

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**B.**  
**v.**  
**UNESCO**

**138th Session**

**Judgment No. 4877**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr K. B. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 20 December 2022 and corrected on 18 January 2023, UNESCO's reply of 24 April 2023, the complainant's rejoinder of 14 June 2023, corrected on 22 June, and UNESCO's surrejoinder of 21 September 2023;

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 non-renewal of his temporary appointment.

The complainant joined UNESCO on 2 November 2015 as a security guard assigned to the Department of Safety and Security, under a short-term contract which was extended on four occasions. On 10 May 2016 he signed a two-month service contract, which was subsequently renewed several times until 28 February 2018. In each of those contracts and in each extension thereof, it was expressly stated that the complainant was not classified as a staff member of the Organization, that there was no guarantee that his appointment would

be extended and that, in the event of a dispute, the parties were to attempt to resolve their differences amicably, failing which they were to resort to arbitration. On 10 April 2018 the complainant was offered a six-month temporary appointment, at grade G-3, which he signed on 19 April without any conditions and conferring on him the status of staff member of UNESCO. His letter of appointment stated that his appointment, which took effect on 23 April, “[did] not imply any right to extension or conversion to another type of contract [within the Organization]” and that, unless extended, his contract would expire in accordance with the terms contained therein “without notice or indemnity”.

On 23 April 2020, following three renewals, the complainant’s appointment reached the maximum duration permitted under paragraph 15 of Item 13.6 of the Human Resources Manual, entitled “Temporary staff appointments”. This provision states that “[a] temporary appointment is an appointment of continuous period of less than 12 months and shall normally be granted for a minimum period of six months. Successive contracts shall not exceed 24 months in any period of 36 consecutive months.” Despite that limit, the complainant obtained four further renewals which were granted by way of exceptional derogation from that provision. On 1 April 2021 his appointment was renewed one final time for a period of three months, in other words until 30 June 2021, the date on which he left UNESCO.

On 6 April 2021, at an online meeting organised by the Head of the Department of Security concerning, inter alia, the future of temporary staff – a meeting which the complainant claims he could only attend for the last few minutes – the attendees were informed that, in the light of future hires and the imminent arrival of an external security firm which would be taking over certain activities of the Department, “no further exemptions from the rules under the [Human Resources] [M]anual could be requested in order to extend contracts beyond the 24-month limit [laid down in the aforementioned paragraph 15]”.

By a note of 8 June 2021, the Bureau of Human Resources Management (HRM) reminded the complainant that his appointment would expire on 30 June and informed him of the administrative

formalities which he needed to complete before leaving the Organization and of the benefits to which he was entitled.

On 6 July 2021 the complainant – who was no longer working for UNESCO and who relied on the provisions of paragraph 9 of the Statutes of the Appeals Board concerning requests for administrative review – sent the Director-General a letter of “[o]bjection to the administrative decision of non-renewal” of his temporary appointment that, in his view, resulted from the aforementioned note of 8 June. He claimed in this regard that insufficient reasons for the contested decision had been provided, that he had not been given adequate notice of the decision and that his right to due process had been breached. He also claimed that the decision amounted to an abuse of power and of authority. On 6 September the Director of HRM rejected his request as irreceivable on the grounds that, as a former official, he had no access to internal means of redress and, in any event, as unfounded because the contested decision complied with the applicable rules and procedures.

On 10 September 2021 the complainant submitted a notice of appeal, followed by a detailed statement of appeal which he sent to the Appeals Board on 20 October. He sought the annulment of the decision of 8 June 2021 and of the confirmative decision of 6 September, and asked to be reinstated at UNESCO. In the event that he could not be reinstated, he sought the grant of a “compensatory payment” and claimed redress for the material and moral injury that he considered he had suffered.

The Appeals Board, having heard the parties, delivered its opinion on 18 November 2022. By a majority of three of its five members, the Board concluded that the non-renewal decision “complie[d] with the provisions in force”, that the complainant had “no right” to have his temporary appointment renewed, that he had received reasonable notice and that the reasons for the non-renewal had been provided to him at the virtual meeting on 6 April 2021. It therefore recommended that the appeal be dismissed. However, two members of the Appeals Board expressed dissenting views, in which they recommended, in particular,

the annulment of the non-renewal decision and redress for the injury suffered.

By letter of 9 December 2022, the complainant was informed of the Director-General's decision to accept the recommendation made by the majority of the members of the Appeals Board. That is the impugned decision.

