

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

F. R. (No. 4)

v.

UNESCO

126th Session

Judgment No. 4034

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Ms A. L. F. R. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 20 August 2014, UNESCO's reply of 9 December 2014, the complainant's rejoinder of 29 April 2015, corrected on 13 May, and UNESCO's surrejoinder of 20 August 2015;

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 claims that she was subjected to harassment.

Details of the complainant's career at UNESCO are given in Judgment 3580, which was delivered in public on 3 February 2016, concerning her first complaint. Suffice it to recall that by a memorandum of 18 February 2013 the complainant, who held the post of Head of UNESCO's National Office in Kinshasa, Democratic Republic of the Congo, was informed that as from 1 March 2013 she would be temporarily assigned to UNESCO's Headquarters in Paris as a *chargée de mission*. However, the complainant did not take up her duties in the Bureau of Field Coordination until 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.

On 14 March 2014 the complainant lodged an internal complaint of moral harassment with the Director-General. She alleged that the former Director of the Bureau of Field Coordination, Mr S., and then the “persons who [had] assumed his duties” upon his retirement on 31 December 2013, had “left [her] without work”, leading her to feel “sidelined and humiliated”. She therefore claimed redress for moral and professional injury.

As part of her preliminary assessment, the ad interim Ethics Adviser interviewed the complainant before the latter retired on 31 March. On 16 April she invited Mr d’O. – who was in charge of the Bureau of Strategic Planning at that time – to respond to the complainant’s allegations, which he did on 12 May. On 16 May 2014 the Ethics Adviser submitted her recommendation to the Director-General. She explained that since the Organization’s anti-harassment policy applied only to current employees and Mr S. had retired, he was excluded from the policy’s scope of application and the internal complaint had to be dismissed as far as he was concerned. She further stated that her preliminary assessment had focused on the period between 11 February and 31 March 2014, when it was established that Mr d’O. had been responsible for the complainant; however, the complainant had not produced any evidence of bad faith on Mr d’O.’s part. The Ethics Adviser concluded that the incidents reported by the complainant did not constitute moral harassment within the meaning of the aforementioned policy but were rather manifestations of a work-related conflict. She hence recommended that the Director-General close the case. She informed the complainant in a letter dated 20 May 2014 that the Director-General had decided to dismiss her internal complaint. That is the impugned decision.

In her complaint before the Tribunal, the complainant seeks damages in the amount of 100,000 euros for the moral and professional injury that she considers she has suffered and costs in the amount of 20,000 euros.

UNESCO submits that the complaint is irreceivable on the grounds of failure to exhaust internal means of redress. In its reply, it asks the Tribunal to refer the case back to the Appeals Board. Subsequently, in its surrejoinder, it requests a stay of proceedings pending the Board's recommendation and the Director-General's final decision in the internal appeal proceedings concerning a deprivation of duties that the complainant initiated around the same time as she lodged her internal complaint of moral harassment. Subsidiarily, it argues that the complaint is unfounded.

CONSIDERATIONS

1. The complainant impugns the decision of 20 May 2014 in which the Director-General dismissed the internal complaint of moral harassment which the complainant had lodged on 14 March 2014 and in which she alleged that her successive supervisors since 24 June 2013 had "left [her] without work", leading her to feel "sidelined and humiliated".

2. UNESCO requests a stay of proceedings until the Appeals Board issues a recommendation to the Director-General and the latter takes a final decision in the proceedings initiated before the Board on 6 May 2014 concerning the complainant's alleged deprivation of duties. The Tribunal notes that the complaint filed by the complainant (her sixth) against the Director-General's decision of 10 December 2015 – which was taken after the request for a stay of proceedings and which dismissed the appeal of 6 May 2014 – was the subject of Judgment 3937. That request is therefore moot.

3. UNESCO submits that the complaint is irreceivable for failure to exhaust internal means of redress since the complainant did not challenge the decision of 20 May 2014 before the Appeals Board within the prescribed timeframe. The complainant points out that she did not have access to the internal means of redress under Staff Regulation 11.1 and Staff Rule 111.1.

