeed been marginalised and in some respects bullied. Her confidence had not been respected. Following Ms Hume's departure, the allocation of the acting up post and allowance had not been satisfactorily considered and she should have had a greater share of the allowance. On the last two pages he made certain recommendations. These included a recommendation that Ms Addo be compensated for not being given a sufficiently high proportion of the acting up allowance.
7. The Secretariat sent Mr Rustomjee's report to Ms Addo but shorn of the final two pages with their recommendations. Ms Addo sought disclosure of these and an apology for the maltreatment identified by Mr Rustomjee.
8. The Secretariat refused to supply the missing pages. It gave an oral apology for Ms Addo's treatment and promised a written one. But it failed to supply the written apology over several months despite pressing correspondence from Ms Addo's solicitor.
9. At the beginning of May 2013 Ms Addo brought the present proceedings, seeking rescission of various decisions and actions over the period from 2007, disclosure of the missing pages of the grievance report and compensation in the sum of £20,000 and costs.
10. In September 2013 the Secretariat supplied the missing pages of the report and an unsigned, uncompleted draft of the apology.
11. The Secretariat's position on the report (set out in the Answer to the Application) was that it was under no obligation to supply the missing pages but was doing so to satisfy Ms Addo that nothing was being hidden. The Secretariat's position on the written apology was that the failure to supply it was due initially to an administrative hiatus but that Human Resources had then "thought it prudent" not to send the

written apology “because litigation had been initiated”. Why the Secretariat ultimately sent it in draft unsigned, incomplete form was not explained.

12. In her Reply Ms Addo expanded her claim for compensation to £400,000.

13. In its Rejoinder the Secretariat draws attention to the feature that Ms Addo had not claimed compensation in the internal processes and that her (now expanding) claim for monetary relief had featured for the first time in the proceedings.

14. With the benefit of hindsight enjoyed by all tribunals (and in the light of the conclusions we reach below) we observe by way of overview that it is often a failure to rectify a justified grievance, or to “do the right thing” in the light of acknowledged failings, which gives rise to legal (and monetary) claims which might otherwise never have been asserted. This does not mean that the claims themselves are necessarily invalid - merely that they could have been avoided by a less defensive approach. The present case may be an illustration of this.

15. The structure of this judgment will be as follows. We set out in turn

- (i) the detailed history, including our main findings of primary fact
- (ii) a brief introduction to the Application and Response
- (iii) some observations about our jurisdiction and time limits
- (iv) our analysis in relation to each head of claim
- (v) our reasoning and conclusions on remedy
- (vi) our reasoning and conclusion on costs.

In sections (iv) and (v) above we make such additional findings of fact as are necessary to resolve the issues .

16. All findings of fact are made on the balance of probabilities having regard to the totality of the material before us.

17. As above, we will refer to Ms Addo either by her name or as “the Applicant”. We refer to the Commonwealth Secretariat as “the Secretariat” or “the Respondent”.

(i) Detailed history and main findings of fact

18. Ms Addo has been employed by the Secretariat since 16th January 1985. She was first a temporary, then permanent, stenographer, and then a secretary. In 1989 she was appointed a Library Assistant. There were changes in job title and in March 2004 the position was upgraded to Documentation Officer (Grade K) but her duties continued to relate to the library. The grievance report records¹ that she is “the longest serving employee in the library section”. At relevant times she has reported to the Head of Library. The Head of Library reported in turn to the Deputy Director CPAD: at many relevant times, this was Mr. Manoah Esipisu

19. The period in respect of which Ms Addo was to allege maltreatment by the Head of Library runs back as far as 2004, though these complaints focus mainly on the period 2007-November 2010. It appears (though we do not have precise dates) that Mr David Blake was the Head of Library for the period to 2007 and Ms Hume took over thereafter.

20. In summary, Ms Addo considered that she had been the victim of “marginalisation, discrimination , bullying and harassment” by line management over those years. In particular (and broadly using the slightly overlapping headings which were to feature in the grievance report) she considered that

- (a) she had been marginalised in her core function of cataloguing and that Mr Blake had failed to involve her in strategic work on the Comsec Publications and Cataloguing Project (2007);
- (b) cataloguing duties had subsequently been unfairly removed from her by Ms Hume
- (c) she had been denied training, particularly from 2009
- (d) there was a process by which management had attempted to eliminate her position
- (e) she had been bullied by Ms Hume: this was said to have taken the form of shouting, making the suggestion that Ms Addo needed psychiatric help other instances of alleged overbearing behaviour and also in the withdrawal of cataloguing activity;
- (f) Ms Hume had disclosed, or shared inappropriately, or failed to protect confidential information relating to Ms Addo; that Ms Hume had recorded on file and shared the unfounded suggestion that Ms Addo might need psychiatric help; and that on the day of her resignation Ms Hume had left the file in an unsecured location where it could be read by all;

(g) her job security had been threatened, initially by Mr Blake but uncontradicted by Mr Esipisu and continued by Ms Hume who had allegedly speculated about whether a possible new appointment would leave Ms Addo with a job²

(h) she should have been appointed (alone) to act up on Ms Hume's departure and that the allocation of the allowance was inappropriate

21. We should mention that in some instances Ms Addo applied the epithet "discrimination" to her treatment. That word is also used by Mr Rustomjee in his report to which we refer below. Both appear to use the word, however, in its broad sense of "unjustified differential treatment" rather than suggesting that the treatment of Ms Addo was grounded on or influenced by a protected characteristic such as race or gender.