In his complaint form, the complainant asks the Tribunal to set aside that decision, to order that he be reinstated to a post matching his qualifications and professional experience or, failing that, to award him a "compensatory payment". Lastly, he claims damages for the material and moral injury that he considers he has suffered. In his brief, he asks in addition, on the one hand, for "[the] last four [...] unlawful extensions of [his] temporary appointment [to be] annulled and replaced by a fixed-term contract covering the same period" and, on the other hand, for the Tribunal to find that "it is appropriate [...] to reclassify [his] employment relationship [...] as if [he] had had the benefit of a fixed-term contract starting on the effective date of [the fourth extension of his temporary appointment, in other words [...] on 23 April 2020]". In his rejoinder, the complainant quantifies the amount of damages for the material and moral injury allegedly suffered as 85,000 euros and seeks an award of costs.

UNESCO considers that the claim for a contractual reclassification is irreceivable because internal means of redress have not been exhausted and because the claim was made out of time. It asks the Tribunal to dismiss the complaint as unfounded for the remainder.

#### CONSIDERATIONS

1. The complainant impugns before the Tribunal the Director-General's decision of 9 December 2022 dismissing the appeal which he had brought against the decisions of 8 June and 6 September 2021 not to renew his temporary appointment.

2. It must be recalled that the Tribunal has consistently held that the decision not to renew the appointment of a staff member of an international organisation lies within the discretion of its executive head and is therefore subject to only limited review. It may be set aside only if it was taken without authority, or in breach of a rule of form or of procedure, or was based on a mistake of fact or of law, or if some essential fact was overlooked, or if clearly mistaken conclusions were drawn from the facts, or if there was abuse of authority (see, for example, Judgments 4654, consideration 16, 4172, consideration 5, 2148, consideration 23, or 1052, consideration 4). That is, *a fortiori*, the situation in a case such as this where the dispute concerns the non-renewal of a temporary appointment which expressly stated that the appointee was not guaranteed any renewal or conversion of his contract into any other type of contract with UNESCO.

Nonetheless, under the Tribunal's case law applicable to contractual relationships in general, a non-renewal decision must also be based on objective, valid reasons, and not on arbitrary or irrational ones (see, in particular, Judgments 4809, consideration 10, 4654, consideration 16, 4495, consideration 15, 3769, consideration 7, 3353, consideration 15, 2708, consideration 12, 1154, consideration 4, and 1128, consideration 2). Those reasons must also be communicated to the staff member concerned (see, in particular, Judgments 4809, consideration 10, 3914, consideration 14, and 3444, consideration 8), although they need not necessarily appear in the decision itself (see, to that effect, Judgments 4368, consideration 15, 3914, consideration 15, and 1750, consideration 6).

3. UNESCO argues that the claim for the complainant's contractual situation to be reclassified should be declared irreceivable as it was made out of time and the internal means of redress had not first been exhausted.

4. The Tribunal will not rule on these objections to receivability as it finds that, in any event, the complainant never asked the Organization to reclassify his contractual situation. There is therefore

no administrative decision refusing that reclassification, so that the objection raised in this regard is moot.

5. The complainant seeks the payment of damages equivalent to the amount he lost in remuneration or other financial benefits as a consequence of the fact that, throughout his career, he was never regarded as having a fixed-term contract. But as he did not request the reclassification of his contractual situation, he is not, in any event, entitled to such damages.

Judgments 3090 and 3225, cited by the complainant in support of his assertions, cannot be relied on in the present case because they were delivered in completely different circumstances from those in the present case. In those two cases, the complainants had specifically requested the organisation in question to reclassify their contractual situation in good time.

6. As a consequence, the first plea put forward by the complainant, alleging a breach of paragraph 15 of Item 13.6 of the Human Resources Manual, according to which the total duration of successive temporary appointments cannot exceed 24 months in any period of 36 consecutive months, as well as a breach of the principle *tu patere legem quam ipse fecisti*, must be rejected.

7. In support of his claim that the decision not to renew his temporary contract was unlawful, the complainant first alleges that an error of law was committed and also that he was subject to discrimination. In so doing, he refers to two judgments of the Tribunal which he regards as “wholly applicable to the present case” and takes the view that he experienced “abuse of the rules governing temporary assistance and temporary appointments”.

However, the Tribunal notes that the complainant’s arguments are based wholly on the series of contracts under which he was successively appointed, even though it appears from the evidence that he did not challenge any of these renewals and that he thus cannot successfully rely on their being unlawful.

This plea must, therefore, also be rejected.

8. The complainant next submits that UNESCO breached its duty of care by failing to provide him with valid reasons for the decision not to renew his appointment. In his view, no specific reason was given other than that his appointment “[would] come to an end on 30/06/2021”.

