

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

K. (No. 4)

v.

UNESCO

138th Session

Judgment No. 4881

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr L. K. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 12 March 2022, UNESCO's reply of 22 September 2022, the complainant's rejoinder of 30 September 2022, UNESCO's surrejoinder of 31 January 2023, the complainant's further submissions of 25 February 2023 and UNESCO's final comments thereon of 2 June 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 his change of immediate supervisor.

The complainant joined UNESCO on 2 December 2002 as a grade G-3 security officer 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. He was assigned to the Security Unit within the Security and Safety Section, which itself came under the Sector for Administration and Management (ADM) as from 5 November 2018.

Following an audit report on the Security Unit at the Organization's Headquarters issued in October 2018, Mr D., then Chief of the Security and Safety Section, decided to change the reporting line of security officers and, according to the Organization, verbally informed them that they would henceforth be supervised by his Assistant Chief, Mr M., instead of the Unit team leader, Mr P. On 18 December 2018 the complainant received written notification of this change of supervision.

In March 2019 the process of recruiting a new Chief of the Security and Safety Section was launched.

At the request of several security officers who had reported "shortcomings [and] management problems that [were] preventing [their] section from running smoothly"* , on 9 April 2019 the Assistant Director-General for ADM had a meeting with several of them – including the complainant – to discuss the management of the Security Unit. On 16 April he received a memorandum in which "[t]he [s]ecurity officers of the UNESCO Security Service"* drew his attention to an alleged "irreparable rift"* between Mr M. and "all [s]ecurity officers"* and asked him to ensure that their immediate supervision would no longer be performed by Mr M. but by "a coordinator or team leader from the field"* . A further meeting was held on 6 May to allow the officers to express their concerns.

By a memorandum of 20 May 2019, the Assistant Director-General for ADM informed the security officers that it would be up to the new person recruited as Chief of the Security and Safety Section "to put in place a structure fulfilling [their] expectations"* . He further stated that Mr M. was part of their reporting structure, enjoyed his complete professional confidence, and that he had no intention of removing tasks from him. He indicated that he would nevertheless suggest mediation with Mr M. Lastly, he specified that, "as clarified at [the] meeting [of 9 April], [he] confirm[ed] that the immediate supervision [of security officers] [would] be undertaken by [the team leader, Mr P.]"* .

* Registry's translation.

The new Chief of the Security and Safety Section, Mr H., took up his duties on 16 September 2019. He spoke individually with security officers shortly after his arrival. On 18 September the complainant sent him an email stating that, despite the instructions given by the Assistant Director-General for ADM in his memorandum of 20 May 2019, Mr M. still appeared as his immediate supervisor in the IT tools for tracking performance and leave. Mr H. replied on 26 September that, as the person responsible for security operations at Headquarters, Mr M. had the required legitimacy to perform all necessary validations in the IT systems and that there was no point in modifying the hierarchical structure of IT tools at that time.

On 30 September 2019 the complainant submitted to Mr H., as well as to the Assistant Director-General for ADM, the Director of the Bureau of Human Resources Management and the two chairs of the UNESCO staff associations, a “challenge [relating to the] change of [...] immediate supervisor”^{*} resulting from the email of 26 September, which, according to him, undermined his “contractual employment conditions”. He asked Mr H. kindly to review his decision.

On 30 October 2019 the complainant sent the Director-General an “[i]nformal protest against the decision by the new Chief of the [Security and Safety Section] unilaterally and arbitrarily to modify [his] contract of employment, signed and accepted in 2002, by changing [his] immediate supervisor”^{**}. That protest was dismissed on 20 December as irreceivable *ratione temporis* and, in any event, unfounded. On 30 December 2019 the complainant filed a notice of appeal, then on 27 January 2020 he submitted a detailed appeal to the Appeals Board, asking it to “enforce the administrative decision [of the Assistant Director-General for ADM contained in the memorandum] of 20 May 2019[,] which confirmed ‘that the immediate supervision [of security officers] was undertaken by [Mr P.]’”^{**} and to order UNESCO to pay compensation of 30,000 euros for the injury he alleged he had suffered.

^{*} Registry’s translation.

By a memorandum of 9 March 2020, Mr H. informed security officers that they would henceforth be supervised by a new Chief of Unit but that, pending that person's recruitment, Mr M. would continue to exercise supervisory functions in their regard.

In the opinion it issued on 27 October 2021 having heard the parties, the Appeals Board recommended that the appeal be dismissed as irreceivable on the ground that the complainant – who had not been adversely affected by the change of supervisor or shown that he had suffered any injury on that account – had no cause of action. By a letter of 15 December 2021, the complainant was informed that the Director-General had decided to accept that recommendation. That is the impugned decision.