4. The Tribunal has already ruled that under Staff Regulation 11.1, Staff Rule 111.1 and the Statutes of the Appeals Board, a former staff member cannot use the internal means of redress to challenge a decision taken after she or he has left the Organization (see Judgment 3505, under 4).

5. In this case, the impugned decision of 20 May 2014 was taken after the complainant retired on 31 March 2014. Consequently, the complainant, as a former UNESCO official, did not have access to internal means of redress. The complaint is hence receivable.

6. In support of her claims, the complainant advances several pleas, namely: breach of the adversarial principle, breach of item 18.2, paragraph 36, of the UNESCO Human Resources Manual on anti-harassment policy, and the refusal to consider her internal harassment complaint for the period up to 31 December 2013. She alleges that she was subjected to harassment and retaliation.

7. As regards the breach of the adversarial principle, the complainant states that she was not provided with a copy of the response of the official in charge of the Bureau of Strategic Planning to her allegations of harassment. UNESCO maintains that the adversarial principle does not apply to preliminary assessments of complaints, since this assessment is an informal stage aiming to determine whether there is *prima facie* evidence of harassment.

8. The Tribunal notes that under item 18.2, paragraphs 31, 33, 34 and 37, of the Human Resources Manual, when an internal harassment complaint is lodged, the Ethics Adviser must conduct a preliminary assessment to determine whether there are reasons to believe that the complaint is founded and to that end must interview the complainant and potentially the alleged harasser. Item 18.2, paragraph 35, of the Human Resources Manual states that, “[o]n the basis of the complaint, the reply by the alleged harasser, and the evidence produced, the Ethics Adviser will evaluate whether there is a *prima facie* evidence of harassment. If required, the Ethics Adviser will extend the enquiries in

order to ensure that the evidence is submitted.” These provisions make it plain that the preliminary assessment precedes the investigation during which the real examination of the internal complaint begins. In the present case, the complainant does not dispute the Organization’s contention that she was interviewed by the Ethics Adviser during the preliminary assessment. The fact that she did not receive the response of the official in charge of the Bureau of Strategic Planning to her allegations of harassment at a stage when the investigation had not started does not constitute a flaw. This plea is hence unfounded.

9. The complainant further submits that UNESCO did not carry out its preliminary assessment within the time limit prescribed in item 18.2, paragraph 36, of the Human Resources Manual. The Organization counters that this provision allows for the time limit to be exceeded if circumstances so require.

10. The aforementioned paragraph 36 relevantly provides that “[t]he Ethics Adviser should endeavour to complete the preliminary assessment no later than 45 days from the date of submission of the formal complaint”. In this case, it is true that the preliminary assessment lasted 63 days. However, it is not disputed that before issuing her recommendation, the Ethics Adviser interviewed the complainant and invited the official in charge of the Bureau of Strategic Planning to submit his comments, which required the time limit to be extended by two weeks. These circumstances explain why the allotted time limit was exceeded and show that the Ethics Adviser did not remain inactive during the preliminary assessment. The complainant fails to show that the Ethics Adviser did not endeavour to adhere to the time limit prescribed in item 18.2, paragraph 36, of the Human Resources Manual. This plea is hence unfounded.

11. The complainant contends that the refusal to consider her internal harassment complaint with regard to the period from 24 June to 31 December 2013 constitutes a denial of justice. UNESCO replies that a complaint lodged when it is no longer possible to put an end to the alleged conduct and to censure the alleged harasser (in this case,

the Director of the Bureau of Field Coordination, who retired on 31 December 2013) is necessarily unfounded.

