

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**119th Session**

**Judgment No. 3397**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms L. K. J. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 2 March 2012 and corrected on 12 May, UNESCO's reply of 24 October 2012, the complainant's rejoinder of 1 February 2013 and UNESCO's surrejoinder of 13 May 2013;

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 and the pleadings may be summed up as follows:

A. The complainant is a former official of UNESCO who retired on 31 October 2011. On 27 January 2011 she fractured her ankle. On 21 February she was informed that the accident which had caused her injury had been recognised as work-related and that all medical expenses directly related to her injury would therefore be reimbursed by UNESCO under the UNESCO Staff Compensation Plan.

On 5 July 2011 the complainant sent the Director-General a letter in which she requested appropriate compensation for physical pain suffered as a result of the accident, and which she might suffer in the future, and for moral injury since the accident. As she received no reply, on 25 July she sent a copy of her letter of 5 July to the Director

of the Bureau of Human Resources Management. After an exchange of e-mails, she was advised on 5 August that the Bureau needed time to examine her request and that the Administration would revert to her in due course. On 31 October, in other words on her last day of service before she retired, the complainant, who considered that the Organization had still not replied to her request of 5 July, submitted a protest to the Director General seeking a review of the “implied rejection” of that request. She also provided further details of the compensation that she claimed.

On 30 November the Director of the Bureau of Human Resources Management informed the complainant that, in accordance with Article 4 of the Staff Compensation Plan, the compensation payable under those Rules was the sole compensation to which she was entitled in respect of any claim falling under the provisions thereof. In a letter of 8 December 2011, the complainant explained to the Director-General that her request for compensation was not based on the Rules of the Staff Compensation Plan but on the “Organization’s obligation stemming from a general principle of law fully to compensate [her] for the injury connected with [her] work-related accident”. She explained that she was specifically contesting the “rejection decision” of 30 November and she asked the Director-General for authorisation to file a complaint directly with the Tribunal or, failing that, to regard her letter as notice of an internal appeal and to forward it to the competent body. As she received no reply, she repeated her request on 8 January 2012. The complainant was advised by a letter of 1 February 2012 that steps had been taken to assess to what extent she could be awarded compensation “over and above that of the Staff Compensation Plan” and that she would be notified as soon as the Administration had more information on the subject. She was told that, consequently, her request for authorisation to file a complaint with the Tribunal or to lodge any other appeal was premature.

In the complaint which she filed on 2 March 2012, the complainant indicates that she impugns the decision of 30 November 2011.

B. The complainant contends that her complaint is receivable, since when she was notified of the decisions of 30 November 2011 and 1 February 2012 she had ceased to be a UNESCO staff member and, pursuant to Chapter XI of the Staff Regulations and Staff Rules, she no longer had access to internal means of redress. From this she infers that, in accordance with the Tribunal's case law, she was entitled to file a complaint directly with the Tribunal.

On the merits, she considers that she is entitled to "supplementary compensation" as, in her opinion, the compensation which she received under the Staff Compensation Plan was insufficient to redress the full physical and moral injury that she suffered as a result of her accident. She submits that UNESCO breached its duty to provide her with safe working conditions and that the fact that she broke her ankle was the direct "consequence" of that failure. She contends that she has suffered injury because the impugned decision is, in her view, unlawful and UNESCO did not treat her with the care required by the circumstances. She explains that she has been in pain since the day of her accident, despite pharmaceutical treatment and physiotherapy. She submits that she has suffered moral injury because, on account of her accident, she has been unable to work at "her full professional capacity", that her physical condition and her quality of life have deteriorated and that these factors have triggered a depression. She further submits that she suffered moral injury because she incurred certain expenditure linked to her injury. Lastly, she maintains that, as her ankle is still painful, she has forfeited the opportunity to work as a consultant for UNESCO after her retirement.

The complainant asks the Tribunal to set aside the decisions of 30 November 2011 and 1 February 2012. She claims the payment with interest of the following sums: 10,000 euros for the injury resulting from the unlawful nature of the decision of 30 November 2011; 30,000 euros in compensation for her suffering; 50,000 euros for moral injury, 3,800 euros for material injury and 50,000 euros in respect of lost opportunities. She adds that if the Tribunal does not consider that it is in a position definitively to establish the amount of compensation to which she believes she is entitled, she would like the

case to be referred back to UNESCO in order that it obtain an expert opinion and that she be awarded “provisional compensation” in the amount of 25,000 euros. She also claims costs in the amount of 6,000 euros. Lastly, she asks the Tribunal to find that, should these various sums be subject to national taxation, she would be entitled to a refund of the tax paid from UNESCO.

C. In its reply, UNESCO submits that the complaint is irreceivable, because the complainant has not exhausted internal means of redress. It points out that the complainant was still a UNESCO staff member on 31 October 2011 when she submitted her protest, so before filing a complaint with the Tribunal she should have complied with the provisions of the Statutes of the Appeals Board.