The complainant requests the Tribunal “that it be officially recognised that it was [Mr P., as team leader,] who should have appraised the performance of security officers for the 2018-2019 period and not [Mr M.], Assistant Chief [of the Security and Safety Section]”*. He also seeks the payment of compensation in the amount of 30,000 euros for the moral injury allegedly suffered, and an award of 5,000 euros in costs.

UNESCO notes that the complaint is not directed against a challengeable administrative decision and considers that the complainant has no cause of action. It also submits that the complainant did not comply with the prescribed time limit for submitting his protest and that his claim regarding his performance appraisal for the 2018-2019 period is irrelevant to the present dispute and should therefore be dismissed. Accordingly, it asks the Tribunal to dismiss the complaint as irreceivable and, subsidiarily, as unfounded.

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, dismissed

* Registry's translation.

his appeal against the refusal by the Chief of the Security and Safety Section, Mr H., on 26 September 2019 to grant a request that he had submitted on 18 September in his capacity as security officer.

That request – which had been submitted to Mr H. barely two days after he had taken up his post – asked him to reconsider the fact that his Assistant Chief, Mr M., appeared as the supervisor with responsibility for security officers in IT tools for tracking performance and leave, which, in the complainant’s view, meant that Mr M. was wrongly regarded as their “immediate supervisor”. The evidence shows that the situation criticised by the complainant resulted from a decision taken by Mr H.’s predecessor, who had taken the view, following an audit report on security at UNESCO Headquarters delivered by the Internal Oversight Service (IOS) on 25 October 2018, that the reporting line of security officers should be modified to allow them to be henceforth supervised by Mr M., by substituting him in the IT tools in question for the Security Unit team leader, Mr P.

2. In the contested decision of 26 September 2019, Mr H. considered in particular that as Mr M. was, “under [his] direct authority, the person responsible for security operations at Headquarters”*, Mr M. “[had] the required legitimacy to perform all necessary validations in the IT systems where the staff ultimately under his authority [were] concerned”* and that therefore “[t]here [was] no point in modifying the hierarchical structure of those tools at [that] time”*.

According to the complainant, that decision failed to apply the terms of a memorandum issued by the Assistant Director-General of the Sector for Administration and Management of 20 May 2019, in which the latter, having in the meantime twice met representatives of the security officers – who had complained about the management of the Section for various reasons – had, while making clear to the officers that “[Mr M.] [was] part of [their] reporting structure”* and “enjoy[ed] [his] complete professional confidence”* so he “[had] no intention of

* Registry’s translation.

removing tasks from him”*, stated that he nevertheless “confirm[ed]”* “[a]s clarified”* during those meetings “that [their] immediate supervision [would] be undertaken by [Mr P.]”*.

It should be noted that it transpired from the memorandum in question that its content was valid pending arrangements to be made by the new Chief of Section to restructure the Section and that, in the decision of 26 September 2019, Mr H., apart from giving a provisional response to the complainant’s request, also referred to those future arrangements, which were indeed laid down since then in a memorandum of 9 March 2020.

3. Article II of the Statute of the Tribunal provides, in paragraphs 1 and 5, that the Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of an official’s appointment and of the provisions of the staff regulations of the organisation that employs her or him. As the Tribunal has repeatedly stated in its case law, it may be inferred from these provisions that, for a complaint to be receivable, among other requirements, the staff member must have a cause of action (see, for example, Judgments 4337, consideration 6, 4296, consideration 6, 4145, consideration 5, or 3426, consideration 16).

A cause of action may be recognised only if the decision challenged by that official adversely affects her or him (see, in particular, Judgments 4322, considerations 8 and 9, 3198, consideration 13, 2952, consideration 3, and 1852, considerations 2 and 3).

However, the Tribunal finds that the complainant has no such cause of action in the present case.

4. It is well established in the case law that an international organisation has broad discretion over the organisation of its services and the Tribunal cannot judge the wisdom of measures that it deems necessary to adopt in this regard (see, for example, Judgments 3362, consideration 13, 2856, consideration 9, 2510, consideration 10, or

* Registry’s translation.

1131, consideration 5). As the Organization correctly points out, a decision which – like the decision challenged in the present case – determines the reporting line of staff members belonging to a given category or service is a measure of this type and therefore falls within the scope of that case law.