22. We should also note at this stage that the breach of confidence allegations included some instances which are specifically highlighted in the Application to the Tribunal.

(a) On 14th November 2008 Ms Hume had forwarded to Ms. Daisy Cooper (a ComSec employee with whom Ms Hume appears to have been friendly but who appears to have had no management responsibilities of any relevance) a draft email³ addressed to Ms Hume's boss Mr Esipisu. The draft purported to "clarify" a meeting with Mr Esipisu concerning Ms Addo, stating (in effect) that Ms Hume should be treated as the proper channel for Ms Addo's concerns and problems. By forwarding the draft to Ms Cooper Ms Hume appears to have been sharing her thoughts and plans about dealings with Ms Addo with someone who should not have been involved (Miss Cooper) -hence the alleged breach of confidentiality. The draft goes on to state that the situation (with Ms Addo) should continue to be dealt with informally "and that there was no paper trail which could be used at a later date". This last (potentially incriminating) phrase (later struck through in the draft email) was to occasion comment from Mr Rustomjee.

(b) On 17th November 2008 Ms Hume forwarded to Ms Cooper an email which she had sent to Mr Esipisu referring to a "1-2-1" meeting Ms Hume had just held with Ms Addo where, Ms Hume claimed, she had given Ms Addo three opportunities to raise certain issues. Again the alleged infringement of confidentiality concerns the sharing with Ms Cooper of management discussions about Ms Addo which were no business of Ms Cooper's. As Ms Addo was later to point out⁴ Miss Cooper was not an HR Officer nor in the Legal and Constitutional Division so there was no justification for involving her.

(c) On resigning on 26th November 2010 Ms Hume allegedly left Ms Addo's personal file in an unsecured place in the library, enabling it to be read by anyone who came. This was of heightened concern because Ms Hume had left in the file a document containing a suggestion by Ms Hume that Ms Addo might need psychiatric help. Ms Addo has never suffered from a mental illness or required such help but was deeply concerned that such an idea, having been recorded at all, should be accessible to all-comers in the library.

23. Ms Hume's resignation in November 2010 created a vacancy. Pending the appointment of a permanent replacement for Ms Hume, one or more existing library staff would be asked to "act up". A "higher responsibility allowance" (in this case £14,086 per annum) would be paid.

24. In the event, a new permanent appointment did not materialise until Ms Nsekanji Pelekamoyo filled the post with effect from 6th February 2012.

25. On 14th January 2011 Mr Esipisu emailed the three library staff members to the effect that the Director of CPAD (Eduardo Del Buey) had approved proposals whereby Hilary McEwan would be "acting head of the library until further notice"⁵.

26. Ms Addo was concerned at this announcement. She got on well with Ms McEwan but felt that she had a better claim to the "acting up" responsibilities than Ms McEwan. On 17th January 2011 Ms Addo emailed Mr Esipisu seeking an explanation for Ms McEwan's appointment. She pointed out that whilst she and Miss McEwan were on the same paypoint she had longer service than Mr McEwan. She contended that she was therefore to be "deemed senior" to Ms McEwan.

27. The Secretariat revisited the issue in the light of Ms Addo's email. It was decided that the acting up allowance should be divided between Ms McEwan, Ms Addo and the third library member of staff Mr Donelan. Ms McEwan and Miss Addo would have 40% of the allowance each; Mr Donelan 20%. On 25th January 2012 Miss Addo was informed that Mr Steve Cutts Assistant Secretary-General had approved the

40% award (being 40% of £14.086 , that is £5634 per annum)⁶. In the event this was paid to Ms Addo for the full period from Ms Hume's departure to Ms Pelekomoyo's arrival.

28. Ms Addo remained unhappy that she had not been accorded the entirety of the acting up responsibilities and allowance.

29. Ms Addo raised a formal grievance covering her alleged maltreatment under Mr Blake and Ms Hume, the alleged breaches of confidence and the acting up duty. Mr Rustomjee, Director EAD, was appointed to conduct the grievance.

30. The parties have (no doubt sensibly) decided not to burden us with all the communications by which the grievance procedures were triggered and progressed. One consequence of this is that we have a slightly incomplete picture of the precise genesis of the grievance, exactly what the terms of reference were and what was provided to the investigator at the outset. The introduction⁷ to the report itself merely refers the fact that the author had been "asked to serve as investigator" in relation to "a grievance" ; that Annexes 2 and 3 to the Staff Rules set out relevant procedures; and that Miss Addo had provided "documentation", although the report later⁸ gives a general account of two "substantive" tranches of documentation she provided.

31. The report notes that Ms Addo's complaints had persisted and developed over "an extensive period"⁹ ; but no chronology of their evolution appears from the report or any of the papers before us.

