

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

Z.

v.

UNESCO

124th Session

Judgment No. 3839

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr M. Z. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 4 December 2014 and corrected on 8 January 2015, UNESCO's reply of 23 April, the complainant's rejoinder of 27 August and UNESCO's surrejoinder of 9 December 2015;

Considering the email of 8 January 2017 from the complainant's counsel informing the Registrar of the Tribunal of the complainant's death on 19 May 2016 and his email of 23 January 2017 notifying the Registrar that the complainant's successors had decided to pursue the complaint;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

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

Considering that the facts of the case may be summed up as follows:

The complaint concerns the rejection of the complainant's request for the reclassification of his post.

At the material time, the complainant held a post at grade P-3 in the Culture Sector. On 21 December 2007, following structural changes in that sector, his job description was updated to reflect the additional duties that had been assigned to him. He signed the updated job

description on 9 January 2008. On 11 December 2008, he again signed this updated job description, after an evaluation carried out on 22 September 2008 on the basis thereof had resulted in the post being maintained at grade P-3.

On 6 September 2010 the complainant sent the Director-General a “request for an updated post description for the purposes of a desk audit and reclassification”, referring to Staff Rule 102.2 and specifying that this was a protest within the meaning of paragraph 7(a) of the Statutes of the Appeals Board. He contended that his 2007 job description “ha[d] neither been verified nor classified by the competent department” and asked for it to be revised to “reflect faithfully the entirety and complexity of the additional duties and responsibilities” that he said he had assumed since 1998. Having received no response, he lodged a notice of appeal with the Appeals Board on 4 November 2010. On 23 November 2010 he was informed that the Director-General had decided to dismiss his protest. She considered there had not been any substantial change to his responsibilities since the evaluation “duly carried out on 22 September 2008 by the competent service”, which had confirmed the grade of P-3.

The Appeals Board delivered its report on 11 July 2014 after hearing the parties. It recommended that the appeal be dismissed as irreceivable *ratione temporis*, since the complainant had not challenged the “Director-General’s decision” confirming his classification of P-3 until 6 September 2010, although he had been notified of it on 11 December 2008. On the merits and subsidiarily, the Appeals Board recommended that an updated job description be drawn up and that the complainant’s post be re-examined with a view to a possible reclassification with retroactive effect.

By a memorandum of 11 September 2014, which constitutes the impugned decision, the complainant was informed that the Director-General had decided to accept the Appeals Board’s recommendation to dismiss the appeal as irreceivable but to reject its subsidiary recommendation on the grounds that the Board had been wrong to examine the merits of the appeal.

The complaint filed with the Tribunal on 4 December 2014 seeks the setting aside of the impugned decision, the drawing up of a new job

description, the performance of a desk audit of the complainant's post, the reclassification of that post and compensation for the moral and material injury that the complainant claimed he had suffered.

UNESCO asks the Tribunal to dismiss the complaint as irreceivable on the ground *inter alia* that the protest was filed late. Failing that, it requests that the complaint be dismissed as unfounded.

CONSIDERATIONS

1. The threshold question is the complaint's receivability, contested by the defendant on the grounds *inter alia* that the complainant's protest was time-barred.

2. In UNESCO's view, the complainant ought to have challenged the result of the evaluation of his updated job description of 2007 within one month of the date on which he received it, that is, 11 December 2008, as evidenced by his signature at the foot of the document. However, he did not do so until almost two years later, on 6 September 2010.

3. According to the complainant, his protest was not time-barred since the absence of a decision of the Director-General endorsing the evaluation of his post at the same grade meant that the time limit for filing a protest had not been triggered. It was his belief that such a decision was required pursuant to Administrative Circular No. 2244 of 19 September 2005 entitled "Table of delegation of powers and accountability".

However, the circular and the explanations on this matter in the file make it plain that a decision to maintain a post's classification did not have to be submitted to the Director-General. This plea is therefore unfounded.

4. The Tribunal observes that an evaluation of the complainant's job description was carried out on 22 September 2008 and resulted in his post being maintained at grade P-3. That decision to maintain the post at the same grade, which was taken by a department of the Organization competent for classification, must be seen as an administrative decision

adversely affecting the complainant. It is well established that any act by an officer of an organisation which has a legal effect constitutes a challengeable decision (see Judgment 3141, under 21). In view of the foregoing, the complainant ought to have challenged his updated job description within one month of the date on which he received it, being at the latest 11 December 2008, the date on which he signed it. The protest filed on 6 September 2010 was hence time-barred.

It follows that in accordance with Article VII, paragraph 1, of the Statute of the Tribunal, the complaint is irreceivable for failure to exhaust internal means of redress.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 28 April 2017, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