Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

K. (No. 3)

v.

UNESCO

138th Session **Judgment No. 4880**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr L. K. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 8 February 2022, UNESCO's reply of 7 September 2022, the complainant's rejoinder of 20 October 2022 and UNESCO's surrejoinder of 18 January 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 abolition of his training duties.

The complainant joined UNESCO on 2 December 2002 as a grade G-3 security officer, assigned to the Security Unit within the Security and Safety Section, under a two-year fixed-term appointment that was renewed several times until 5 November 2021, when he was dismissed by the Organization on disciplinary grounds.

By a memorandum of 16 June 2011, Mr D., then Chief of the Security and Safety Section, informed the Section's staff that a team of trainers – to which the complainant belonged – was to be set up within the Security Unit "to be responsible for training, ongoing training and

initial training"[*]. The memorandum stated that the trainers in question were "part of the normal service as before"[*]. A further memorandum, dated 6 February 2017, was distributed to the Section's staff to inform them that a training group – including the complainant – had been set up in order, in particular, to "implement various training activities relating to technical skills for security professionals"[*]. The memorandum made clear that this group was not a separate entity, that the needs of the service still took priority and that the composition of the group was subject to change by decision of the Chief of Section.

On 31 July 2019 Mr D. left UNESCO and Mr H. was appointed Chief of the Security and Safety Section with effect from 16 September 2019.

On 9 January 2020 Mr H. informed the Director-General of his intention to carry out a restructuring. On 17 January, at a consultation meeting with security officers, he informed them of the proposed new structure and in particular, according to UNESCO, of his plan to entrust training coordination to a new "executive unit"[*] and his idea of outsourcing training services. The document used as a visual aid during his presentation was distributed to them on the same day. After receiving several comments from staff about his proposed restructuring, Mr H. sent them a memorandum, dated 9 March 2020, notifying them of the establishment of a new Operational Support Unit with effect from 1 March, responsible in particular for coordinating security training and proposing the Section's strategy in this area.

On 26 March 2020 the complainant – who had stopped his training activities following the establishment of the new unit and the outsourcing of services of this kind – sent the Director-General a protest seeking to "formally challenge the manner in which [his] function of trainer [had] been abolished"[*] by the aforementioned memorandum of 9 March. On 28 April he filed a first notice of appeal against the "administrative decision to abolish [his] function of trainer"[*] and on 12 May he submitted a detailed appeal to the Appeals Board.

[*] Registry's translation.

His protest was rejected on 15 May 2020 on the grounds that the contested decision did not adversely affect him. On 19 May he filed a second notice of appeal to inform the Appeals Board that he wished to maintain his challenge. As the two notices of appeal had the same subject matter, he requested their joinder, which was granted.

In the opinion that it issued on 27 October 2021 after hearing the parties, the Appeals Board recommended that the appeal be rejected on the grounds, in particular, that, by its memorandum of 9 March 2020, UNESCO had used its powers "to reassign, in its interests, some of the [complainant's] tasks without changing his functions as a security officer"[*]. It also noted that the complainant had not demonstrated that he had a "contractual right to perform the task of trainer"[*]. By a letter of 15 December 2021, the complainant was informed that the Director-General had decided to accept the Appeals Board's recommendation. That is the impugned decision.

In his complaint, the complainant asks the Tribunal to award him compensation in the amount of 55,000 euros for material injury and to order the reclassification of his post from G-3 to G-4 or, failing that, the appointment of an external reclassification specialist to re-evaluate the level of his post, taking account of his training functions. He also claims compensation for the moral injury he considers he has suffered, which he assesses at 30,000 euros, and costs in the amount of 5,000 euros.

UNESCO contends that the complaint is irreceivable for lack of a cause of action. It submits that the memorandum of 9 March 2020 – which is general in nature and falls within its discretion – is not a challengeable administrative decision and does not affect the complainant's rights and safeguards. It also asserts that the question of post classification is the subject of a separate complaint and should not therefore be dealt with in the context of the present dispute. It therefore asks the Tribunal to dismiss the complaint as irreceivable and, subsidiarily, as unfounded.

In his rejoinder the complainant withdraws his claim that his post should be reclassified.

[*] Registry's translation.

CONSIDERATIONS

1. The complainant impugns before the Tribunal the decision of 15 December 2021 by which the Director-General of UNESCO, in accordance with the recommendation of the Appeals Board, rejected his appeal challenging the abolition of the training duties – concerning in particular the use of protective equipment – assigned to him in the Security and Safety Section since 2010.

