Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

S.

v.

UNESCO

133rd Session **Judgment No. 4457**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr I. S. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 12 October 2018 and corrected on 29 November 2018, UNESCO's reply of 18 March 2019, the complainant's rejoinder of 9 May, corrected on 18 May, UNESCO's surrejoinder of 26 August 2019, UNESCO's further submissions of 6 January 2020 and the complainant's final observations thereon of 12 February 2020;

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 challenges the decision to summarily dismiss him.

At the material time, the complainant held a fixed-term appointment at grade P-4 as a procurement officer. On 22 December 2015 his post was abolished with effect from 1 January 2016. He was then transferred to a P-3 post.

On 24 December 2015 the complainant signed, on UNESCO's behalf, an agreement with the president of an association registered under French law – who was also a member of the UNESCO staff (see Judgment 4224) – whereby obsolete computer equipment belonging to

UNESCO was transferred to the association free of charge, even though it was earmarked to be destroyed by a company that had entered into a long-term agreement with UNESCO to that effect. As the complainant's supervisor suspected that these two officials had committed misconduct by signing the agreement without having first sought authorisation, he reported the matter to the Director of the Bureau of Human Resources Management by email of 14 January 2016. The Director forwarded the email to the Internal Oversight Service (IOS). On 2 February the Director-General asked the IOS to open an investigation into the allegations of the conclusion of an unauthorised agreement for the disposal of computer equipment, a potential conflict of interest and unauthorised outside activities. As far as the complainant was concerned, the investigation was to focus on the first two allegations alone. The complainant was informed of the opening of the investigation on 23 March and interviewed by the IOS on 25 May.

By memorandum of 19 September 2016, the Director of the Bureau of Human Resources Management sent to the complainant a copy of the IOS report and informed him that, on the basis of this report, the Director-General was charging him with having engaged in misconduct by initiating an unauthorised agreement resulting in the disposal of assets belonging to UNESCO outside the applicable rules and procedures. The Director added that the report showed that the value of the equipment disposed of was equal to or more than 50,000 United States dollars and consequently, that by drafting and signing a non-standard agreement without receiving authorisation from the Contracts Committee and without consulting the Office of International Standards and Legal Affairs, the complainant had been culpably negligent and caused the Organization unnecessary loss, misused the Organization's property and equipment and misused his position. Specifically, he was charged with having breached paragraphs 4.2 (concerning the role of the Contracts Committee) and 5.2 (concerning the disposal of assets) of Item 10.1 of the Administrative Manual, paragraph 3.9(b) (concerning non-standard contracts) of Item 7.2 of the Administrative Manual, and Staff Regulation 1.4 (concerning requirements in respect of conduct). Since the acts he was alleged to have committed constituted misconduct under Staff Regulation 10.2 and rendered him liable to disciplinary

action, the complainant was invited to submit his comments, which he did on 7 October.

By memorandum of 8 November 2016, the Director of the Bureau of Human Resources Management informed the complainant that the Director-General had sufficient evidence to establish that he had engaged in the misconduct of which he had been notified in the memorandum of 19 September and breached aforementioned Staff Regulation 1.4 and paragraphs 5.2 and 3.9(b). Although, referring to an email from the Contracts Committee, she noted that the equipment disposed of was worthless and concluded that paragraph 4.2 of Item 10.1 of the Administrative Manual had therefore not been breached, she had not identified any mitigating circumstances. She had consequently decided to dismiss the complainant summarily for serious misconduct. He separated from service on 10 November.

On 7 December 2016 the complainant challenged the decision to dismiss him by lodging a protest, which was rejected on 14 February 2017. He then brought the matter before the Appeals Board, from which he requested disclosure of a number of documents, careful and diligent investigation of the case, withdrawal of the penalty and removal of all documents relating to the disciplinary procedure from his personal file, reparation in full for the damage suffered, including in the form of reinstatement, and an award of costs.