32. We do have a "summary of issues" dated 11th August¹⁰ 2011 prepared by Ms Addo apparently at the request of Mr del Buey following email exchanges in March 2011. This refers to a list of what are described as "long-standing unresolved issues in the library". It deals to a greater or lesser extent with certain of Ms Addo's allegations about maltreatment by Ms Hume in particular , about breaches of confidence and about what it describes as "Lack of Transparent Criteria in the selection of the acting Head of Library."

33. It is clear from Mr Rustomjee's report however that he conducted a highly detailed investigation and considered all Ms Addo's complaints and the evidence with painstaking care. He interviewed Ms Addo , Ms McEwan, Mr Donelan, who also worked in the library, and Mr Esipisu. He examined the documents in depth.

34. He completed his report and submitted it to the Secretariat on 29th September 2012.

35. We summarise Mr Rustomjee's central conclusions by reference to the headings in paragraph 20 above.

36. As to (a) Mr Rustomjee concluded¹¹ that Ms Addo "was effectively marginalised in decision-making related to one of her core duties- cataloguing". Though he found no documentation "to corroborate a view that [Ms Addo] was specifically denied input into the strategic thinking and decision-making of her supervisor" the material did point to her "marginalisation". She had not been "afforded sufficient opportunity to input her experience knowledge and skills in an area of recognized competence" representing a core duty. A specific criticism was that management had failed to respond to her protestations that she was being by-passed or to a request that she be allowed to resume cataloguing duties on the departure of a temporary worker. Her plea was simply "ignored" and not flagged or addressed.

37. As to (b) Mr Rustomjee concluded that cataloguing duties had been unfairly removed from her sphere of responsibility. Ms Hume had, he found, "waved off", without justification, Ms Addo's enthusiasm to do this work. Miss Addo's complaint under this head was "valid".

38 As to (c) Mr Rustomjee did not accept the allegation that there had been a "long-standing" denial of training"; but he did accept that she had been denied the training on cataloguing she should have received and in this respect she had been treated less favourably than a library colleague of only six months standing.

39. As to (d) Mr Rustomjee found no "compelling or persuasive documentation that an attempt had been made to "eliminate" her post or to discriminate against her in this regard. He dismissed this complaint.

40. As to (e) Mr Rustomjee found¹² that there was substantial evidence to support Ms Addo's grievance "that she was subjected to a period of bullying" by Ms Hulme but there were a number of incidents relied on by Ms Addo where he found the evidence insufficient , or insufficiently "conclusive" to uphold the complaint. The bullying which was established involved speaking to Miss Addo in a derogatory manner,

undermining her, writing a file note that Miss Addo needed counselling or psychiatric help and denial of training.

41. As to (f) Mr Rustomjee upheld the complaints that confidential information had been divulged. As regards the November 2008 emails to Daisy Cooper he noted that she worked in an “altogether different part of the Secretariat” and that by involving her as she had done Ms Hume had engaged in an irregular and improper process of consultation and committed “at least a breach of confidentiality between line manager and employee”. He expressed a further and particular concern about the substantive comment in the earlier email that there should be “no paper trail”. This supported Ms Addo’s more general concerns that she had not been able to function in an open and transparent atmosphere and that her employment was insecure. The Report also implicitly accepts that there was a breach of confidentiality when Ms Hume left in an insecure place the file containing the (unjustified) suggestion that Ms Addo needed psychiatric help.

42. As to (g) Mr Rustomjee concluded that Ms Addo had been left (by clear implication inappropriately) feeling that her job was insecure. There were several different contributors to this situation, including specific comments by managers which had cast doubt at times on whether her position, or particular functions, would continue, the attitude to her cataloguing duties and the denial of training which were the subject of separate complaints. She had not been given the same opportunity to move out of the library as had been extended to a co-worker. Mr Rustomjee said he had found “no evidence at all of a concerted effort to place [Ms Addo’s] employment on a firm, understandable and clear footing, notwithstanding a documented record of correspondence from [Ms Addo] to various line managers and their supervisors”¹³.

43. As to (h) Mr Rustomjee accepted that it was “entirely inappropriate” to have appointed initially Ms McEwan to 100% of the duties. There had been no recognition of Ms Addo’s long service or experience, which included previous acting-up /managing experience. He rejected Ms Addo’s contention that she should have been appointed to act up alone on Ms Hume’s departure but concluded that she had a valid grievance that the 40% allocation was insufficient. One aspect of this was the failure to recognise that she had cataloguing experience and that her duties in this regard had been unfairly eroded.

44. The Grievance Report contains some initial observations based on the overall picture which might equally have served as conclusions. Mr Rustomjee referred¹⁴ to an overriding sense of “benign neglect” of Miss Addo’s concerns and a “consistent lack of response” to the issues she has raised.

45. The investigator’s recommendations appear on the final two pages of the report. These pages were the ones which were eventually omitted in the version sent to Ms Addo. Mr Rustomjee made three recommendations: first there should be a meeting between Ms Addo her line manager and the HR Director to examine her development and training needs; secondly that there be a similar meeting to examine options for Ms Addo to be transferred outside the library section and library work, should Ms Addo continue to be interested in such a transfer; thirdly that Ms Addo be paid an (unspecified) “once-off payment” representing an additional notional share of the acting up allowance.