12. Item 18.2, paragraphs 5(c) and (d), of the Human Resources Manual emphasise the prevention of harassment and invite employees to report any instances of harassment in the workplace as soon as possible to avoid the situation escalating. In the instant case, the complainant did not lodge a complaint against the former Director of the Bureau of Field Coordination before he retired on 31 December 2013. The Tribunal considers that she thereby failed to enable the Organization to investigate the conduct which she alleges she experienced. Although the Organization is obliged to investigate any incidents that might constitute harassment, the employee must nevertheless report those incidents in good time so as to allow the Organization to fulfil its duty. This plea is hence unfounded.

13. The complainant alleges that she was subjected to moral harassment by the Director of the Bureau of Field Coordination. She states that he did not allow her to carry out her duties as a *chargée de mission*, left her “idle” and did not reply to her suggestions of “other duties” that she could perform. She adds that he did not give her exact instructions when she arrived at Headquarters, did not introduce her to her colleagues, and refused to engage in any “work-related interaction” with her. She further submits that the aforementioned director appraised her performance for the period 2012-2013 not as a *chargée de mission* but as the Head of UNESCO’s Kinshasa Office, which is, in her view, unlawful. Lastly, she objects to not having been invited to various meetings and to the fact that by November 2013 her name still did not appear in the Bureau’s electronic mailing list.

These allegations relate to the period from 24 June to 31 December 2013. Since, for the reasons stated above, no investigation could be carried out into these allegations, the Tribunal is not in a position to make an informed assessment thereof. Given that this situation results from the complainant’s failure to lodge her internal complaint in a timely fashion, the Tribunal will dismiss these allegations.

14. In respect of the period after 31 December 2013, the complainant also accuses the official in charge of the Bureau of Strategic Planning of having deprived her of duties and of having refused deliberately to implement her transfer. The complainant considers that this inappropriate and unlawful conduct was part of a campaign of institutional harassment arising from a wish to retaliate against her.

15. Item 18.2, paragraph 8, of the UNESCO Human Resources Manual provides:

“For the purpose of this policy, harassment shall be defined as follows: Harassment is any deliberate, offensive, undesired conduct, incompatible with the Standards of Conduct, in the workplace or in connection with work that can be reasonably perceived as such, and has the purpose or effect of:

- (a) An affront to the identity, the personality, the dignity or the physical integrity of an employee/a group of employees, or
- (b) The creation of an intimidating, hostile, degrading, humiliating or offensive work environment.”

16. According to the Tribunal’s case law, “an allegation of harassment must be borne out by specific facts, the burden of proof being on the person who pleads it, and [...] an accumulation of events over time may be cited to support an allegation of harassment” (see Judgment 3347, under 8).

17. In respect of the allegation that the official in charge of the Bureau of Strategic Planning deprived the complainant of duties, the Tribunal considers that there is insufficient convincing evidence to establish that the alleged harassment occurred.

18. Furthermore, the complainant states that after the Bureau of Field Coordination was abolished, she was not notified of her exact assignment. The Organization explains that this situation – which affected many officials – resulted from a restructuring of UNESCO involving the said Bureau’s abolition. It adds, however, that the Bureau’s staff continued to perform on-going tasks and the official in charge of the Bureau of Strategic Planning had informally confirmed to the complainant where she would be transferred in mid-February.

The Tribunal observes that the patently unacceptable situation in which the complainant and numerous other officials were placed reveals a management error by the Administration but does not constitute harassment. Under the case law, unsatisfactory conduct is not, in itself, sufficient to establish harassment (see, for example, Judgment 3625, under 9).

19. It follows from the foregoing that the complainant has failed to show that she was a victim of harassment.

20. However, although the alleged harassment has not been established, the Tribunal considers that the management error identified above placed the complainant in a difficult situation that caused her moral injury. The Organization must redress its breach of the duty to provide its employees with a safe and healthy working environment by the payment of damages, which the Tribunal sets at 10,000 euros.

21. As the complainant succeeds in part, she is also entitled to an award of costs, set at 1,000 euros.

DECISION

For the above reasons,

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

In witness of this judgment, adopted on 2 May 2018, 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 26 June 2018.

(Signed)

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