After hearing the parties, the Appeals Board delivered its opinion on 13 April 2018. While it did not dispute that the complainant had broken certain rules, the Appeals Board drew the Director-General's attention to the complainant's "obvious good faith", the fact that there had not been any personal enrichment, and the fact that the complainant had given in to psychological pressure resulting from the insistence of the president of the association. The Appeals Board pointed out that the complainant had not benefited from any mitigating circumstances, considered that the penalty imposed was therefore disproportionate to the charges, and so recommended that the Director-General impose a less severe penalty but reject any further claims.

By a letter of 10 July 2018, which is the impugned decision, the complainant was informed that the Director-General confirmed the penalty of summary dismissal for serious misconduct and considered that it was proportionate in view of the seriousness of the charges. In response to the three points raised by the Appeals Board, she took the view that, given his length of service and the nature of his duties, the complainant must have been aware of the provisions of paragraph 5.2 of Item 10.1 and paragraph 3.9(b) of Item 7.2 of the Administrative Manual, and that ignorance of those provisions could not, in any event, reduce his liability. She added that the gravity of an act constituting a dereliction of duty by a member of the staff was to be assessed independently of the financial damage caused to the Organization or personal enrichment. Lastly, the assertion that the complainant had been the victim of psychological pressure exerted by the association's president, even if proven, could not mitigate the seriousness of the charges, since international civil servants are, under paragraph 13 of the Standards of Conduct for the International Civil Service, accountable for the decisions taken in performing their functions.

The complainant requests the Tribunal to set aside the impugned decision and "all the decisions to which it refers" in so far as they refuse to withdraw the penalty and remove all the documents relating to the disciplinary procedure from his personal file, to order reparation in full for the damage suffered, including by means of his reinstatement, and to award him 10,000 euros in costs. In his rejoinder, the complainant asks the Tribunal to take note of the content of the negotiations that he and the Organization had conducted with a view to settling the dispute through informal mediation.

UNESCO requests the Tribunal to dismiss the complaint as unfounded.

In its further submissions, UNESCO submits that the disclosure of confidential information exchanged in the context of an attempt to reach an amicable settlement is contrary to the principle of the sound administration of justice and the ethical obligations of the representatives of the parties before the Tribunal and that it cannot therefore be allowed.

It therefore requests the Tribunal to disregard the part of the rejoinder dealing with this matter.

In his final observations, the complainant requests the Tribunal to reject UNESCO's request and argues, in particular, that it is unacceptable for an organisation to raise a new objection to receivability in its further submissions.

CONSIDERATIONS

1. The complainant impugns the decision of 10 July 2018 by which the Director-General of UNESCO confirmed his summary dismissal on 8 November 2016 for serious misconduct, despite the opposing opinion of the Appeals Board.

This severe disciplinary penalty was imposed owing to the fact that on 24 December 2015, in the context of his duties as a procurement officer in the Property Management Unit, the complainant had signed – on UNESCO's behalf but without authorisation – a contract providing for the transfer of obsolete computer equipment earmarked for destruction to a humanitarian association, chaired by another member of the Organization's staff, which proposed to supply it to disadvantaged children in West Africa.

The Director-General considered that, by acting in this way, whereas the equipment in question would usually have been transferred to a company with which UNESCO had entered into a long-term agreement to ensure such equipment was recycled, the complainant had shown culpable negligence in disregarding the administrative procedures in force, misused property and equipment belonging to the Organization and, moreover, misused his position.

2. In its further submissions, UNESCO has requested that the Tribunal disregard the last paragraph of the complainant's rejoinder, in which his representative discloses the content of exchanges between the parties made in the context of an attempt to settle the dispute amicably.

The complainant's objection to the receivability of this request – in which he seeks to rely on the Tribunal's case law set out, in particular, in Judgment 3648, consideration 5, according to which an organisation may not raise an objection to receivability in its surrejoinder where it could have done so in its reply – is unfounded. It is true that what was held with regard to the surrejoinder would likewise apply to such further submissions. However, the request in question cannot be regarded as an objection to receivability and is based, moreover, on new information provided by the complainant in his rejoinder. The request is therefore admissible, even though it would have been more natural for UNESCO to make it in the surrejoinder.

