

The Administrative Tribunal,

Considering the second complaint filed by Mrs C. F. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 12 November 2002 and corrected on 16 January 2003, UNESCO's reply of 24 April, and the complainant's letter of 10 June 2003 renouncing her right to file a rejoinder;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, a British national born in 1946, holds a post at grade G-7 in the Field Administration Section of the Bureau of Human Resources Management (HRM) at UNESCO's headquarters in Paris.

On 1 April 2000 her immediate supervisor (the incumbent of post PER-105) was transferred to Iraq. On 17 November the then Chief of the Field Administration Section sent a memorandum to the Director of HRM requesting a special post allowance to be awarded to a colleague of the complainant, who, he said, was covering the duties of post PER-105.

The complainant wrote to the Director of HRM on 18 December, asserting that she had been carrying out the responsibilities of her supervisor after he had left for Iraq and requesting a special post allowance from 1 July 2000 under the terms of Staff Rule 103.17. In a memorandum of 26 December 2000 to the Deputy Director of HRM, the Chief of Section said that he had not delegated any of the duties of post PER-105 to the complainant.

Having received no reply to her request, the complainant wrote to the Director-General on 25 January 2001, saying that she understood the silence to be a refusal and that she was submitting a preliminary protest under paragraph 7(a) of the Statutes of the Appeals Board. On 26 February the Director of HRM replied that the Director-General had confirmed the implicit decision not to grant her a special post allowance. In a memorandum of 14 March to the Director of HRM the complainant provided additional information supporting her request and asked that it be reconsidered. Having received no reply, she wrote again to the Director-General on 11 May, saying that she was protesting against the implicit refusal of her request of 14 March. She filed a notice of appeal on 10 July 2001 and a detailed appeal on 8 August. In its opinion dated 1 July 2002 the Appeals Board considered that she had failed to establish her claim for the special post allowance and recommended rejecting her appeal. The Director-General did so in a letter of 26 August 2002. That is the impugned decision.

B. The complainant submits that the memorandum from the Chief of Section stating that her colleague had been asked to perform "all the functions of post PER-105" is a misrepresentation of the facts. She asserts that she had been orally assigned duties previously undertaken by her former supervisor and she provides statements from colleagues in support of her assertion. Therefore, she should have been granted a special post allowance.

In any event, the memorandum requesting a special post allowance for her colleague was procedurally flawed: it was not copied to all the appropriate individuals nor was it on the proper form. She alleges that the Organization has shown nothing more than blatant favouritism by awarding the allowance to someone else while she was the one to carry out the work. Her career prospects have been hurt and her colleague has been given an unfair advantage. UNESCO has breached its duty of trust and fairness owed to staff.

She claims a special post allowance at grade P-3 from 1 July 2000 to 28 February 2001. She also claims damages and legal costs in the amount of 10,000 United States dollars.

C. In its reply UNESCO states that, even though the complaint has been filed within 90 days of the complainant receiving a decision on her internal appeal, it nevertheless objects to receivability on the basis that her internal appeal had not been receivable *ratione temporis*. The complainant should have filed her appeal within one month of 26 February 2001, the date on which she had received the Director-General's decision regarding the protest she had filed on 18 December 2000. Instead she "slept on her rights" before filing her appeal in July 2001; her complaint is thus still "saddled" with her appeal's defect of being irreceivable under the Statutes of the UNESCO Appeals Board.

Subsidiarily, it says that the complaint is devoid of merit. The appropriate statutory provisions state that duties and responsibilities of a higher grade, if assigned orally, may not exceed a period of one month. For any assignment lasting longer than one month written instruction must be given. There is no written instruction or any other evidence to support any of the complainant's allegations that it was she who carried out the duties of post PER-105.

CONSIDERATIONS

1. The complainant, a Senior Administrative Assistant in HRM, claims that she was entitled to a special post allowance after assuming some functions of her immediate supervisor who was transferred to another duty station.
2. In a memorandum of 18 December 2000 to the Director of HRM, the complainant requested the allowance from 1 July 2000 alleging that she was orally assigned by the then Chief of the Field Administration Section to perform additional duties at a higher level of responsibility covering post PER-105, which had been vacated by her immediate supervisor on 1 April 2000. The situation having lasted for more than three months, she asked that she be given a special post allowance from 1 July 2000 to 28 February 2001, under the terms of Staff Rule 103.17(b) which provides in part:

