

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

F. (Nos. 5, 6 and 7)

v.

UNESCO

128th Session

Judgment No. 4171

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth, sixth and seventh complaints filed by Ms L. F. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 1 February 2016, UNESCO's single reply of 6 June, the complainant's rejoinder of 5 August and UNESCO's surrejoinder of 14 November 2016;

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 cases may be summed up as follows:

The complainant challenges the decisions to dismiss her internal complaints of moral harassment.

Facts relevant to this case are to be found in Judgments 4169 and 4170 on the complainant's third and fourth complaints respectively, also delivered in public this day. Suffice it to recall that the complainant joined UNESCO on 3 January 2005 under a fixed-term appointment which was renewed several times, eventually ending on 2 January 2013, when she left the Organization. When she was assigned to a post of secretarial assistant in the Intergovernmental Oceanographic Commission (IOC) in the Natural Sciences Sector, she was placed under the direct supervision of Mr T.A.

On 29 June 2012 she submitted three complaints of moral harassment to the Director-General – two of which also alleged abuse of authority – directed against Mr T.A., Mr J.A., her second supervisor from May 2009, and Ms W.-W., Assistant Director-General for the IOC since January 2010. On 12 October 2012 the Ethics Adviser, who had invited these staff members to submit their comments, informed the complainant that the Director-General had decided to close the cases following preliminary assessment on the grounds that the alleged acts did not constitute moral harassment within the meaning of the applicable provisions but were “rather manifestations of work-related conflicts”.

On 9 November 2012 the complainant lodged a protest against the decisions to dismiss her complaints. Having received no reply, she submitted a notice of appeal on 18 December 2012. After obtaining several extensions of the time-limit, she submitted a detailed appeal to the Appeals Board directed against each of the alleged harassers on 13 November, 2 December and 9 December 2013. In particular, she requested that a thorough investigation be carried out into each of her complaints (preferably by an outside specialist), that the alleged harassers be sanctioned and that she be granted fair compensation for all the physical, material and moral injury suffered.

In its opinions, which it delivered on 9 and 12 October 2015 having heard the complainant, the Appeals Board recommended, in particular, that the Director-General note that although there was no harassment, there was a dysfunction in respect of the situations with Mr T.A. and Mr J.A. and that there was a climate of conflict and hostility, mainly due to disagreements, differences of opinion and differing perceptions of the events by the complainant and Ms W.-W.; to likewise note that, although the managers complied with the applicable rules, they ought to have found a sustainable solution consistent with their normal managerial authority and duty of care; to find that the complainant ought to have been given another opportunity to prove her worth in another sector; and, lastly, to re-establish a human resources unit dedicated to transfers in order to avoid similar situations in future. By three letters of 27 November 2015, which constitute the impugned

decisions in the fifth, sixth and seventh complaints filed by the complainant, she was advised that the Director-General, considering that the applicable rules had been followed, had decided not to accept the recommendations of the Appeals Board in respect of her transfer to another sector or identification of a sustainable solution and to take note of the other recommendations.

In her three complaints, the complainant requests the Tribunal to set aside the impugned decision, to award her compensation for physical, moral and material injury, and to order that she be reinstated, or, alternatively, to adjust her compensation claim to cover all of the injury that she has suffered as a result of her employment ceasing on 2 January 2013. She also seeks the “restoration” of the two within-grade increments which were, in her view, due on 1 February 2011 and 2012, which she was “refused” following unfavourable performance ratings for the 2008-2009 and 2010-2011 bienniums, “payment of the sum corresponding to those increments, including contributions to the United Nations [Joint Staff] Pension Fund”, an award of moral damages for, inter alia, the delay in the internal appeal procedure and 5,000 euros in costs. Lastly, she requests that these three complaints be joined to her third and fourth complaints. In her fifth complaint, she further asks for the comments which Mr T.A. made to the Ethics Adviser to be disclosed and in her seventh complaint, “the restoration of [the] increment due on 1 February 2010”.

UNESCO asks that the Tribunal dismiss the three complaints as unfounded and produces the document of which the complainant seeks disclosure in her fifth complaint. Specifically in respect of the fifth complaint, UNESCO considers that the complainant’s charges of alleged sexual harassment by Mr T.A. between 2005 and 2009 are irreceivable on the grounds that she did not exhaust internal remedies. It submits that this also applies to her claims for “restoration” of the increments allegedly due on 1 February 2010, 2011 and 2012.