As it is, the request is justified. As the Tribunal has already stated, since the confidentiality of amicable dispute settlement procedures must be preserved to increase the likelihood of their success, information relating to any negotiations conducted by the parties with a view to resolving a dispute referred to the Tribunal must not be disclosed in the proceedings before it (see Judgment 3586, consideration 5).

The aforementioned paragraph of the rejoinder, which should indeed be disregarded, will not therefore be taken into consideration by the Tribunal.

3. In justification for the contested penalty of summary dismissal, the Director-General noted in her decision of 8 November 2016 that the conclusion of the contract of 24 December 2015 constituted a "serious breach" of two provisions of the Administrative Manual, namely paragraph 5.2 of Item 10.1 and paragraph 3.9(b) of Item 7.2, relating to the disposal of assets and "non-standard" contracts respectively.

It should be noted that the memorandum of 19 September 2016, by which the complainant was notified of the charges initially brought against him, also referred to the breach of a third provision of the Administrative Manual, namely paragraph 4.2 of Item 10.1, relating to the role of the Contracts Committee, but this charge was not ultimately included in the decision of 8 November 2016. Although the complainant was criticised for concluding the contract in question without prior authorisation from the Committee, whereas such authorisation was

required for any transfer of fixed assets with a cumulative value of more than 50,000 United States dollars, it had in the meantime transpired that the Committee itself considered, as shown by its email of 15 July 2015, that this formality was not necessary since the obsolete computer equipment earmarked for destruction in fact had "no market value".

The Tribunal considers that the other two provisions referred to above were not actually breached by the complainant either, except for very slightly in the case of the first.

4. Paragraph 5.2 of Item 10.1 of the Administrative Manual provides that property belonging to UNESCO may only be disposed of using one of the four modes listed therein, namely redeployment to another entity of the Organization, transfer of ownership to government departments or non-governmental organizations (NGOs), write-off or sale.

In its reply, the Organization explains that the complainant breached those provisions in disposing of the computer equipment in question by transferring ownership to an association, whereas, although paragraph 5.2(b) does authorise this mode of disposal with a view to building an NGO's capacity, this is only permitted, according to UNESCO, where the NGO is continuing to implement a programme from which UNESCO has decided to withdraw – which was not the situation in the case in point.

However, first, it must be observed that, while this subparagraph indeed indicates that such a transfer of ownership "is normally the case" when operations are handed over to an NGO and that "[t]he continuation of programmes in support of UNESCO's mandate is the main criterion for deciding whether transfer of ownership is appropriate", the provision does not restrict use of this mode of disposal to that situation alone. Second, the Tribunal notes that subparagraph (c) of the same paragraph, relating to write-off, provides that this mode of disposal is to be applied, inter alia, when "an asset is no longer economic to maintain, due to damage or age" and, in particular, in the case of "'scrapping' when the physical dumping or destruction of the asset is required" and may thus refer precisely to the disposal of obsolete computer equipment. It cannot therefore be said that the complainant disposed of the equipment at issue in breach of the requirements of that paragraph. Moreover, the

Tribunal observes that, if UNESCO's argument were valid, doubt would be cast on the lawfulness of the free-of-charge transfer of such assets under the agreement which it concluded with a company with a view to having them recycled.

5. It is true that paragraph 5.2 refers to a form to be used in this area, which had not been duly completed in this case. However, responsibility for completing this form rests primarily with the managers of the departments to which the assets to be disposed of are assigned and, although the complainant may be criticised for not ensuring that this formality was complied with, it is plain from the evidence that, at the material time, there was a degree of laxity regarding the use of these documents which makes this lack of diligence excusable, especially as the equipment in question was no longer of any value.

6. Similarly, in its submissions, the Organization contends that the complainant breached paragraph 5.3 of Item 10.1 of the Administrative Manual, which provides that disposals of assets must be certified by the finance and administrative officers of each sector or unit. However, besides the fact that the observations made above also apply to the application of paragraph 5.3, breach of this paragraph was not, in any case, one of the grounds for the contested penalty.