On the merits, UNESCO emphasises that it “scrupulously” applied the Staff Compensation Plan. In particular, it paid the complainant all medical expenses directly related to her accident, in accordance with Article 12.1 of the Plan. The Organization adds that the complainant could not obtain the supplementary compensation provided for in Article 12.8 of the Plan, since it is awarded only when injury or illness has resulted in total disability. In fact, the complainant had been informed by a letter of 20 September 2012 that her file had been closed since her attending physician had indicated in his final medical report that she had completely recovered from her accident. Moreover the defendant organisation points out that the complainant had no right to be retained in the service of UNESCO beyond the statutory retirement age.

D. In her rejoinder the complainant presses her pleas. She says that for “almost twenty months” she has felt constant pain in her ankle. Thus, she now claims 40,000 euros in compensation for the suffering she has endured.

E. In its surrejoinder UNESCO expands its arguments. It states that the complainant is not entitled to any compensation other than that for which provision is made in the Staff Compensation Plan. It submits

that it processed her requests as quickly and efficiently as possible in the circumstances.

### CONSIDERATIONS

1. Under Article VII, paragraph 1, of the Statute of the Tribunal, a complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations. The only exception allowed to this rule is where staff regulations provide that decisions taken by the executive head of an organisation are not subject to the internal appeal procedure, where for specific reasons connected with the personal status of the complainant he or she does not have access to the internal appeal body, where there is an inordinate and inexcusable delay in the internal appeal procedure, or, lastly, where the parties have mutually agreed to forgo this requirement that internal means of redress must have been exhausted (see, in particular, Judgment 2912, under 6).

The only question which the application of this rule raises in this case is whether the complainant did in fact have access to internal means of redress after her retirement.

2. As it was recognised that the accident which befell complainant on 27 January 2011 was work-related, the costs of her treatment were borne in full by the Organization in accordance with the Staff Compensation Plan. However, on 5 July 2011 the complainant submitted to the Director-General a request for compensation in respect of the physical suffering and moral injury resulting from that accident, the impact which the latter had had on the members of her family and for non-medical expenses incurred on account of it, for which she requested lump-sum reimbursement.

On 31 October 2011, her last day of service before her retirement, she submitted a protest to the Director-General. Since the discussions following her request for compensation of 5 July had been inconclusive, she considered that her request had been implicitly rejected and she

requested a review of that decision. In addition, she specified the extent of the compensation to which she considered she was entitled and said that she reserved the right to claim compensation for any partial disability.

3. In a letter of 30 November 2011, the Director of the Bureau of Human Resources Management, acting on behalf of the Director-General, drew the complainant's attention to the principle of sole compensation set forth in Article 4 of the Staff Compensation Plan. She informed her that:

“Once your treatment is completed, we ask that you submit a complete medical report from your attending physician to the Organization's Chief Medical Officer, who will submit his recommendation to the Advisory Board. The Board will then make a recommendation to the Director-General for final decision.”

4. On 8 December 2011, the complainant informed the Director-General that she contested what she took to be a decision rejecting her request for compensation. She asked for authorisation to file a complaint directly with the Tribunal or, failing that, to be informed “as soon as possible as to the internal means of redress available”, in which case her letter was to be regarded as a notice of appeal to be forwarded to the competent body. After the complainant had repeated this request on 8 January 2012, the Director of the Bureau of Human Resources Management replied on 1 February 2012 in the following terms:

“We have taken note of your request for compensation over and above that of the UNESCO Staff Compensation Plan.

Steps have already been taken to ascertain to what extent such compensation could be allowed. We will come back to you as soon as we have more information in this respect.

Your request for authorisation to file a complaint with the Administrative Tribunal of the ILO or to enter any other appeal is therefore premature.”\*

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\* Registry translation.

5. Precedent has it that former officials may file a complaint directly with the Tribunal where access to the internal appeal procedure is granted only to serving officials under the Staff Rules and Staff Regulations of their organisation (see Judgments 2840, under 21, and 3074, under 13).

This case law plainly does not apply in this case. It is clear from the written submissions that the complainant filed her protest before she retired and that she thereby initiated the internal appeal procedure reserved for serving officials. Moreover the letters of 30 November 2011 and 1 February 2012 show that the defendant organisation had received this protest and was in the process of considering it. The Organization itself concluded from that situation that it would be premature to file a complaint with the Tribunal.

6. There is nothing in the file to show that the procedure announced in the letter of 30 November 2011 was followed correctly, that the Advisory Board on Compensation Claims was asked to make a recommendation and that the Director-General took her final decision on the basis of such a recommendation. It follows that the complaint was filed before the completion of the internal appeal procedure initiated on 31 October 2011. The complaint is therefore premature and, as such, irreceivable.

7. It shall be incumbent upon the defendant organisation forthwith to pursue that procedure without delay, if it has not been completed in the meantime, in other words if it has not been brought to a close by a decision of the Director-General, taken in accordance with the prescribed procedure, further to the letter of 20 September 2012 annexed to the reply.

#### DECISION

For the above reasons,

1. The complaint is dismissed.

2. The Organization shall proceed as indicated under consideration 7, above.

In witness of this judgment, adopted on 4 November 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Claude Rouiller, Vice-President, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 11 February 2015.

*(Signed)*

GIUSEPPE BARBAGALLO    CLAUDE ROUILLER    HUGH A. RAWLINS

DRAŽEN PETROVIĆ