That abolition was the result of the outsourcing of training for security officers, which had been decided at the same time as a restructuring, announced in a memorandum from the Chief of Section on 9 March 2020, which included the establishment of a Security Training Coordination Team within a new Operational Support Unit and the abolition of "[a]ny other previous training-related structure"[*]. The outsourcing in question, which took the form of a contract with a private company specialising in teaching the skills required by security professionals, had the effect of putting an end to the activities of in-house trainers, who formed a team to which the complainant belonged and who, pursuant to the memoranda of 16 June 2011 and 6 February 2017 in particular, had previously been responsible for providing such services over and above the ordinary responsibilities of their respective jobs.

2. According to the Tribunal's settled case law, the outsourcing of services, which an international organisation may decide to undertake when it considers it necessary to assign certain tasks to an external service provider rather than to officials hired under its staff regulations, forms part of the management policy that the organisation is free to pursue in accordance with its general interests. As a result, the Tribunal is not competent to review the advisability or merits of the adoption of such a measure in a specific field of activity (see Judgments 4588, consideration 16, 3940, consideration 5, and 3376, consideration 2).

[*] Registry's translation.

When an organisation decides to use the services of a subcontractor, it must ensure that the contract it signs with that subcontractor "will not have an adverse impact on the situation of officials who are subject to the staff regulations and will not unjustifiably infringe the rights they enjoy under those regulations" (see Judgments 3940, consideration 6, and 3376, consideration 2). However, the Tribunal has made clear in this respect that, given the definition of its competence set out in Article II of its Statute, "an official may challenge before the Tribunal the outsourcing of certain tasks only to the extent that such outsourcing has a direct adverse impact on the rights conferred by the official's terms of appointment" (see Judgment 3376, consideration 3).

3. It is also well established in the case law that a decision determining a staff member's duties is at the discretion of the executive head of the organisation that employs her or him and as such is subject to only limited review by the Tribunal. Such a decision may be set aside only if it is *ultra vires* or in breach of a rule of form or procedure, or shows some mistake of fact or of law, or has overlooked some essential fact, or if some obviously wrong inference has been drawn from the evidence, or if there is misuse of authority. It is not for the Tribunal to substitute its assessment for that of the organisation as regards the tasks to be entrusted to the staff member concerned (see Judgments 3902, consideration 11, 1590, consideration 4, and 968, consideration 8).

Furthermore, where – as in the present case – the decision does not concern a transfer but concerns merely an alteration of the duties to be performed on a given post, the Tribunal's power of review defined above must be exercised with particular caution in order to respect the wide discretion enjoyed by the organisation in matching duties to needs (see Judgment 1590, consideration 4).

4. In support of his claims, the complainant submits essentially that UNESCO could not lawfully abolish his training duties, since the performance of those duties, which had long been entrusted to him, should be regarded as intrinsically linked to his employment.

However, it follows from what was stated in consideration 2 above that the Tribunal could in any event only interfere with the decision to end those duties if that decision had a direct adverse impact on the complainant's rights conferred by his terms of appointment. Yet, as the complainant himself notes in his written submissions, the duties in question were not specified in those terms. They were only added to his functions, as defined by those terms, when the internal training arrangements established in particular by the aforementioned memoranda of 16 June 2011 and 6 February 2017 were put in place.

Admittedly, the abolition of the duties in question would have nevertheless needed to be accompanied by financial compensation if it had also led to a substantial reduction in the complainant's remuneration. Under the Tribunal's case law, an organisation is required by its duty of care towards its staff members to provide such compensation where outsourcing seriously affects a staff member's financial situation (see Judgment 3373, considerations 7 and 9). In view of the evidence on file, that is not the case here. The complainant emphasises specifically in his written submissions that he performed his training duties without any financial compensation, from which it can be inferred that the abolition of those duties had no tangible consequences of this nature.

5. The complainant devotes a large part of his submissions to asserting that the training duties entrusted to him until 2020 should have been included in the job description for his post. In his initial written submissions, he even claimed that his post should be reclassified from G-3 to G-4 on that basis, which would have led to a rise in salary. Although he withdrew that claim in his rejoinder because his request for reclassification is the subject of his fifth complaint filed with the Tribunal in the meantime, he otherwise maintains his arguments on this point. In this regard, he alleges a breach of certain provisions of Item 3.1 of the UNESCO Human Resources Manual, relating to the "[p]ost classification system", which lay down, in particular, the principle that the job description should be consistent with the duties and responsibilities of the post concerned and the correlative obligation to update the job description if those duties and responsibilities change.

He further criticises the Organization for not having kept the promises allegedly made by his supervisors, in particular in the aforementioned memoranda of 16 June 2011 and 6 February 2017, to include the duties performed by the in-house trainers appointed in those memoranda in their job descriptions.