7. With regard to paragraph 3.9(b) of Item 7.2 of the Manual, the Organization alleges a breach owing to the complainant's failure to submit the contract in question for approval to the Office of Legal Affairs, as required for the conclusion of any non-standard contract under this provision. However, as the complainant rightly points out, it follows from paragraph 2.1 of Item 7.2 that the provisions of that item apply only to contracts making a promise of payment, which was not the case of the contract at issue in this case. Accordingly, the complainant cannot be legitimately accused of having breached this provision or, therefore, the obligation it lays down.

8. However, the Tribunal observes that the complainant's conduct was not beyond reproach.

First, the complainant's job description at the material time shows that his supervisor, and not he, was empowered to sign contracts. It is true that, since the adoption of this document in 2008, the complainant's remit had changed significantly in practice and a draft new job description (which no longer included this restriction on his authority) had been drawn up in 2015. However, owing to a restructuring of the bureau to which he was assigned – during which the job he then held was abolished – this new job description was never officially approved. In law, therefore, the complainant was not authorised to sign a contract and, contrary to what he maintains in his submissions, the fact that his supervisor was on leave on 24 December 2015 did not entitle him to exercise that power on that day.

Second, the complainant was undoubtedly aware that UNESCO had concluded a long-term agreement for the recycling of its obsolete computer equipment with the aforementioned company, which had been chosen following a call for tenders and was thus the Organization's official service provider in this area. This being the case, even if the agreement did not grant exclusivity to this company, the Tribunal considers that the complainant could not decide to circumvent its application by transferring equipment of this type to another partner without at least consulting his supervisor. It should be noted, moreover, that the aforementioned email of 15 July 2015 sent by the Contracts Committee stated that its approval of the disposal of computer equipment free of charge specifically concerned "recycling as per the existing agreement with [the said company]", which makes plain that this approval did not necessarily extend to any form of disposal of assets of this type. Lastly, these considerations are all the more important in that the contract concluded with the association which intended to supply the equipment in question to disadvantaged children was not really aimed at recycling the equipment but, at least initially, at reusing it.

9. Although the complainant was thus wrong to sign the contract, the fact that the penalty imposed by the Director-General largely rested, as stated above, on erroneous considerations concerning the breach of various provisions, affects the lawfulness of the impugned decision. This alone would warrant its setting aside.

10. However, the Tribunal further finds that, as the complainant also submits, it was a blatant error in the legal characterisation of the facts that led to his conduct being considered as constituting serious misconduct for the purposes of the application of Chapter X of the Staff Regulations and Staff Rules, concerning disciplinary measures, and this finding would apply even if all the charges against the complainant had proven to be well founded.

11. Staff Regulation 10.2 provides:

> "[...] Notwithstanding the provisions of Regulation 10.1 [which, in combination with Rule 110.2, provides that, as a general rule, disciplinary measures may only be imposed after consulting a joint disciplinary committee], the Director-General may summarily dismiss a member of the staff for serious misconduct."

In Judgment 63, consideration 1, the Tribunal observed, in respect of this regulation, that:

> "As this is the heaviest penalty which can be inflicted, and can be applied without prior consultation with a joint body, this provision must not be given a broad interpretation. It applies to an official who, in the first place, fails in his duty and, in the second place, thereby **commits serious misconduct**." (Emphasis added.)

In Judgment 1661, under 6, the Tribunal held, in respect of a similar provision in the Staff Rules of another international organisation, that:

> "Misconduct so serious as to warrant dismissal is such that **letting the appointment continue would be intolerable**." (Emphasis added.)

Moreover, paragraphs 14 and 15 of Item 11.3 of Chapter 11 of the Human Resources Manual, which are consistent with this case law, indicate that the summary dismissal of a member of the staff should only be pronounced in the event that misconduct has occurred and "the gravity or consequences thereof **warrant immediate separation from service**" (emphasis added).