46. The Report concludes with observations to the effect that informal mediation had been exhausted and that disciplinary action was a matter for the parties. As regards internal mediation Mr Rustomjee observes¹⁵ that Ms Addo had already made efforts to bring matters to the attention of line managers and their line managers. These had

“not been taken up in any detail. Many responses have ignored the substantive issues, throwing them back to the line manager, the latter often at the centre of [Ms Addo’s] complaint. Some have gone so far as to admonish [Ms Addo] for not using other opportunities to raise the issues she has, while again failing to follow up on either on substance or on commitments to convene meetings at which the issues can be addressed. Where any responses have been given, they have not addressed any specific issue”

The report goes on to criticise the “stark pattern” of leaving issues “unaddressed” when personnel departed the organisation.

47. In its Answer¹⁶ the Secretariat confirms that it does not seek to “ignore, nor dispute” the conclusions of the report in relation to what Ms Hume and Mr Blake “were found to have done”.

48. In its Rejoinder the Secretariat first reiterates¹⁷ that it “does not seek to dispute” the findings in the Report. It then seeks to qualify this by stating that, through no fault of the investigator “the Report is

“incomplete” by virtue of the fact that Ms Hume and Mr Blake were not interviewed. It then goes on to state that the Respondent does not agree with all the recommendations in the report (which the Secretariat appears to regard as going beyond the investigator’s function) “and indeed it does not agree with all its conclusions”. The Rejoinder does not indicate which “conclusions “are challenged or what alternative conclusions we are invited to draw.

49. We should say at this point that we do accept the findings and conclusions in the Report. They are clearly the product of a careful investigation and considered judgment by the senior person appointed to conduct it. No serious basis is provided by the Secretariat (or by Ms Addo) for making any different finding or drawing any different conclusion on any point.

50. We would also remark that whilst we can understand (without accepting , see below) the Secretariat’s suggestion that the investigator should not have made recommendations but only findings, the further and separate indication that there are (unspecified) conclusions which it does not accept is itself a matter of concern to us. The investigator was acting on behalf of the Secretariat and - at least in so far as relates to factual findings and conclusions -was indisputably acting within his authority from the Secretariat. We do not consider that it is consistent with the Secretariat’s responsibility as employer to an employee whose grievance has been upheld to question (especially in this generalised manner) the accuracy of factual conclusions reached in the employee’s favour. Such a stance can, moreover, only tend to undermine the purpose of the grievance investigation and the sincerity of any apologies or promises made by management to act differently in the future.

51. The Report was provided to Ms Addo on 21st November 2012, nearly two months after the report was apparently completed. But, as mentioned, the version sent to Ms Addo omitted the final two pages, containing the recommendations and the section on mediation (and the observation that disciplinary action was for the parties to consider) . It would have been clear to Ms Addo from the index page (which was provided to her¹⁸) that the missing pages respectively covered recommendations, exhausting mediation and disciplinary action.

52. On 24th November 2012¹⁹ Ms Addo emailed the Director of HR Zarinah Davies to ask for the missing sections of the report. On 29th November 2012²⁰ Ms Davies replied, outlining the position that the Secretariat was not obliged to share the report with the employee; that in this case it was considered helpful to Ms Addo for her to see the investigator’s findings and conclusions; that whilst it was open to the investigator to make recommendations, these were a matter for the “receiver of the report” and not the employee; and that there were also considerations of confidentiality.

53. A similar message was conveyed at a meeting held that day between Ms Addo, Mr Uku Director, Ms Davies and Ms Pelekamoyo. Ms Addo’s note²¹ of that meeting records Ms Davies making the additional observation that the investigator had gone beyond his remit in making recommendations. At the meeting Ms Davies offered a verbal apology on behalf of the Secretariat for Ms Addo’s treatment over “the past few years”. Ms Davies is also recorded as assuring Ms Addo that appropriate training would be provided. Ms Addo said she wanted specific proposals in writing as to how the allegations sustained by the investigator would be addressed. It was agreed to meet again.

54. The second meeting between the same individuals was duly arranged for 1st February 2013. At that meeting , as her note²² records Ms Addo specifically requested

- (a) that the apology be put in to writing
- (b) that management’s proposals be set out as to how issues in the grievance would be handled in future
- (c) that she should be told what measures were being put in place to prevent any recurrence and she further recorded
- (d) that she was dissatisfied with not being given the final pages of the report.

55. Ms Davies agreed to put the apology into writing and said she would make sure that the treatment Ms Addo had received under previous line managers would not recur , though Ms Addo’s note (we have none from the Secretariat) records a somewhat contradictory observation that this could not be “guaranteed”. There followed a discussion of the job description.

56. On 14th February 2013 Ms Addo emailed²³ Mr Uku (Director) asking if she could speak to him about “goings-on” at the library and an unspecified “turn for the worse”. Her email states that she was at home with a migraine and palpitations.