6. However, this line of argument is, in any event, irrelevant.

It should firstly be observed here that, contrary to what the complainant appears to consider, a modification of his job description to include the training duties previously entrusted to him would not have ensured that he would continue to be assigned them or prevented, in particular, their abolition following UNESCO's decision in 2020 to outsource them. Under the Tribunal's case law, a job description does not confer an entitlement to the continued existence of the duties or responsibilities referred to therein, or of the post to which it relates (see, for example, Judgment 4654, consideration 19).

The Tribunal points out above all that any irregularity in the situation resulting from the absence of reference in the complainant's job description to the training duties assigned to him at the time when he performed them does not affect the lawfulness of the decision to end them. The fact that these duties had not previously been officially recognised in that form, even assuming that they should have been, obviously did not in itself make their abolition unlawful. In reality, the complainant could have effectively submitted to the Tribunal the dispute which he wishes to raise not as a challenge to the decision at issue here, but as a challenge to a decision refusing to modify his job description to take account of his previous responsibilities, which it was up to him to elicit, if necessary, by submitting a request for such a modification to UNESCO at the appropriate time. The complainant's arguments on this point, including concerning the denial of a "legitimate expectation of career progress"[*] and the fact that the Organization purportedly "enriched itself at [his] expense from 2010 to

[*] Registry's translation.

2020"[*], which relate to his past situation, are therefore irrelevant in the present proceedings.

7. The complainant also argues in his written submissions that the decision to outsource the training of security officers was not taken in the interests of the service. In his view, the abolition of his training duties discriminated against him and in fact resulted from a deliberate attempt to damage his career, which amounts to an allegation of an abuse of power. He perceives evidence of these alleged flaws in the fact – on which he appears to base a plea of a failure to state reasons – that the Organization never stated the reasons why it had decided to outsource training and thereby end his responsibilities in this area.

This argument will be rejected in its entirety.

8. It transpires from a memorandum of 9 January 2020, submitted as evidence by the Organization, which was sent by the Chief of Section to the Director-General to present the plan for restructuring that was later implemented, that the outsourcing of training for security officers was one of the measures intended to remedy the "numerous weaknesses" relating to security that had been identified by the Internal Oversight Service (IOS) in an audit report on security at UNESCO Headquarters delivered on 25 October 2018.

The decision to outsource was therefore clearly taken for a purpose falling within the interests of the service. While the complainant disputes the appropriateness of this management choice, which, he submits, led to "financial and human waste"[*] and disregarded various security policies adopted by the governing bodies of UNESCO, it is not for the Tribunal, as recalled in consideration 2 above, to review the advisability or merits of such a decision.

The Tribunal notes that the outsourcing at issue inherently involved the abolition of the complainant's previous training duties and that it was a general measure which, far from concerning him specifically, affected all the Section's in-house trainers. These considerations,

[*] Registry's translation.

together with the fact that, as has just been stated, the measure had indeed been taken by the Organization for a purpose pertaining to the interests of the service, inevitably lead the Tribunal to dismiss the complainant's allegations of discrimination and abuse of power, which are clearly unfounded.

9. As regards the plea of a failure to state reasons, it should be recalled that the Tribunal's case law does not require the reasons for an administrative decision to necessarily be set out in the decision itself and allows them to be provided, for example, in other documents or orally (see Judgments 4451, consideration 11, 3662, consideration 3, or 1590, consideration 7). In the present case, the file shows that on 17 January 2020 the Chief of Section held a meeting to consult security officers on the planned restructuring and that during the meeting he duly mentioned the plan to outsource training, as shown by the document used as a visual aid during his presentation (where that issue is referred to by the English word "outsourcing"). In those circumstances, and particularly since that outsourcing was sufficient in itself to explain the abolition of the training duties previously assigned to the complainant, the Tribunal considers that the alleged failure to state reasons of which he complains cannot, in any event, be accepted.

10. Lastly, the complainant submits that the Organization's authorities and the Appeals Board disregarded the applicable rules, overlooked essential facts and drew clearly mistaken conclusions from the evidence when they respectively considered that his claims should be dismissed. However, these pleas, which effectively amount to a resubmission, in a different form, of the arguments discussed above, must also be dismissed for the same reasons as those already set out.

11. It follows from the foregoing that the complainant has not established that the decision to abolish his training duties is tainted by any of the flaws which entitle the Tribunal to intervene within its limited power to review a decision of this kind, defined in consideration 3 above.

12. As a result, the complaint must be dismissed in its entirety, without there being any need to rule on UNESCO's objections to its receivability or to order the further submissions suggested by the complainant in his rejoinder.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 16 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