

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

*Registry's translation,  
the French text alone  
being authoritative.*

**F. (No. 2)**

**v.**

**UNESCO**

(Application for execution)

**123rd Session**

**Judgment No. 3763**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 3505 filed by Ms L. F. on 6 October 2015, the reply of the United Nations Educational, Scientific and Cultural Organization (UNESCO) of 1 February 2016 and the complainant's rejoinder of 25 February 2016, no surrejoinder having been submitted by UNESCO;

Considering the documents produced by the parties at the Tribunal's request;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

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

#### CONSIDERATIONS

1. In Judgment 3505, delivered in public on 30 June 2015, the Tribunal dismissed the complainant's first complaint as irreceivable under Article VII, paragraph 1, of its Statute, on the grounds that she had filed it without having first exhausted the internal means of redress open to her. However, it remitted the matter to UNESCO "in order that the Appeals Board" might, "after taking such steps as may be necessary to ensure that the procedure has been duly followed", "give an opinion on

the two appeals submitted to it by the complainant” against decisions which, implicitly then explicitly, confirmed that her entitlement to annual leave and sick leave had not been extended beyond the date of expiry of her appointment.

2. In accordance with paragraphs 10 to 12 of the Statutes of the Appeals Board, a staff member who has submitted a notice of appeal to the Board must file a detailed appeal within the following month, a copy of which is then forwarded to the Administration of the Organization in order that the latter may provide a detailed reply. Paragraph 18 of the Statutes provides that the time limit for filing a detailed appeal and for the Administration’s reply, which in both cases is set at one month, may be extended by the Chairperson of the Appeals Board.

3. The evidence in the file shows that when Judgment 3505 was delivered in public, the complainant, who had obtained several extensions of the time limit, had not yet filed the detailed appeal which she was expected to submit to the Appeals Board. Any further examination of the two aforementioned appeals, which had been joined at the complainant’s request, therefore depended on the submission of that brief.

4. Contrary to the complainant’s repeated assertions in her written submissions, in those circumstances the execution of Judgment 3505 did not require UNESCO to take any particular initiative, apart from that of ensuring the resumption of proceedings before the Appeals Board. Thus, the only action which the secretariat of the Board had to take was to remind the complainant, if necessary, that it was incumbent upon her to submit her detailed appeal. The documents in the file show that this action was in fact taken by the Secretary of the Appeals Board, who drew the complainant’s attention, first informally and then by a letter of 14 December 2015, to the fact that she needed to produce that document.

5. The information supplied by the parties in the further submissions ordered by the Tribunal shows that the complainant eventually filed her detailed appeal on 23 March 2016 and that the Organization produced its detailed reply on 22 September. Thus, although at the date on which

the present judgment is adopted, the Appeal Board has not yet issued its opinion, the appeal proceedings are taking their normal course, and while it is certainly regrettable that they have not progressed more rapidly, it must be noted that their length is largely attributable to the time limit extensions requested by the complainant herself.

6. It follows from the foregoing that, in the present circumstances, UNESCO has correctly executed Judgment 3505 and there are therefore no grounds for allowing the complainant's claims that the Organization should be ordered to honour that obligation or to pay a penalty.

7. Nevertheless, the submissions in the file show that, after the public delivery of the judgment, in response to an enquiry from the complainant as to the steps the Organization intended to take to resume the examination of the above-mentioned appeals, she received a letter from the Director of the Bureau of Human Resources Management, dated 23 September 2015, stating that "the Appeals Board [had] examined both appeals at the hearing on 29 May 2015" and that "the Tribunal's judgment ha[d] therefore been executed". As the Director later acknowledged in a letter of 14 January 2016, this statement was obviously wrong, in that it plainly confused those appeals with others lodged by the complainant, which had in fact been examined at the hearing in question.

8. In this case, the letter of 23 September 2015, the sole purpose of which was to reply to the complainant's request for information, cannot be regarded as a genuine administrative decision. In particular, it cannot be construed as a deliberate refusal on the part of UNESCO to execute Judgment 3505 since, as stated above, the Appeals Board was at that very time trying to resume the examination of the two appeals referred to in the judgment. Hence there are no grounds for setting aside the alleged decision to that effect which, in the complainant's opinion, may be gleaned from the terms of the letter.

9. However, the error in the letter of 23 September 2015 reveals regrettable negligence in the processing of the complainant's case by the services of the Organization. Indeed, this negligence is all the more

serious for the fact that, on receiving the letter in question, the complainant expressed her astonishment at its content in a letter to the Administration dated 29 September 2015, to which she never received a reply. The incorrect information given to the complainant was likely to sow confusion in her mind, in that it implied that Judgment 3505 would not be executed properly, and therefore to give rise to a feeling of frustration. This conduct by UNESCO thus caused the complainant moral injury, which may be fairly redressed in the circumstances of the case by ordering the Organization to pay her compensation in the amount of 1,000 euros.

10. Furthermore, it was the letter of 23 September 2015 which prompted the complainant to file this application for review, albeit mistakenly. Indeed, it was not until after this application had been filed that the Organization, by the above-mentioned letter of 14 January 2016, corrected the initial error. The complainant may therefore legitimately claim costs, which the Tribunal will set at 500 euros.

#### DECISION

For the above reasons,

1. UNESCO shall pay the complainant 1,000 euros in compensation for moral injury.
2. It shall also pay her costs in the amount of 500 euros.
3. All other claims are dismissed.

In witness of this judgment, adopted on 1 November 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakit , Judge, sign below, as do I, Dra en Petrovi , Registrar.

Delivered in public in Geneva on 8 February 2017.

*(Signed)*

CLAUDE ROUILLER    PATRICK FRYDMAN    FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