CONSIDERATIONS

1. The complainant has filed five complaints against five decisions of the Director-General of UNESCO, all dated 27 November 2015, and asks that they be joined. In the fifth, sixth and seventh complaints concerning the moral harassment allegedly suffered by the complainant, the facts are closely interconnected. Moreover, in these three complaints, the Tribunal will examine the same pleas. It is therefore convenient to join them so that they may form the subject of a single judgment.

However, the third and fourth complaints, which have also led to judgments delivered in public this day, deal with different matters and raise distinct legal questions that merit individual examination. Accordingly they will not be joined to the three complaints which are the subject of the present judgment.

2. The complainant impugns three decisions of 27 November 2015 taken by the Director-General on the complainant's appeals against the decisions of 12 October 2012 closing the cases concerning her internal complaints of moral harassment directed against her supervisors, Mr T.A. (her fifth complaint) and Mr J.A. (her sixth complaint), and against the Assistant Director-General for the IOC, Ms W.-W. (her seventh complaint).

3. In the impugned decisions, the Director-General took note of the first recommendation made by the Appeals Board, which stated that although harassment could not be established, there was evidence to show a dysfunction (in respect of the complaints against Mr T.A. and Mr J.A.) or a climate of conflict and hostility (in respect of the complaint against Ms W.-W.), but she considered that the evidence pointed rather to manifestations of work-related conflict. On the basis of the consideration that the contested decisions had been taken in accordance with the UNESCO anti-harassment policy, the Director-General did not take into account either the second recommendation of the Appeals Board, according to which the managers should have found a sustainable solution for the complainant, or the third recommendation,

according to which the complainant should have been transferred to another sector. Lastly, the Director-General agreed to take note of the fourth recommendation of the Appeals Board, inviting her to re-establish a human resources unit responsible for transfers in order to avoid similar situations in future.

4. The complainant points to numerous events and submits various documents as evidence that she suffered moral harassment by Mr T.A., Mr J.A. and Ms W.-W. The Organization does not deny that difficulties existed, but it describes them as work-related conflicts and endeavours to show that they originated from the complainant's behaviour. It likewise uses plentiful examples to illustrate its arguments.

5. In these circumstances, the Tribunal will rely on the findings of the Appeals Board and, since no manifest error is apparent, will take for established the facts as the Board ascertained them. As the Tribunal has stated in its case law, an internal appeals body plays a fundamental role in the resolution of disputes, owing to the guarantees of objectivity derived from its composition, its extensive knowledge of the functioning of the organisation and the investigative powers granted to it. It gathers the evidence and testimonies that are necessary in order to establish the facts, as well as the data needed for an informed assessment thereof (see, for example, Judgments 2295, consideration 10, and 3424, consideration 11).

6. In its opinions of 9 October 2015 (CAP 399) and 12 October 2015 (CAP 400 and CAP 401), the Appeals Board considered that although work-related conflicts between the complainant and her supervisors could not be considered as acts of harassment under the provisions of the UNESCO anti-harassment policy, they should have been taken into account. The Appeals Board found that it seemed undeniable that the work climate in the IOC was difficult and the working relationships between the complainant and her supervisor complicated. A mutual lack of respect had created tensions and a hostile climate. The complainant felt isolated, ill-treated and not duly recognised while her

supervisors considered that they were not duly respected by their subordinate, whose behaviour had become inappropriate. A positive and harmonious working environment, free of intimidation, hostility or offence, was not ensured. The Appeals Board expressed its regret at that situation and felt that not everything had been done to ease the atmosphere in the IOC, despite the recommendation of the Reports Board to transfer the complainant to another service. The complainant had submitted several requests to that effect and some managers had also made attempts to find other solutions. Unfortunately, no conclusive decision had been reached. The mere change of supervisors which had been decided on instead of a transfer was far from being a solution in a hostile environment, where the complainant's reputation had already been tarnished. A totally new environment, such as her transfer to another sector or her being put at the disposal of the Bureau of Human Resources Management pending transfer, were options to be considered without fail, in order to limit further deterioration of a situation which had already become untenable for the parties. The complainant was willing to be transferred elsewhere and the Bureau of Human Resources Management had the authority to arrange this. The Appeals Board deplored the fact that no viable solution had been found, leaving the complainant with a feeling of isolation and harassment from which she suffered. In the same vein, the Board was of the view that the complainant had been excluded from certain professional activities, probably due to attitudes and tensions between her and her supervisors. In conclusion, the Board found that although it could not establish harassment, there was evidence showing that there had been a dysfunction in the cases concerning the complaints against Mr T.A. and Mr J.A. and that there had been a climate of conflict and hostility in the case concerning the complaint against Ms W.-W. In particular, it invited the Director-General to note that the managers ought to have found a sustainable solution that was consistent with their normal managerial authority and their duty of care and to find that the complainant ought to have been given another opportunity to prove her worth in another sector, far from an environment of conflict and hostility.