57. From late February 2013 Ms Addo went off work with work related stress. It appears that she remains off sick at the time of the Tribunals deliberations.

58. She had a meeting with the Occupational Health Adviser, Dr Schilling, on 27th March 2013. He reported by letter of the same day. The report notes that she has suffered from hypertension for many years and has been on medication since 1997. It relays Ms Addo's account to Dr Schilling of the grievance, the missing pages of the report and its conclusions. Dr Schilling opines that she is "suffering from work-related stress" and he describes the physical manifestations: exacerbated high blood pressure, palpitations, headaches and insomnia.

59. Meanwhile her solicitors Suttons were corresponding with the Secretariat through Mr Bouwhuis, in-house legal counsel, in relation to the requests made by Ms Addo at the 1st February meeting. On 28th March Mr Bouwhuis appears to have sent by email an undated "holding" letter promising a substantive response "during the week beginning 8th April". A substantive response never came. It appears that Mr Bouwhuis had left the Secretariat by the date of his promised response. No one took up the matter for the Secretariat or informed Suttons or Ms Addo that they should now correspond with someone else at the Secretariat. Suttons sent a "chaser" email to Mr Bouwhuis on 22nd April 2013 in ignorance of his having left the organisation.

60. Ms Addo lodged her present application to this Tribunal at the beginning of May 2013. The absence of the promised written apology was one of the elements in her claim. It appears that a draft letter containing a written apology (and further responses to Ms Addo's requests made at the 1st February meeting) was prepared in May. It was eventually sent on 3rd September, but still in draft form, unsigned (though bearing Ms Davies' name at the foot) headed "DRAFT for review May 2013" and with some "xxxs" indicating that information was to be inserted. The draft referred to "requests made during the discussion of xx 2013" [presumably a reference to the 1st February meeting]. It acknowledged that the treatment to which Ms Addo had been subjected was "not in line with the human resources principles of the secretariat or good management practice" and stated; "We are indeed sorry that this happened". It then summarised Ms Addo's complaints and asserted that "since the arrival of the new Head of Library in xxxx, "concerted efforts had been made (by implication to address the underlying problems)" "even before the published grievance outcome was known". a number of matters - some specific and some very general are then set out: the holding of team meetings, ensuring regular communications and feedback, discussion of Ms Addo's workload and duties and "exploring learning and development opportunities". Notably one sentence tails off completely with no resolution:

"With regards to your complaint that cataloguing duties were taken away from you xxxxx"

As regards future action the letter asserted that the initiatives it had set out "above" (which included the incomplete sentence on the important subject of cataloguing duties) demonstrated that the Secretariat had taken steps to address the problems already. There follow some very general and vague assurances about ensuring compliance in future with human resources principles.

61. At the same time the Secretariat sent Ms Addo the last two ("missing") pages of the investigation report.

62. The explanation for delaying the promised written apology is set out in the Secretariat's reply. Mr Bouwhuis' departure had left the Secretariat without legal advice.

" In the absence of legal advice, Human Resources decided not to send the letter considering that litigation had been initiated"²⁴.

63. Given that Miss Addo had long since been given the findings of the grievance investigation, a verbal apology and the promise of a written apology, it is difficult to see why the sending of the promised written apology should require legal advice. It is also difficult to see why, if such legal advice was really needed, it was not sought externally. Nor is it apparent why nothing was said to Ms Addo or her advisers at the time about the reasons for delay. More broadly, the instigation of legal proceedings is not a good reason for treating an employee less favourably than the employer otherwise would. Sending an unsigned, incomplete draft more than seven months after the written apology had been promised scarcely improves the position.

64. Making all due allowances for the pressures often engendered by litigation, we are bound to say that it reflects adversely on the Secretariat that when faced with a highly critical grievance report (which

itself notes a serious long-term failure on the part of the organisation to address Miss Addo's legitimate complaints) it then declines to observe its own promise to issue a written apology because it fears the consequences in litigation. Such a stance may fail to inspire confidence in the sincerity of the apology or in any assurances for the future.

(ii) The Application and Response

65. The Application identifies the contested decisions as.

"a. the harassment, discrimination and bullying of me by the Secretariat, in particular through the acts of Catherine Hume (between 2008 and 2009...and David Blake (between 2004-2007, especially 26th March 2007- 4th July 2007);

b. the decision not to appoint me to the position of Acting Head of Library on 14th January 2011 and the failure to give adequate information about selection to this post;

c. the divulging of confidential information about me by Catherine Hume to an unauthorised member of staff on 14th & 17th November 2008;

d. the decision of 29th November 2012 not to give me the complete version of the Grievance Investigator's Report and the decision not to consider, discuss with me and where appropriate, implement the recommendations made by the Investigator"; and

e. not agreeing to (or addressing) the requests made by me on 1 February 2013...following the upholding of parts of my grievance by the Grievance Investigator"

66. The complaint about confidential information is elaborated in the explanatory statement to include Ms Hume's actions in leaving the confidential file (with the unjustified note questioning Ms Addo's mental health) in an unsecured place on Ms Hume's resignation.