However, the Tribunal recalls its own case law in that regard, according to which the reasons for a non-renewal decision need not necessarily appear in the decision itself (see, for example, Judgments 4368, consideration 15, 3914, consideration 15, and 1750, consideration 6), but may also be communicated to the staff member concerned in another way, such as at a meeting (compare, for example, with Judgment 3914, consideration 15).

In the present case, it is true that the note from HRM of 8 June 2021 to which the complainant refers did not contain a statement of reasons.

But it is clear from the evidence that an online meeting was organised on 6 April 2021 by the Head of the Department of Safety and Security for “temporary personnel and staff members under temporary assistance contracts”, to which the complainant was invited. During that meeting, the subject-matter of which had been communicated in advance to all staff concerned, the Head of the Department expressly stated, as the complainant himself acknowledges, that, given that the Department was to be restructured as a result of the outsourcing of certain activities to an external security firm, “[t]he majority of contracts [under temporary appointments or for temporary assistance] would not be renewed beyond 30 June 2021” and that, in any event, “no further exemptions from the rules under the [Human Resources] [M]anual could be requested in order to extend contracts beyond the 24-month limit [laid down in paragraph 15 of Item 13.6 of the Manual]”. The Tribunal infers therefrom that the complainant, who had already exceeded that 24-month limit since 23 April 2020, could not have been unaware that his appointment would not be renewed when it expired on 30 June 2021.

The complainant seeks to argue in this regard that he was only present for the last seven minutes of that online meeting. But the Tribunal notes that the complainant could have asked his colleagues at the end of the meeting what had been said before he joined, he could also have asked the Head of the Department for further information, or he could have requested confirmation of the reasons for the non-renewal decision when he received HRM's note of 8 June 2021.

This plea must also be rejected.

9. The complainant also maintains that the impugned decision should be set aside because he did not receive reasonable notice before the end of his temporary appointment. He takes the view that this notice should have been determined in accordance with the provisions applicable to staff under fixed-term contracts, especially since it was UNESCO's existing practice to provide at least three months' written notice if a contract of that type was not going to be renewed.

However, as explained in considerations 6 and 7 above, the complainant cannot successfully claim that the last four renewals of his temporary appointment should be redefined as fixed-term contracts with the consequence that the provisions applicable to that type of contract cannot apply in the present case. The same is necessarily true of the alleged administrative practice referred to by the complainant, which, in his view, only concerns fixed-term contracts.

The Organization argues, firstly, that, under paragraph 30 of Item 13.6 of the Human Resources Manual, applicable to temporary staff appointments, a temporary appointment shall, unless extended or converted, expire without notice or indemnity on the end date specified in the letter of appointment and, secondly, that the complainant had been expressly reminded of that rule in his letter of appointment of 10 April 2018. However, the Tribunal recalls that, according to its case law, reasonable notice must always be given when a temporary appointment is brought to an end, regardless of the terms of the contract in question or the provisions of the Staff Regulations and Staff Rules of the organisation concerned (see, in particular, Judgments 3746, consideration 9, 3353, consideration 24, and 1544, consideration 11).



In the present case, the complainant was informed by a note of 8 June 2021 that his contract would indeed expire on 30 June.

In the circumstances, the Tribunal considers that the complainant received reasonable notice, within the meaning of the case law referred to above, and consequently that the plea in relation to this point must be dismissed.

10. In his rejoinder, the complainant alleges a violation of his right to be heard before the non-renewal decision was taken.

However, the Tribunal finds that, in this case, in view of the information provided at the online meeting of 6 April 2021 to the staff members concerned, the complainant had the opportunity to present his arguments against the non-renewal of his contract. The plea that there was a violation of the right to be heard must therefore be dismissed in any event.

11. Also in his rejoinder, the complainant considers that the reason given for the refusal to grant him a further renewal of his temporary appointment, namely the outsourcing of certain activities of the Department of Safety and Security, was purely fictitious and that in reality he was the victim of an arbitrary choice made by the Head of his Department.

However, the Tribunal notes that these new pleas are not substantiated and must therefore be dismissed.

12. Lastly, in his rejoinder, the complainant criticises the Director-General for failing to explain in her decision of 9 December 2022 why she had not followed the dissenting opinions expressed by two members of the Appeals Board. But the Tribunal recalls that the simple reference made by the Director-General to the recommendation of the Appeals Board is in itself adequate motivation (see, to that effect, Judgment 4147, consideration 10).

13. It follows from all the foregoing considerations that the complaint must be dismissed in its entirety.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 10 May 2024, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 8 July 2024 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLÉMENT GASCON

MIRKA DREGER