"When a staff member is called upon to assume temporarily the functions of a post of higher grade for a period of more than three months, he shall be granted, with effect from the beginning of the fourth consecutive month of such service [...] a non-pensionable special post allowance."
3. The complainant learned that, on 17 November 2000, the Chief of Section had requested the Director of HRM to grant a special post allowance from 1 October 2000 to a colleague of the complainant, whom he had requested "to carry out all the functions of post PER-105". Later on, by a memorandum dated 26 December 2000, the Chief of Section stated that he had not delegated to the complainant any responsibility concerning post PER-105. The complainant points out that, because she felt that there was misrepresentation of facts and overtly unfair treatment in that request, she had decided to request an allowance for herself. She received no reply to her request.
4. On 25 January 2001 she submitted a preliminary protest to the Director-General under Rule 7(a) of the Statutes of the Appeals Board on the grounds that the terms of Staff Rule 103.17 had not been respected. The Director of HRM informed her on 26 February that the Director-General had confirmed the implicit decision not to grant her a special post allowance.
5. By a memorandum of 14 March the complainant sought reconsideration of her application from the Director of HRM. She provided an organisational structure of her section showing her functions and comparative position vis-à-vis the supervisor who had been transferred. She likewise referred to the reorganisation of work which had become necessary in her unit and which had resulted in additional duties being given to her at a higher level of responsibility; she offered testimonials of colleagues who, she said, supported her statements. She added that, since her colleague at the same grade had been awarded a special post allowance, she should, for the sake of equality, be awarded the same. Additionally, she contends that HRM did not follow the procedure laid down in UNESCO Manual Item 2320.33 with respect to the assignment of duties at a higher level to a staff member.
6. Having received no reply to her memorandum of 14 March, the complainant wrote to the Director-General on 11 May stating that she took the silence as a refusal to grant her a special post allowance. This served as a reiteration of her preliminary protest of 25 January 2001.
7. In June 2001 she submitted her case to a mediator for possible resolution; when the outcome was unsuccessful, she filed a notice of appeal on 10 July, followed by a detailed appeal on 8 August 2001.

8. On 1 July 2002 the Appeals Board recommended that the Director-General reject the complainant's claim for a special post allowance; he did so on 26 August 2002.

9. Thus, on 12 November 2002, the complainant filed the present complaint with the Tribunal seeking payment of a special post allowance at grade P-3 from 1 July 2000 to 28 February 2001, as well as damages and legal costs amounting to 10,000 United States dollars.

10. The defendant Organization, while admitting that the complaint was filed with the Tribunal within the prescribed ninety-day period, alleges that it was still "saddled" with the prior defect of her internal appeal being irreceivable *ratione temporis* under the Statutes of the Appeals Board. The defendant avers that the complainant, after receiving the Director-General's ruling of 26 February 2001 rejecting her request for a special post allowance, should have submitted her appeal within one month, that is, 26 March 2001, in accordance with the Statutes of the Appeals Board, but she filed her notice of appeal only on 10 July 2001, approximately four months beyond the time limit.

11. The Appeals Board, however, assumed jurisdiction stating that its competence to hear the appeal was in no way contested and, given the object and the form, the appeal was admissible *ratione materiae*. On the merits, it recommended the dismissal of the appeal to the Director-General, who endorsed that recommendation.

12. As the complaint must be dismissed on the merits, the Tribunal finds it unnecessary to deal with the question of whether the complainant submitted her appeal to the Appeals Board within the time limit.

13. The general rule applicable to entitlement to a special post allowance, Staff Rule 103.17(b), provides that a staff member shall be granted such an allowance when he or she is called upon to assume temporarily the functions of a post of higher grade for a period of more than three months. Manual Item 2320.32 states that a staff member may be assigned functions orally by his or her supervisor if the period does not exceed one month. But if the replacement is to continue beyond the first month, "a written instruction should be addressed to the staff member with a copy for information to the staff member's personnel officer [...]. If and when the period is expected to exceed three months, then prior approval for such an assignment must be obtained [...] well in advance and in any case before the expiry of the third month".

14. The temporary assignment of functions having exceeded a three-month period, the complainant addressed a request to the Director of HRM for payment to her of a special post allowance. However, she failed to show that prior approval had been obtained for her assumption of higher-level duties in accordance with Manual Item 2320.33. Nor was she able to provide any written instruction from her supervisor to the effect that additional duties had been assigned to her. On the contrary, the Chief of the Field Administration Section categorically disclaimed in a memorandum having delegated any responsibility concerning the said post to the complainant. Moreover, he had requested in writing that a special post allowance be granted to another staff member, also a Senior Administrative Assistant, whom he had requested to carry out all the functions of post PER-105. For all these reasons, the complaint is devoid of merit.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2003, Mr James K. Hugessen, Vice-President of the Tribunal, Mrs Florida Ruth P. Romero, Judge, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2004.

James K. Hugessen

Florida Ruth P. Romero

Mary G. Gaudron

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 20 February 2004.