

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

117th Session

Judgment No. 3330

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms A. N. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 15 May 2013;

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

Having examined the written submissions and disallowed the complainant's application for oral proceedings;

CONSIDERATIONS

1. The complainant was recruited by UNESCO on 15 October 1989 and assigned to its Headquarters in Paris. On 20 January 2003, the relevant UNESCO services drew up a notice of personnel action listing the sums of money due to her on the termination of her appointment for reasons of health. The complainant received notification of this document on 19 February while she was in hospital. On 19 June she sent the Director of the Bureau of Human Resources Management a "request for a review" of this notice. As she received no reply, in October 2003 the complainant submitted a

protest to the Director-General under paragraph 7(a) of the Statutes of the Appeal Board, which reads:

“A staff member who wishes to contest any administrative decision [...] shall first protest against it in writing. The protest shall be addressed to the Director-General through the Director of the Bureau of Human Resources Management, within a period of one month of the date of receipt of the decision [...] contested by the staff member if he is stationed at Headquarters and within a period of two months if he or she is stationed away from Headquarters or if he or she has been separated from the Organization.”

2. The Tribunal considers that, as this subparagraph makes no provision for the filing of a “request for a review”, that which the complainant lodged on 19 June 2003 must be regarded as a protest. It finds, however, that the time limit specified in this subparagraph was not complied with in this case. According to the Tribunal’s case law, a complainant who has lodged an internal appeal in breach of the procedural rules and, in particular, of the time limits laid down by the applicable texts cannot be considered to have complied with the requirement of exhausting internal means of redress on which the receivability of his complaint depends under Article VII, paragraph 1, of the Statute of the Tribunal (see Judgment 2781, under 7, and the case law cited therein). In addition, it is immaterial that an internal appeals body was wrong to hear an internal appeal that was time-barred (see, in this connection, Judgments 775, under 1, 2297, under 13, and 2543, under 5).

3. The argument that the complainant was in hospital when she was notified of the notice of personnel action could certainly be accepted in her favour, but as she herself says that she left hospital on 3 March 2003, her protest could and should have been submitted before 19 June 2003.

4. Similarly, the fact that the Director-General did not take a final decision after the Appeals Board had delivered its report on this case on 10 December 2012 has no bearing on the receivability of the complaint, since the complainant herself had failed to comply with the

relevant provisions of the Board's Statutes when she initiated the internal appeals procedure in 2003.

5. The complainant also requests compensation for various injuries which she allegedly suffered during her career, but this claim cannot be entertained as internal means of redress have not been exhausted.

6. As the complaint is clearly irreceivable, it must be summarily dismissed in accordance with the provisions of Article 7 of the Tribunal's Rules.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 20 February 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Claude Rouiller, Vice-President, and Mr Seydou Ba, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 April 2014.

GIUSEPPE BARBAGALLO
CLAUDE ROUILLER
SEYDOU BA
DRAŽEN PETROVIĆ