7. It is firmly established in the case law that the person alleging harassment bears the burden of proving the allegation (see Judgments 2745, consideration 20, 3347, consideration 8, 3692, consideration 18, and 3871, consideration 12). In CAP 399, CAP 400 and CAP 401, the Appeals Board clearly referred to the complainant's numerous submissions and allegations and showed in its findings and conclusions that it had properly understood and examined all the written evidence before it. It considered that harassment could not be established but that the disputes leading to the complainant's complaints could be explained by the bad working relationships between her and other members of the IOC, in particular her supervisors, which had created a very tense working environment. In this case, the complainant has furnished no evidence that the Appeals Board committed a manifest error in its assessment of the facts. The Tribunal will therefore not accept the charges of harassment.

8. More specifically regarding the charges of sexual harassment which the complainant claims to have experienced between 2005 and 2009, the Tribunal observes that these charges were merely alluded to in the complaint submitted against Mr T.A. on 29 June 2012. Consequently, it cannot be considered that the remedies available to the complainant to report such harassment were exhausted, as required under Article VII, paragraph 1, of the Statute of the Tribunal. UNESCO's objection to receivability on this point is hence well-founded.

9. Among the complainant's numerous grievances against the Organization, she submits that it did not transfer her to another service although she was in a working environment that had become unbearable. In her view, this constitutes a breach of item 18.2, paragraphs 5 and 57, of the Human Resources Manual concerning anti-harassment policy. In the complainant's opinion, this breach was further aggravated by the Organization's failure to take into consideration the deterioration in her health.

10. Item 18.2, paragraph 5, states:

“The basic principles governing the anti-harassment policy are the following:

- (a) In accordance with the Standards of Conduct for the International Civil Service, every employee of UNESCO shall treat one another fairly, with courtesy, respect and dignity, without verbal or physical abuse, regardless of rank or contractual status.
- (b) [...]
- (c) Focus shall be placed on preventive action against harassment. [...] Each UNESCO employee, at any level, and in particular at supervisory level, is responsible for building a positive work environment and a climate of trust and tolerance, free of all forms of harassment. [...].”

Paragraph 57 of item 18.2 provides:

“Managers and supervisors are responsible for:

- (a) Ensuring a positive and harmonious working environment, free of intimidation, hostility or offence and any form of harassment;
 - (b) Taking steps, at an early stage, to prevent and/or resolve conflicts between staff/employees in their Sector, Division, Section, Unit, Field Office;
- [...].”

11. These provisions simply apply the duty of care, to which the complainant also refers, owed by all international organisations. In its case law, the Tribunal has emphasised that the relations between an international organisation and its staff members must be governed by good faith, respect, transparency and consideration for their dignity (see Judgment 1479, consideration 12). An organisation must therefore treat its staff with proper consideration and avoid causing them undue injury. It must care for the dignity of its staff members and not cause them unnecessary personal distress and disappointment where this could be avoided (see, for example, Judgments 1756, consideration 10(a), and 3353, consideration 26). As the Tribunal held in Judgment 2524, an international organisation has a duty to provide a safe and adequate environment for its staff (see also Judgment 2706, consideration 5).

12. UNESCO maintains that it endeavoured to find a solution and proposed various options to the complainant, such as mediation, diversification of her duties, a change in supervisors or dialogue. However, the complainant's transfer to a service outside the IOC was one possibility that was identified throughout the various internal appeal procedures initiated by the complainant. It was the subject of a recommendation by the Reports Board in January 2011, which the Director-General accepted in her decision of 25 January 2011. In the opinion delivered in October 2012 concerning the performance rating for the 2010-2011 biennium, the four members of the Reports Board again recommended transferring the complainant to a service other than the IOC, two making it their principal recommendation and two presenting it as an alternative to terminating the complainant's appointment.

