

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

S.

v.

UNESCO

120th Session

Judgment No. 3550

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms S. S. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 25 September 2014;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. The complainant held a service contract with UNESCO from April to December 2011. Before separating from service she filed a harassment grievance against one of her colleagues. By an e-mail of 19 February 2013 the Director of the Bureau of Human Resources Management informed the complainant that an investigation had been conducted by the Internal Oversight Service (IOS), which had concluded that there was a preponderance of evidence that she had been harassed. She added that on the basis of the IOS report, the Director-General would have decided to initiate the disciplinary procedure against the alleged harasser. However, given that the latter had retired from UNESCO on 31 October 2012, he was no longer under the authority of

the Director-General. Consequently, no procedure could be initiated against him.

2. The complainant filed a notice of appeal against that decision seeking compensation for the harassment she had suffered. Pursuant to Item 13.9, paragraph 75, of the Human Resources Manual, the Chairperson of the Appeals Board examined her appeal as sole arbitrator and issued his arbitration report on 13 December 2003. He recommended that the complainant be awarded one month's salary as an *ex gratia* payment for the "hardship" she had encountered, that she be considered for any suitable opening that might become available in UNESCO and that a record of the findings of the IOS be kept in the harasser's personal file.

3. By a letter of 31 January 2014 the Director of the Bureau of Human Resources Management informed the complainant that, pursuant to the Arbitrator's report, UNESCO would pay her one month's salary and that the Director-General would consider her for any opening that might become available in UNESCO for which she was qualified. She added that the Director-General would ensure that the record of the IOS findings would be kept in the harasser's file. She asked the complainant to provide the Administration with her bank account details so that it could proceed with the payment of the one month's salary. She added that, pursuant to Item 13.9, paragraph 75, of the Human Resources Manual, the decision of the Arbitrator was final, conclusive and without further recourse.

4. On 25 September 2014 the complainant filed a complaint with the Tribunal, impugning the decision of 31 January 2014.

5. In the letter of 31 January 2014 UNESCO made it clear that, under the applicable rules, the decision taken by the Arbitrator was final, conclusive and without further recourse.

6. The Tribunal notes that, according to paragraph 17 of Item 13.9 of Chapter 13 of the Human Resources Manual, holders of service contracts “are neither staff members under UNESCO’s Staff Regulations and Staff Rules nor officials under the Convention on the Privileges and Immunities of the Specialized Agencies. Their rights and obligations are based on the terms of the contract they have signed with the Organization, including the general conditions annexed to the contract.” Paragraph 75 of Item 13.9 of Chapter 13 provides that any disputes relating to service contracts shall be submitted to binding arbitration.

7. It is unnecessary to consider the arguments put forward by the complainant in support of these claims, as the Tribunal clearly has no jurisdiction to hear this case. Pursuant to Article II, paragraph 5, of its Statute “[t]he Tribunal shall [...] be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any [...] international organization meeting the standards set out in the Annex [to the Statute] which has addressed to the Director-General [of the ILO] a declaration recognizing, in accordance with its Constitution or internal administrative rules, the jurisdiction of the Tribunal”. As the complainant cannot be considered as an official and is not covered by the provisions of the UNESCO’s Staff Regulations and Staff Rules, she has no access to this Tribunal (see Judgments 2017, under 2(a), and 3049, under 4).

8. It follows that the complaint is clearly irreceivable and must therefore be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 22 May 2015, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 30 June 2015.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