67. The Application invokes the obligations in the Staff Rules and annexes relating to Harassment and Administrative Grievances and the "implied duty of trust and confidence". It further claims compensation in the sum of £20,000 and costs.

The Answer

68. In the Answer the Respondent suggests that since Ms Hume and Mr Blake have left and because the missing pages of the grievance report have now been provided "most of what is requested in the Application is at best redundant and at worst irrelevant."²⁵ We deal with its responses to particular pleas in the context of our analysis below.

Subsequent pleadings

69. We do not propose to summarise the Reply and Rejoinder. We deal with particular points they raise in the context of our findings of fact above and analysis below.

(iii) Jurisdiction

70. The Tribunal has jurisdiction under its statute to consider an application filed within three months of the event giving rise to the application (or within three months of the filing of certain notices which do not arise in this case): Article II (2)(ii). An out of time application can nonetheless be considered where the Tribunal is satisfied that it was not reasonably practicable for the application to be filed within the three month period: Article II(3)

71. In the present case the Secretariat accepts that the claim is in time because the alleged failure to agree or address complaints (contested decision (e) in the Application) must be regarded as having occurred within three months of filing.

72. The Secretariat seeks to suggest that this aspect of the matter has now been remedied but does not suggest that, even if correct, this would affect the Tribunal's jurisdiction

73. In our judgment the Secretariat was correct in this case not to take any issue as to time limits. The failure to respond to Ms Addo's requests of 1st February 2013 was a continuing act which extended right up to and beyond the institution of proceedings. Moreover those requests were themselves a stage in the story of a continuing grievance about matters extending back over a period of years - a grievance, which, from the Applicant's perspective, has yet to be satisfactorily resolved.

74. We would not wish the impression to be given, however, that it is always necessarily sufficient to engage the jurisdiction of the Tribunal that an issue has arisen on the correspondence within three months of proceedings. In a case where an individual was raising in correspondence a long-dormant dispute, the Tribunal might have to consider for example whether the "event giving rise to the

application “ was really the long-dormant dispute rather than the recent correspondence about it. In other words, it should not be assumed that the jurisdiction of the Tribunal can be engaged by writing a letter or making demands about an out-of-time event and then treating the response, or lack of it, as a fresh “event” . We do not address this further in this judgment because this case is at the other extreme: what happened - and did not happen - within the three month period before proceedings is genuinely the culmination of a long history culminating with an unsatisfied grievance (and the Applicant was of course obliged to exhaust internal remedies as she has sought to do) .

Analysis: The elements of the claim addressed.

(a) Harrassment , discrimination, bullying and marginalisation, particularly through Ms Hume and Mr Blake
75. As regards the facts, we have already indicated that we accept the findings of the grievance report. To the extent that the report upholds her allegations, so do we. To the (more limited) extent to which the report rejects her allegations, so do we.

76. We have set out a summary of Mr Rustomjee’s principal findings and conclusions at paragraphs 36-46 above and will not repeat them here. In essence however , the central allegations upheld with reference to the above heading were that Ms Addo’s cataloguing duties had been unfairly removed, appropriate training denied, Ms Hume had bullied her in certain respects, her job security had been undermined and there had been an ongoing failure to engage with issues which she had raised.

77. As far as the labels are concerned , we would use the expression “unfair treatment” in preference to “discrimination” as that is the broad sense in which Mr Rustomjee uses the word. (We do not understand him to be concluding that there was discrimination, for example, on grounds of race or sex). The expression “marginalisation” is clearly apt and “harassment” and (to a lesser extent) “bullying” can also fairly be applied to aspects of his findings.

78. Is this conduct in breach of Ms Addo’s contract having regard to the law of the international civil service which we must apply?

79. It would be extraordinary if such conduct were not a breach of the contract. We have no difficulty in finding that it is.

80. The Applicant relied on the “implied term of trust and confidence” that is to say the implied term recognised in national law that the employer will not without proper and reasonable cause conduct itself in a manner calculated or likely to destroy or seriously damage trust and confidence between employer and employee.

81. We are satisfied that a similar principle is contained in the law of the international civil service, which we must apply. It was recognised, for example in Sita Ram ILOAT judgment no 367 that it is implicit in the contract of service that the employing administrative body must have a care for the dignity and reputation of the employee and should not cause “unnecessary personal stress”.

82. This implied duty was plainly breached by the conduct of the Secretariat (through its managers and particularly Ms Hume and Mr Blake) in the respects we have summarised in para 76 above.

(b) Head of library

83. Here again we accept the findings and conclusions of the Grievance Report.

84. It follows that we do not accept that Ms Addo should have been appointed as the sole holder of acting up responsibilities. There is no requirement in the Staff Rules or in the general law that appointment to acting up duties must be decided on the basis of seniority, as Ms Addo contends. Equally the fact that Ms McEwan’s contract apparently provided for her to deputise for the Head of Library in her temporary absence did not mean Ms McEwan could automatically be selected to act up for what could have been (and was in the event) a long interregnum where there was no permanent Head of Library. A reasonable management judgment needed to be made. We accept the conclusions of the Grievance Report that a reasonable management judgment in the present case must have entailed a sharing of duties.