In its submissions, UNESCO does not indicate specifically what solutions for transferring the complainant outside the IOC were envisaged nor, if they were, why they could not be implemented. In the reply, it quotes a passage from the Reports Board's opinion dated October 2012, according to which placing the complainant at the disposal of the Bureau of Human Resources Management "was not so easily done" and a statement made by the Assistant Director-General for the IOC, Ms W.-W., to the Ethics Adviser saying that the limited number of staff working for the IOC and her budget made it impossible to transfer the complainant "with her post" outside the IOC. However, it was the complainant's transfer and not that of her post which should have been considered. In the same statement, the Assistant Director-General said that she had discussed the complainant's transfer to another division of the Natural Sciences Sector as an interim measure and a six-month secondment to the Bureau of Human Resources Management but these measures were not accepted. However, the Organization's various appeal bodies did not suggest the complainant's temporary secondment but her transfer to another sector or her placement at the disposal of the Bureau of Human Resources Management with a view to a transfer. Lastly, UNESCO refers to the Director-General's decisions of 2 February 2011 and 9 January 2013, which make it plain that she considered that a transfer had been effected by means of firstly changing the complainant's "reporting relationships" and then placing her under

other supervisors. However, it was the complainant's transfer outside the IOC that was suggested, and not a change in "reporting persons" or supervisors.

UNESCO has failed to prove that the Appeals Board committed an error in its assessment of the facts in finding that the complainant was not alone responsible for the hostile climate in the service, that in two of the three cases there was a dysfunction and that the Organization did not do everything in its power to alleviate the situation and to effect a transfer that several of its appeal bodies felt was desirable.

13. In view of the findings set out by the Appeals Board in its opinions, the Director-General was wrong to consider that UNESCO's rules had been correctly applied and to reject, firstly, the recommendation that the managers should have found a sustainable solution to the complainant's problems that was consistent with their normal managerial authority and duty of care and, secondly, the recommendation that the complainant should have been given the opportunity to prove her worth in another sector. Paragraphs 5 and 57 cited above and, more generally, the duty of care require the Organization to ensure a positive and harmonious working environment, free from intimidation and hostility.

In this case, that duty was further reinforced by the worsening health of the complainant, who has provided various medical certificates, the number of which, their sequence and the nature of the health conditions identified are such as to raise suspicion that her health problems were work-related in origin.

Even though the charge of harassment cannot stand, an international organisation fails in its duty to treat staff members with dignity and avoid causing them undue and unnecessary injury if the organisation is aware of an unhealthy working atmosphere in the service where a staff member works but allows it to remain without taking adequate measures to remedy the situation (see, to this effect, Judgment 2067, considerations 16 and 17).

In the present case, the Organization breached its duty of care. It follows that the impugned decisions must be set aside.

14. The complainant asks to be reinstated at UNESCO. This claim has already been dealt with in Judgment 4170 delivered in public this day and the Tribunal will not rule on it again.

15. The complainant further claims fair compensation for all the physical, material and moral injury that she suffered owing to the deterioration in her working conditions, damage to her career and health, and affronts to her reputation and dignity.

Concerning material injury, the Tribunal recalls that in Judgment 4170 delivered in public this day, it awarded the complainant compensation equivalent to two years' salary and allowances of all kinds, including payment of the equivalent of pension contributions, all bearing interest at the rate of 5 per cent per annum, for the unlawfulness of the failure to renew her appointment. The complainant does not state why or how much she should be compensated for the additional material injury caused by the breach of the duty of care noted above. The Tribunal assumes that the compensation is to cover the complainant's medical costs. However, given that the exact cause of the complainant's medical problems has not been established with certainty, this claim cannot be granted.

However, difficult working conditions and an affront to the complainant's dignity caused her moral injury. In light of the lack of care with which, according to the evidence, the Organization treated her in this matter, the Tribunal considers it appropriate to award her 10,000 euros in compensation under this head.

16. In addition, the complainant requests the "restoration of the [three] increments due [respectively] on 1 February 2010, [1 February] 2011 and [1 February] 2012". This matter has likewise already been decided in consideration 12 of Judgment 4169 and in consideration 16 of Judgment 4170, to which the Tribunal refers.

17. Lastly, the complainant claims moral damages for the excessive length of the internal appeal procedure. However, the Tribunal observes in this regard that although the complainant submitted a notice

of appeal against the three decisions closing the cases concerning her complaints of harassment on 18 December 2012, she did not file her detailed appeals with the Appeals Board until 13 November, 2 December and 9 December 2013, having obtained several extensions of the time-limit. Since the delay in ruling on the internal appeals was largely attributable to the complainant herself, it is not appropriate to grant this claim.

18. As the complainant succeeds for the most part, she is entitled to costs, which the Tribunal sets at 750 euros.

DECISION

For the above reasons,

1. The decisions of 27 November 2015 taken by the Director-General of UNESCO on the complainant's appeals against the decisions of 12 October 2012 closing the cases concerning her internal complaints of moral harassment are set aside.
2. The Organization shall pay the complainant 10,000 euros in moral damages.
3. It shall also pay her 750 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 30 April 2019, Mr Patrick Frydman, Vice-President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

(Signed)

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