It is also a general rule that an organisation’s staff members are, in the performance of their duties, placed in a position of hierarchical subordination to its executive head and the various supervisors to whom they report. As regards UNESCO staff members, that rule is expressly stated in the provisions applicable to them, as Staff Regulation 1.2 provides that “[s]taff members are subject to the authority of the Director-General” and “are responsible to him or her in the exercise of their functions”, while Item 2.2, paragraph 9, of the Human Resources Manual adds that “[t]he authority of the Director-General is exercised through officers to whom he/she has delegated the authority to take certain decisions and through duly designated hierarchical supervisors” and that “[a]ll staff members must follow the decisions/instructions of the Director-General, or of officers acting by delegation of authority and [...] of their hierarchical supervisors”.

The Tribunal considers that it follows from these considerations that staff members cannot ordinarily be allowed the opportunity to challenge measures determining their reporting lines or the choice of persons designated to exercise supervisory functions in their respect. It is the organisation’s prerogative to take such decisions and they cannot therefore be considered to adversely affect those staff members.

5. Admittedly, under the Tribunal’s case law, as an exception to what has just been said, there are two particular situations in which a staff member may be considered to have a cause of action in challenging decisions of this type. The first is where the contested decision has a direct adverse impact on the rights conferred by that staff member’s terms of appointment (see in particular, for the use of this criterion in the similar context of criticism of a measure falling within an organisation’s management policy, Judgment 3376, consideration 3). The second is where the decision in question involves a manifest

perversity that renders her or his challenge lawful (according to the criterion established by the Tribunal in Judgment 4322, consideration 9, in a situation that may be transposed to this area).

However, neither of these situations arises in the present case.

6. Firstly, it should be noted that the complainant's terms of appointment did not include anything concerning the reporting line or conditions of supervision applicable to his job.

In this regard, the complainant refers solely to a "summary of the functions of the post"* of security officer which appeared in a vacancy notice published when new officers were recruited in 2017 and from which it is clear, according to him, that the immediate supervision of holders of these posts had to be performed by a team leader or her or his deputy. However, such a vacancy notice has no contractual value in any event, whether in respect of the officers recruited on its basis or *a fortiori* of the complainant, whose personal situation it did not concern and in whose regard it plainly could not create any entitlements. Moreover, it does not appear from the wording of the notice in question, according to which security officers were to perform their duties "[u]nder the authority and in compliance with the [i]nstructions of the Chief of Section or her or his Assistant Chief, under the oversight and responsibility of team leaders or their substitutes"*, that the new supervisory arrangements for these staff members decided in 2018 were incompatible with those set out in that document.

Although the complainant submits that, in view of the circumstances in which Mr M. actually carried out his supervisory functions, his designation as the person responsible for appraising security officers breached the requirement of an objective assessment of his merits, the Tribunal considers that this criticism is not, in any event, such as to establish that the contested decision had a direct adverse impact on the rights conferred on the complainant by his terms of appointment within the meaning of the case law previously cited.

* Registry's translation.

7. Secondly, although it is clear from the evidence that Mr M. was not well liked by a large number of security officers, as is demonstrated in particular by the content of the exchanges, referred to above, that took place in 2019 between the representatives of those officers and the Assistant Director-General for Administration and Management, that circumstance does not suffice to convince the Tribunal that it was a manifest perversity for Mr M. to be retained by the contested decision in the supervisory functions that had been entrusted to him in 2018.

8. The Appeals Board, in its opinion of 27 October 2021, and then the Director-General, in the impugned decision, were therefore right to find that the complainant's internal appeal had to be dismissed for lack of a cause of action.

9. The Tribunal observes that, in his written submissions, the complainant takes particular issue with the fact that Mr M., further to what he considers to be a "wrongful/irregular transfer of the power to perform appraisals of security officers"*, conducted his performance appraisal for the 2018-2019 biennium.

In addition to the argument, already referred to above, that Mr M. should not have been given that responsibility because he was not his immediate supervisor, the complainant alleges, in particular, in that respect that Mr M. demonstrated hostile bias towards him during that appraisal.

However, criticisms of the lawfulness of the complainant's performance report for the 2018-2019 biennium could be properly raised only in a challenge to that report itself, which would be the subject of proceedings separate to those giving rise to the present judgment. Furthermore, the Tribunal notes that the complainant initiated internal appeal proceedings against that performance report and at the same time submitted an internal complaint of retaliation

* Registry's translation.

against Mr M. on account of its content, the dismissal of which is the subject of his eighth complaint before the Tribunal.

10. It follows from the foregoing that the present complaint is irreceivable and must therefore be dismissed in its entirety.

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