85. We would add that, contrary to Ms Addo’s contentions, there is no requirement that criteria must be published to determine for eligibility for “acting up”. Rule 52 of the Staff Rules sets out the requirements for awarding the “higher responsibility” allowance . A discretion is given to the Head, PSSD, to approve the allowance “after satisfying him/herself that the proposed allowance is reasonable in terms of extra work, the duration of of any relevant staff member absence or the expected timing for additional staffing”. Although there follow more precise rules of computation, the Rule envisages that a practical

judgment will be made about the award. The Rule does not envisage that there will be a highly structured process involving defined criteria.

86. The implied term illustrated by the Sita Ram case (above) entails that the allocation must however be approached with a level of fairness required by proper respect for the individuals involved, their abilities and experience.

87. It follows also from our acceptance of the Report's findings that we do accept, in line with the report, that given her seniority experience and the fact that cataloguing duties had been unfairly removed from her, Ms Addo should have been awarded a greater share of the acting up allowance. Equally, in line with the Report we do not accept that she should have been awarded the full duties or the full award.

(c) Confidential information

88. We accept, in line with the findings in the Grievance Report that there were breaches of confidentiality by Ms Hume

(a) in disclosing to Daisy Cooper in the emails of 14th and 17th November 2008 (referring to line management discussions concerning Ms Addo which Ms Cooper had no business to know); although Ms Cooper was employed by CSAT, an employee such as Ms Addo is reasonably entitled to expect that sensitive discussions about her manager's dealings with her will not be disseminated outside the group of staff which has a proper interest in knowing about it;

(b) in leaving in an insecure place the file containing the (unjustified) suggestion that Ms Addo needed psychiatric help.

89. Respect for confidentiality can be seen as an aspect of the Sita Ram principle. It is generally recognised by legal systems internationally.

90. The Secretariat is vicariously responsible for the breaches which have occurred.

(d) Incomplete report and consequential lack of discussion of recommendations

91. Ms Addo contends that the Secretariat was obliged to give her the report in full. She says that the Secretariat was obliged to disclose and discuss with her the recommendations which were omitted.

92. The Secretariat notes that the "missing" pages have been disclosed to her since proceedings were started. It states²⁶ that this was done to ensure that Ms Addo did not think the Secretariat was "hiding" anything from her. But it says that there is nothing in the Staff Rules which obliged the Secretariat to disclose any part of the report to her; and that the investigator had not been asked to provide recommendations in any event, his mandate being merely to "establish the facts". In its rejoinder it points out that the only reference to "recommendations" under either of the applicable investigation procedures is the power under the harassment procedure Annex 3) to recommend disciplinary action (which the Secretariat says, is irrelevant here because the candidates for disciplinary action are no longer employed).

93. We consider that the Respondent is right to say that there is no general requirement under the applicable procedures on a grievance investigator to state recommendations . We also agree that the employee has no express right to see a report which the investigator produces.

94. Management guidance contained in the "Surtherland Human Resource Handbook" goes a little further than the grievance and harassment procedures which are appended to the Staff Rules. The "Guidelines for Investigators" (para1) state that the investigator can make a recommendation as to how behaviour which he deems unacceptable should be categorised, In the context of interviews with witnesses it also refers (at para12) to the fact that the complainant may wish to see "the full results of the investigation" and that if so, the Director will show them to the complainant. But we bear in mind that this is simply "management guidance" and does not form part of the Staff Rules or any part of the contract of employment.

95. However, we consider that there are certain minimum requirements which are implicit in dealing properly with a grievance and complying with the Sita Ram duty.

96. First any grievance does require that the employee be given an answer: are the complaints well established or not?

97. Secondly, it seems to us, there must be a rational and reasoned answer, explaining in broad terms what facts and conclusions have been reached (and why).

98. Thirdly, the form in which the reasoned answer is given must generally be for the organisation, subject to any detailed internal rules (and here there are none which assist)

99. Fourthly, if the organisation decides to provide the reasoned answer to the grievance by supplying the investigator's report, it must not without sufficient justification, redact or omit parts of the report. Sometimes redaction or omission of parts of the report will be justified. It is not appropriate to seek to define these circumstances but it can easily be envisaged that it might be necessary to do so where, for example, commercially confidential information or something relevant to international security had been set out in the background or (possibly) where the identity of an "informer" required protection.

100. We do not however consider there was any sufficient justification here for omitting the final two pages. The fact that it contains recommendations is not sufficient justification. In a grievance such as Ms Addo's which has implications for an employee's future treatment, opportunities or status, there is nothing inherently wrong in an investigator's making recommendations (even though the procedure does not require it) . If they are made in the report the employee has a legitimate interest in knowing what they are, so that he or she can make representations about them; and they should not be excised without some further justification.

101. We conclude that having chosen to divulge to Ms Addo the report in the form Mr Rustomjee produced it, the Secretariat had no sufficient justification for cutting off the final two pages.