12. In this case, the complainant's misconduct clearly does not meet the criteria of gravity thus identified by the applicable provisions and the case law, especially given various mitigating circumstances

from which, as the Appeals Board rightly pointed out in its opinion of 13 April 2018, the complainant should benefit.

13. The most important of these circumstances is that, as already stated above, the computer equipment that was transferred to the aforementioned association was, in any case, earmarked to be scrapped and had been acknowledged to have no market value. That consideration alone has a decisive influence on the assessment of the seriousness of the charges which may be brought against the complainant, since it follows that the conclusion of the contract in question did not cause any financial damage to UNESCO.

Moreover, the evidence shows that the initial decision to bring disciplinary proceedings against the complainant was partly taken on the basis of an error of judgement concerning the value of the equipment in question. Although it is true that, as has been stated, the Director-General later dropped one of the charges of which he had been notified when it became clear that this value was to be considered nil, broader conclusions should undoubtedly have been drawn from this new piece of information, which in fact put the seriousness of all of the charges against the complainant into perspective.

14. Furthermore, in her decision of 10 July 2018, the Director-General was wrong to refuse to afford the complainant the benefit of the excuse of good faith which the Appeals Board had granted him.

First, the evidence shows that the complainant – who had been misled in this respect by the fact that several officials of the aforementioned association were members of the UNESCO staff – believed, when he concluded the contract in question, that the association enjoyed the Organization's support or at least some form of recognition. Moreover, the association's humanitarian goal and the worthiness of its plan to supply salvaged computer equipment to disadvantaged children in Africa evidently led him to think, in all sincerity, that he would be acting in a good cause by assisting this plan. In so far as the equipment transferred was worthless and the contract did not specify any payment, which ruled out any risk of personal enrichment for anyone, it is therefore

understandable that he agreed to grant the request for a donation made by the association's president.

Second, in respect of the flaws identified in consideration 8, above, the Tribunal considers that, in view of the changes in his remit since 2008 and the ongoing preparation of a new job description, the complainant may have believed in good faith that he was allowed to sign such a contract himself. In addition, the complainant specified in the contract that, in due course, the association should have the transferred equipment recycled in compliance with the rules in force in France, that is, under the same conditions – in terms of environmental protection in particular – as those to which the company holding the long-term agreement concluded for this service was bound. The evidence also shows that there was some urgency at the time the contract was signed to remove the stock of computer equipment in question from UNESCO premises. The equipment was physically cluttering up the loading bay of the Organization's Headquarters which, pending the next planned collection by the service provider, represented a safety issue, to which the head of the fire brigade had specifically drawn the complainant's attention a few days earlier. In those circumstances, it was therefore reasonable for the complainant to think that it was in the Organization's interests to conclude the contract in question.

The complainant's good faith is further confirmed by the fact that he never sought to conceal the signature of the contract and, on the contrary, informed his supervisor of it himself when the latter returned from leave.

15. Lastly, the evidence shows that the complainant decided to conclude the contract in question under insistent pressure from the president of the association, himself a UNESCO official, which is also a mitigating circumstance in this case.

In that regard, it is apparent in particular from an exchange of emails between the complainant and the association's president on the day the contract was signed that the complainant, who was evidently entertaining doubts concerning the lawfulness of the verbal agreement in respect of the planned transfer that he had given the previous day,

ultimately wished to suspend the operation, but the association's president replied that the lorry hired by the association to deliver the equipment was in fact already parked in front of UNESCO premises and that the contract therefore had to be signed immediately. The complainant was thus, in a sense, presented with a *fait accompli*, which it was in practice difficult to withstand, except by entering into a conflictual relationship with the president of the association.

16. All in all, even if, in view of his extensive professional experience in the field of contracts, the complainant should have been more rigorous in this matter, it is plain that his error cannot be classified as serious misconduct.

17. An analysis of the decision of 10 July 2018 shows that it was because the Director-General wrongly refused to take into account the mitigating circumstances set out above that she reached the opposite conclusion. In that regard, the Tribunal notes that the error of legal characterisation of the facts which thus taints that decision is based not only on an obvious error of judgement, but also on an error of law in that the Director-General made the refusal to take account of such circumstances a matter of principle.

