Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

P.

v.

UNESCO

138th Session **Judgment No. 4885**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr C. V. P. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 3 June 2022 and UNESCO's reply of 29 September 2022, the complainant having chosen not to file a rejoinder;

Considering the additional documents submitted by UNESCO on 28 March 2024 in response to a request for further submissions from the President of the Tribunal;

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 1 June 2005 as a grade G-3 supernumerary security officer, assigned to the Security Unit within the Security and Safety Section. From 16 October 2007 he held a two-year fixed term appointment, which was renewed several times.

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. He invited them to provide any comments on the new structure. The document used as a visual aid during his presentation was distributed to them on the same day. On 29 January, as he had only received two emails containing feedback on the proposed restructuring, Mr H. reminded his officers of the invitation to inform him of any objections in that regard. The complainant sent his comments on 31 January.

By a memorandum of 9 March 2020, Mr H. notified the security officers 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. Referring to "enormous financial and human waste"*, the complainant submitted his

* Registry's translation.

objections on 23 March and asked the Chief of Section to withdraw his memorandum. The next day, he was informed that his message – which was deemed "grotesque and disjointed [but above all] inappropriate and totally disrespectful"* – would result in a warning, which he received the same day.

On 26 March 2020 the complainant – who had stopped carrying out his training activities following the establishment of the new unit and the outsourcing of services of this kind – sent the Director-General a protest in which he requested the cancellation of the contested memorandum and all of the decisions taken by Mr H. included in it. On 1 April he submitted a harassment complaint against Mr H. to the Internal Oversight Service (IOS), then on 28 April he filed his first notice of appeal against the decision "to abolish [with effect from 1 March] [his] function of trainer in various areas linked to the security of UNESCO staff and buildings".

His protest was rejected on 15 May 2020 on the grounds that the contested decision, contained in the memorandum of 9 March 2020, had been adopted in accordance with the applicable rules and was based on the needs of the service, so did not adversely affect him. On 18 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. On 1 June he submitted his detailed appeal to the Appeals Board, requesting that it set aside "the decision to abolish [his] function of trainer", pay him compensation in the amount of 20,000 euros for the injury allegedly suffered and reestablish the "training centre"* set up by the former Chief of the Security and Safety Section.

On 26 June 2020 the complainant was informed of the decision of the Director of IOS to close the investigation into his harassment complaint of 1 April.

In its opinion of 1 February 2022, issued 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,

* Registry's translation.

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 14 March 2022, the complainant was informed that the Director-General had decided to accept the Appeals Board's recommendation. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to recognise, firstly, that UNESCO enriched itself at his expense from 2010 to 2020 by "using"* him, without any compensation, as a trainer in the various areas for which he had received certifications and qualifications approved by the United Nations system and, secondly, that Mr D. did not keep the promises he had made to him to place in his professional file all diplomas and certifications received and to modify his job description, which damaged his "legitimate expectations of career progression". In respect of what he describes as the "repeal" of his function of trainer more specifically, he invites the Tribunal to consider this as evidence of "harassment by abuse of authority and dominant position and of discrimination"*. He also seeks an award of damages, set *ex aequo et bono* at 55,000 euros, the reestablishment of the "training centre"* within the Organization, the resumption of his function of trainer and the inclusion of his certifications in his professional file. Lastly, he requests that his employer comply with particular resolutions adopted by UNESCO's General Conference and the United Nations.

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 points out that the IOS decision to close the investigation into the harassment complaint of 1 April 2020 was not challenged and has therefore become final. It

* Registry's translation.

therefore asks the Tribunal to dismiss the complaint as irreceivable and, subsidiarily, as unfounded.

CONSIDERATIONS

1. The complainant impugns before the Tribunal the decision of 14 March 2022 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

[*] Registry's translation.

such a measure in a specific field of activity (see Judgments 4588, consideration 16, 3940, consideration 5, and 3376, consideration 2).

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 the file shows that 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 complaint 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 submits that the training duties entrusted to him until 2020 should have been included in the job description for his post. On this point, 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 also 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, taking care to place in their personal files the certificates of their qualifications in this respect.

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 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 even reflected "[h]arassment by abuse of authority and dominant position" to which he was allegedly subjected. In connection with these alleged flaws, he also complains about the fact – on which he appears to base a plea of a failure to state reasons – that the Organization did not state 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 and the United Nations, 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,

[*] Registry's translation.

affected all the Section's in-house trainers. These considerations, 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 to the dismissal of the complainant's allegations of discrimination and harassment, which are clearly unfounded. In this respect, the Tribunal notes incidentally that the harassment complaint which the complainant lodged against the Chief of Section on 1 April 2020 resulted, after its investigation by IOS, in a decision to close it, notified on 26 June, and, according to the Organization's uncontested assertion, no internal appeal was lodged against that decision, which has therefore become final.

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 memorandum of 9 March 2020 was unlawfully retroactive in that it provided for the restructuring of the Section to take effect from 1 March, particularly because it was not distributed, according to him, until 16 March.

It is true that, in accordance with the principle of non-retroactivity, which is one of the general principles of international civil service law, an organisation may not normally apply an administrative act that is unfavourable to the staff members concerned before its notification

(see, for example, Judgments 4254, consideration 4, or 3884, consideration 4). However, under the Tribunal's case law, a complainant cannot effectively complain of a breach of this principle when the retroactive application of the act in question did not cause her or him any injury (see, in particular, Judgments 3662, consideration 10, and 2963, considerations 8 and 9).

In the present case, while the abolition of the duties assigned to the Section's in-house trainers can certainly be regarded as unfavourable to them, the file shows that the training provided by these trainers had in fact ceased – due in particular, apparently, to the expiry of the qualification certificates previously issued to them – before the reform in question came into force. The retrospective application from 1 March 2020 of the contested memorandum – which, besides, would not in any event have justified its setting aside in its entirety, but only in so far as it had taken effect prior to its notification – had thus no tangible impact on the complainant's situation and, consequently, did not cause him any injury. This plea will therefore be dismissed.

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. The Tribunal observes that some of the complainant's claims are, moreover, irreceivable as they seek declarations of law (see, for example, Judgments 4700, consideration 2, or 3876, consideration 2) or injunctions that it does not have competence to issue.

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