102. The Secretariat fairly acknowledges that the effect of withholding the final pages could be that the complainant would think it is "hiding something". This is of course the very opposite of what a proper grievance procedure seeks to achieve: an honest and open resolution of the issues raised, "warts and all"

103. It is also worthy of note that a major thrust of the concerns raised by Mr Rustomjee is a long-standing lack of engagement by management with Ms Addo's complaints. If ever there was a case where the unhappy history required a high degree of openness at the grievance report stage this was it.

104. The effect of omitting the final pages was to prevent Ms Addo being able to discuss those recommendations, not least whether she should be compensated in relation to the "acting up", as recommended. These were matters which, in the circumstances she was entitled to have the opportunity to debate.

(e) Not addressing the 1st February requests

105. It is common ground that the Secretariat had failed to respond at the date of the proceedings to Ms Addo's requests made at the 1st February meeting.

106. We have set out the requests at paragraph 54 above. Those requests were, against the background of the grievance, which had been upheld, reasonable ones, in the sense that a reasoned reply from the Respondent was to be expected.. Indeed , so far as the written apology was concerned the Respondent had promised to provide one.

107. There was no reason why a written apology should not have been produced promptly (and well before the beginning of May . It follows from our findings of fact above that we do not consider the departure of a legal adviser to provide any good reason for not providing a written apology which has been promised.

108. The other requests made by Ms Addo and later summarised by her solicitor also required a response which management should have provided.

109. If it was necessary to take legal advice - and we cannot see why it was - and none was available internally then external legal advice should have been taken urgently and any delay explained to Ms Addo.

110. There were clear further breaches of the Sita Ram duty in not responding.

111. These breaches are not in any way mitigated by the fact that a deliberate decision was apparently made by Human Resources to withhold issuing the proposed letter because legal proceedings had been instituted. We reiterate that the institution of proceedings is no basis on which to renege on a promised apology.

112. Nor do we consider that sending an unsigned , incomplete letter headed "DRAFT for revision" meets the requirement for a proper formal " on the record" response to the 1st February requests and the promised apology.

(v) REMEDIES

113. Where the Tribunal finds the application to be well founded , Article X of the Statute requires the Tribunal to order rescission of the decision contested or the specific performance of the obligation invoked and empowers us to award compensation.

114. We order that a complete and signed letter responding to the Applicant's requests of 1st February 2013 be provided and a complete signed written apology be issued. It is a matter for the Secretariat whether this is done in the same, or separate, letters.

115. The other matters of which complaint is made are not, in substance, in the nature of decisions which can be rescinded or obligations which can be specifically performed, except in so far as they relate to the Secretariat's secondary obligation to compensate for wrongs done.

116. The principal appropriate remedy is therefore compensation.

117. We have power to award compensation of up to three times net annual salary or more if the case is exceptional: see Article X(1) of the Statute

118. In assessing the appropriate level of compensation we have a broad discretion to award what is equitable for the injuries sustained.

119. It is relevant to examine whether there are particular losses which can be attributed to the actions which we have found to infringe the contract.

120. We are not able to find that any particular injury to health has been sustained as a result of the Respondent's impugned conduct. Ms Addo has long suffered from hypertension. Dr Schilling's report indicates that the cause of her absence from February 2013 has been work stress but we cannot correlate this with specific breaches we have identified. On the face of it the absence from February 2013 might appear to have more connection with the unspecified "goings on" which Ms Addo records in her email to the Director of 14th February 2013 . We simply do not know. Fundamentally, there is nothing which enables us to say that some specific deterioration in Ms Addo's condition is attributable to the breaches we have identified.

121. This is a case where the principal injury is moral injury.

122. We think it right to look at the events in their totality , rather than ascribing particular figures to individual awards.

123. Ms Addo in her Reply sought to extend her claim to some £400,000. But she seeks to do so by reference to a range of ongoing issues (concerning renewal of her contract, expected problems with references and other anticipated issues with the Secretariat) which are not before the Tribunal and so we do not permit any amendment of her plea in this respect.

124. We debated the appropriate figure at some length. Ultimately we concluded that the appropriate figure, maintaining a sense of proportion whilst acknowledging the seriousness of the treatment, was the £20,000 claimed in her Application

125. Mrs Addo's treatment under Ms Hume in particular was serious; and the Secretariat had compounded Ms Addo's sense of injustice by failing to deal properly with her complaints and most recently with the outcome of the grievance and particularly by failing to respond properly to her requests of 1st February.

126. We award £20,000 as compensation.

(vi) COSTS

127. The Applicant has very substantially succeeded in her claim . We think it appropriate to award her such reasonable legal costs as she has incurred in connection with the proceedings.

128. It is hoped that the amount of these costs can be agreed without further recourse to the Tribunal. We leave it to the parties to refer the matter back to us in the event that they are unable to reach an amicable agreement)

CONCLUSION

129. The Applicant's claim for breach of contract succeeds to the extent indicated in the judgment and we award her £20,000 as compensation . We direct that the Respondent issue a completed signed response to her requests of 1st February 2013 and a completed signed apology. She is also entitled to her reasonable legal costs

Given on this 9th day of April 2014

Christopher Jeans QC, | President Dheerendra Dabee SC | Justice Sandra Mason QC