Indeed, it appears that the reasoning for this decision is based on an unfortunate confusion between the finding of misconduct – which, it is true, cannot depend on the consideration of possible mitigating circumstances – and the assessment of the seriousness of that misconduct – which must, in contrast, necessarily take account of such circumstances where they exist. The statements in that decision to the effect that "the gravity of an act or omission constituting a dereliction of duty by a member of the staff is to be assessed independently of the financial damage caused to the Organization or personal enrichment", "the finding that [the complainant] was subjected to 'psychological pressure', even if proven, cannot mitigate the seriousness of the charges against [him]" and "ignorance of [the allegedly breached] provisions cannot reduce [his] liability" are all signs of that confusion, which involves an error of law.

18. The error in the legal characterisation of the facts which persuaded the Director-General to consider wrongly that the complainant had committed serious misconduct had the additional effect of tainting the contested decision with three other defects.

19. First, since the complainant was therefore not liable to summary dismissal, which can only be imposed in cases of serious misconduct, his case should have been submitted to a joint disciplinary committee for an opinion, in accordance with Staff Rule 110.2(a). The penalty imposed, which was not preceded by such an opinion, is thus tainted by a procedural defect which deprived the complainant of the essential safeguard in disciplinary matters of consultation of a joint body of this type.

20. Second, the penalty of summary dismissal, which is the most severe penalty applicable to members of the UNESCO staff, was in this case disproportionate in view of the seriousness of the facts.

Under the Tribunal's case law, although the disciplinary authority within an international organisation has a discretion to choose the disciplinary measure imposed on an official for misconduct, its decision must always respect the principle of proportionality which applies in this area (see, for example, Judgments 3640, consideration 29, 3927, consideration 13, and 3944, consideration 12).

It follows from what has been said above that this principle was not respected in this case, as the Appeals Board rightly pointed out in its opinion.

The Tribunal observes that the severity of the penalty imposed on the complainant appears all the more disproportionate given that he had been employed by UNESCO for 26 years without his conduct ever, it would seem, having been subject to any criticism from the Organization.

21. Lastly, the breach of the principle of proportionality is combined, in this case, with a direct breach of the applicable rules, since, under aforementioned Staff Regulation 10.2, the penalty of summary dismissal

may lawfully be imposed only when the official concerned has been guilty of serious misconduct.

22. It ensues from the foregoing that the decisions of the Director-General of UNESCO of 10 July 2018, 8 November 2016, and 14 February 2017 (rejecting the protest against the decision of 8 November 2016) must be set aside, without there being any need to rule on the other pleas nor to order the disclosure of additional documents requested by the complainant.

23. As a consequence of the setting aside of these decisions, UNESCO will be ordered to remove from the complainant's personal file all documents relating to the disciplinary proceedings against him.

24. In view of the time which has passed since the events, the complainant's age on the date of this judgment and the fact that he was employed under a fixed-term appointment, the Tribunal finds that it is not appropriate, in the circumstances of the case, to order the complainant's reinstatement in the Organization.

25. However, the complainant is entitled to receive full compensation for the material and moral injury caused to him by his unlawful summary dismissal.

26. As regards material injury, the Tribunal observes that, from November 2016, the complainant was deprived of the remuneration he would ordinarily have received until the end of the contract in force at the time of his summary dismissal, which expired on 31 December 2017, and that he also lost a valuable opportunity to have his appointment subsequently renewed, given that his 26 years' seniority with UNESCO meant that he could arguably have been expected to continue his career there until he retired.

In these circumstances, the Tribunal considers that all this injury suffered by the complainant may be fairly redressed by awarding him a sum equivalent to three years' remuneration, which will be calculated on the basis of the last net salary and allowances of any kind which the

complainant was receiving at the time of his departure from the Organization, without deducting from this sum any earnings which he may have received since then.

27. The penalty of summary dismissal also caused the complainant obvious moral injury since it seriously damaged his honour and reputation of itself.

