

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**F. R. (No. 6)**

**v.**

**UNESCO**

**125th Session**

**Judgment No. 3937**

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Ms A. L. F. R. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 10 March 2016 and corrected on 27 April, UNESCO's reply of 10 October, the complainant's rejoinder of 22 December 2016 and UNESCO's surrejoinder of 10 April 2017;

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

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

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

The complainant, who at the material time held the grade P-5 post, contends that she was deprived of any real duties.

Details of the complainant's career at UNESCO are given in Judgments 3580 and 3936 on her first and fifth complaints respectively. Suffice it to recall that in a memorandum of 18 February 2013, the Director of the Bureau of Human Resources Management informed her that as from 1 March 2013 she would be temporarily assigned to UNESCO's Headquarters in Paris as a *chargée de mission*. That same day the complainant submitted a protest in which she requested the Director-General to reconsider the decision to transfer her to Paris. That protest was dismissed and the complainant lodged a notice of appeal

with the Appeals Board on 18 April 2013 challenging the decision of 18 February 2013.

The complainant took up her duties in the Bureau of Field Coordination on 24 June 2013. That Bureau was abolished in late 2013 and the Director of the Bureau of Human Resources Management informed the Director-General in a memorandum of 23 January 2014 that the complainant would be transferred to the Bureau of Strategic Planning, to which the Director-General agreed. The complainant retired on 31 March 2014.

Meanwhile, in an e-mail of 14 March 2014 which was addressed to the Director-General and copied to the Deputy Director-General, the complainant, referring to paragraph 7(a) of the Statutes of the Appeals Board, alleged that she had not been given any tasks to do since her assignment to Headquarters. She sought compensation for the injury arising from the fact that she had thus been “deprived of work”. On 16 April the Deputy Director-General replied that if she wished to contest an administrative decision adversely affecting her, in accordance with abovementioned paragraph 7(a) she should lodge a protest in that connection with the Director-General via the Bureau of Human Resources Management. In an email of 19 April, the complainant told him that she was challenging the decision to transfer her to a “post without real duties” that had been taken on 18 February 2013. On 6 May 2014 the Deputy Director-General replied that since the appeal against that decision which she had lodged on 18 April 2013 was still pending, the Appeals Board would have the opportunity to examine all her claims and allegations relating to that decision.

On 6 May 2014 the complainant lodged an appeal with the Appeals Board challenging the “implied decision to deprive [her] of duties in the post [...] to which [she] [had been] transferred by decision of 18 February 2013”. She sought redress for moral and professional injury and also claimed costs. The Appeals Board delivered its opinion on 25 September 2015 after hearing the parties. It considered that insofar as the appeal was directed against the decision of 18 February 2013 – the only “existing” administrative decision in its view – it was irreceivable since the complainant had submitted it “almost one year”

after receiving notification of the aforementioned decision. The Appeals Board added that insofar as the appeal was directed against an alleged implied decision to deprive her of real duties, the complainant had not submitted a protest against such a decision within the prescribed time limits, and indeed it had been unable to identify such a decision. It concluded that the complainant had not complied with the Statutes of the Appeals Board and therefore recommended that the Director-General dismiss the appeal as time-barred. In a letter of 10 December 2015 the complainant was notified of the Director-General's decision to endorse that recommendation. That is the impugned decision.

In her complaint, the complainant seeks the setting aside of the impugned decision, redress for moral and professional injury and an award of costs in the amount of 15,000 United States dollars.

UNESCO submits that the complaint is irreceivable for failure to exhaust internal means of redress inasmuch as it is directed against the decision of 18 February 2013. It considers that the complaint is irreceivable *ratione materiae* inasmuch as it is directed against an alleged implied decision. Subsidiarily, it argues that the complaint is unfounded.

#### CONSIDERATIONS

1. The complainant impugns the decision of 10 December 2015 by which the Director-General dismissed as irreceivable the appeal that she had lodged on 6 May 2014 contesting the “implied decision to deprive [her] of duties in the post [...] to which [she] [had been] transferred by decision of 18 February 2013”.

2. The Director-General dismissed that appeal since she considered – in keeping with the recommendation of the Appeals Board, which she endorsed – that the complainant's challenge must be interpreted as being directed either against the decision of 18 February 2013 transferring her to a post at Headquarters, or against an implied decision – which could not be identified – depriving her of any real duties in that post. The Tribunal finds that the Director-General and the Appeals Board thereby misconstrued the complainant's email of

14 March 2014. In that email, the complainant sought to contest the fact that she had not been given any real duties since holding the post to which she had been assigned at Headquarters. She was not therefore challenging the aforementioned decision of 18 February 2013 as such.

Furthermore, although she erroneously indicated that she was acting on the basis of paragraph 7 of the Statutes of the Appeals Board, she clearly intended to complain about the fact that, in her view, she did not have any real duties in the post to which she had been assigned. It was hence incumbent on the competent authority within the Organization to respond to the grievance thus submitted with a decision that the complainant could have contested, if she so wished, through the internal means of redress provided for in the Staff Regulations. It follows that UNESCO was wrong to treat the complainant's email of 14 March 2014 as a protest under paragraph 7(a) of the Statutes of the Appeals Board.

3. It ensues from the foregoing that the impugned decision of 10 December 2015 must be set aside. At this stage of the proceedings, the Tribunal would ordinarily remit the case to the Organization for the competent authority to take a decision on the grievance that was submitted to it. However, in view of the passage of time since the events and the complainant's departure from UNESCO, the Tribunal considers that it would not be appropriate to do so in this case.

4. The unlawfulness of the impugned decision arising from the fact that the grievance submitted by the complainant was not properly examined caused her moral injury, which may be fairly redressed by awarding her 10,000 euros in compensation.

5. As she succeeds in part, the complainant is entitled to costs, which the Tribunal sets at 1,000 euros.

#### DECISION

For the above reasons,

1. The Director-General's decision of 10 December 2015 is set aside.

2. UNESCO shall pay the complainant compensation in the amount of 10,000 euros for moral injury.
3. It shall also pay her 1,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 13 November 2017, Mr Patrick Frydman, Vice-President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 24 January 2018.

*(Signed)*

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