This injury was further aggravated in this case by the abrupt, unnecessarily humiliating manner in which this penalty was applied. The complainant submits, without being effectively contradicted by the Organization, that he was forced to leave UNESCO premises under the watch of security officials as soon as he was notified of it. The Tribunal points out that, unless there is a justified need, the use of such procedures is strongly condemned in its case law (see, for example, Judgments 2892, consideration 26, or 3169, consideration 21).

28. In addition, the Tribunal takes the view that the complainant, as he rightly submits, suffered specific moral injury as a result of UNESCO's unlawful refusal to grant him access to certain documents potentially useful to his defence.

First, since the beginning of the dispute, the Organization has refused to provide the complainant with the recommendation that he be summarily dismissed issued by the Director of the Bureau of Human Resources Management to the Director-General on the basis of paragraphs 11 and 14 of Item 11.3 of the Human Resources Manual. However, it is settled case law that a staff member must, as a general rule, have access to all the evidence on which an authority bases its decision against her or him and that the employing organisation cannot withhold such evidence on the grounds of confidentiality (see, for example, Judgments 2700, consideration 6, 3863, consideration 18, or 4293, consideration 4). UNESCO, which in this case confines itself essentially to arguing that the aforementioned recommendation is part of an "internal and confidential procedure", does not thus advance a sound reason for refusing to provide that document.

Second, it appears that the complainant was not given the opportunity to view, as permitted under Staff Rule 104.10, the personal file that UNESCO held on him. Although the Organization states in its surrejoinder that the complainant could "inspect his personal file at any time", the evidence shows that he could not actually exercise that right in practice because he was prohibited from entering the Organization's premises and because of the failure to respond to the steps he had taken, in particular in the run-up to the Appeals Board hearing, with a view to gaining access to that file.

The Tribunal finds that – even if, as stated above, the production of those various documents did not appear to it to be essential to rule on the lawfulness of the contested penalty – UNESCO's unlawful conduct had the effect, inter alia, of depriving the complainant of the opportunity to use the information contained in them before the Appeals Board and thus infringed his right of appeal.

29. Lastly, the complainant's contention that the excessive length of the internal appeal procedure caused him additional moral injury is also well founded.

It is settled case law that officials are entitled to have their appeals examined with the necessary speed, in particular in view of the nature of the decision which they wish to contest (see, for example, Judgments 2902, consideration 16, 4063, consideration 14, or 4310, consideration 15).

In this case, although the complainant had referred the matter to the Appeals Board on 14 April 2017, the Director-General, as has been stated, did not adopt a decision on this appeal until 10 July 2018, almost 15 months later.

The Tribunal finds that, while it may not appear unreasonable in absolute terms, this delay is excessive in view of the nature of the case, since it concerned a summary dismissal on disciplinary grounds.

30. In all, the Tribunal considers that these various heads of moral injury, taken as a whole, will be fairly redressed by awarding the complainant compensation of 40,000 euros in this respect.

31. Since the complainant succeeds to a very great extent, he is entitled to costs in respect of the proceedings before the Tribunal, the amount of which will be fixed at 3,000 euros in view of the fact that he was represented by a UNESCO staff member, not a lawyer.

However, there are no grounds for awarding him costs for the internal appeal proceedings. Under the Tribunal's case law, costs of this kind may be awarded only in exceptional circumstances (see, in particular, Judgments 4156, consideration 9, or 4217, consideration 12). Such circumstances are not evident in this case.

DECISION

For the above reasons,

1. The decisions of the Director-General of UNESCO of 10 July 2018, 8 November 2016 and 14 February 2017 are set aside.
2. All documents relating to the disciplinary proceedings brought against the complainant shall be removed from his personal file.
3. UNESCO shall pay the complainant material damages calculated in the manner stated in consideration 26, above.
4. The Organization shall pay the complainant 40,000 euros in moral damages.
5. It shall also pay him 3,000 euros in costs.
6. All other claims are dismissed.

In witness of this judgment, adopted on 10 November 2021, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 27 January 2022 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