

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**N. (No. 2)**

**v.**

**UNESCO**

**126th Session**

**Judgment No. 4035**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms G. N. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 7 February 2017 and corrected on 6 March, UNESCO's reply of 16 June, the complainant's rejoinder of 4 September and UNESCO's surrejoinder of 17 November 2017;

Considering the application to intervene filed by Mr S. E. Z. on 7 September 2017 and UNESCO's comments thereon of 23 October 2017;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 13 of its Rules;

Having examined the written submissions;

Considering that the facts of the case may be summed up as follows:

The complainant accuses her former supervisor of moral harassment.

At the material time, the complainant held a post at grade P-4 in UNESCO's Office of International Standards and Legal Affairs (hereinafter "the Office").

On 12 February 2013 she submitted to the Director-General an internal complaint of moral harassment directed against the Director of the Office in which she detailed the "offensive, humiliating and degrading" behaviour she considered she had suffered since 2009.

On 27 May 2013 the Ethics Adviser, who had invited the Director of the Office to provide her comments on the complainant's allegations against her, informed the complainant that the Director-General had decided to close the case 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". The Director-General recognised, however, that these "repeated disagreements" might have affected the complainant's well-being and that she might have perceived them as an affront.

On 19 June the complainant lodged a protest against that decision. As she received no reply within the "proper time limit", she lodged an appeal with the Appeals Board on 31 July. However, she was informed on 19 August 2013, in the reply to her protest, that the Director-General had decided to maintain her decision of 27 May. In her detailed appeal, the complainant asserted that she had been subjected to moral harassment, alleged she had suffered material and moral injury and requested appropriate redress for the damage to her career, dignity and health.

In the report which it issued on 30 June 2016 after hearing the complainant, the Appeals Board found that insofar as the Director of the Office had categorically denied the complainant's allegations, and since the two protagonists' statements were hence in total contradiction with each other, testimony ought to have been gathered from witnesses in order to reach an "impartial and equitable conclusion". It added that the case should have been investigated further, since there was a preponderance of evidence showing that the complainant had been subjected to harassment, discrimination and sidelining. Since the Director of the Office had left the Organization, the Appeals Board considered that it was no longer possible to initiate an investigation. It recommended by a majority that the "attacked decision" be quashed and that the complainant be paid damages for injury under all heads in an amount calculated in the manner specified by the Board.

Discussions ensued with a view to reaching an amicable settlement, but they failed. The complainant was notified in a letter dated 16 January 2017 that the Director-General had decided to endorse the majority recommendation of the Appeals Board and that she would

therefore receive the sum of 53,400 United States dollars. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to award her appropriate and exemplary compensation for the material injury and the damage to her career and health that she considers she has suffered. She also claims compensation for moral injury and costs.

UNESCO submits that the complaint should be dismissed as unfounded.

#### CONSIDERATIONS

1. The complainant impugns the decision of 16 January 2017 of the Director-General of UNESCO on the appeal directed against the dismissal of the moral harassment complaint lodged by the complainant against the Director of the Office of International Standards and Legal Affairs, the unit to which she was assigned.

In that decision, the Director-General concurred with the recommendation of the Appeals Board in its report of 30 June 2016 and, in particular, quashed the decision of 27 May 2013 closing the case on that complaint following the preliminary assessment thereof. Although the Director-General accepted that the case had been wrongly closed, like the Appeals Board she considered that it was no longer possible for practical reasons to carry out an investigation into the alleged harassment. She therefore agreed to compensate the complainant in the amount proposed by a majority of the Appeals Board members, thereby leaving unresolved the issue of whether the complaint was well founded.

2. Since, as has just been stated, the Director-General accepted in her decision of 16 January 2017 that the case should not have been closed by the Ethics Adviser, the Tribunal considers there is no need to examine the complainant's submissions concerning the irregularities which, according to her, affected the preliminary assessment procedure and, more generally, the flaws affecting the lawfulness of the decision of 27 May 2013 taken following that procedure. That decision having

been quashed by the Director-General, the submissions in question are moot.

3. Moreover, since the decision of 16 January 2017 already provided for the injuries suffered by the complainant to be redressed by a payment equivalent to the remuneration that she lost during the period of almost two years when she was placed on sick leave, that is 53,400 United States dollars, plainly the complainant's claims for compensation may only be granted to the extent that she can show that those injuries warranted greater relief.

4. The complainant objects to the fact that the Director-General, having recognised that the decision to close the case on her complaint of moral harassment had been wrong, failed to initiate the investigation for which item 18.2 of the Human Resources Manual on anti-harassment policy provides when the preliminary assessment does not culminate in a decision to close the case.

However, like the Appeals Board, the Tribunal considers that it was by that stage no longer possible to conduct such an investigation, not only because the Director of the Office had left the Organization, but also because of the time that had elapsed since the incidents in question, which in particular made it difficult to gather reliable testimony from witnesses as to whether those incidents occurred and how third parties may have perceived them.

The Tribunal has already found in similar cases that when a harassment case has been wrongly closed, it is not appropriate to order that an investigation be re-opened if that course would raise practical difficulties of this nature (see, for example, in another case concerning a UNESCO official, Judgment 3639, under 8 to 10).

Furthermore, the Tribunal came to the same conclusion in its recent Judgment 3935, delivered in public on 24 January 2018, in which it ruled on a complaint filed by the complainant's immediate supervisor at the material time, Mr E. Z., who likewise considered that the Director of the Office had harassed him.

5. This situation means that, as in the case leading to aforementioned Judgment 3935, it is impossible for the Tribunal, in the present case, to reach an informed decision on the merits of the parties' submissions as to the existence and, as the case may be, the effects of the harassment alleged by the complainant. Neither the parties' briefs nor the evidence tendered allow the Tribunal to rule on these points with certainty; this would be possible only if the findings of an investigation that was duly carried out at the material time were available.

Thus, although the complainant alleges, *inter alia*, that she was unduly divested of the substance of her responsibilities, unlawfully placed in a hierarchical position that was not commensurate with her grade and subjected to denigration of her work and other humiliating statements and conduct, the evidence on file does not permit a determination as to whether some of these incidents actually took place and whether, viewed as a whole, they constituted harassment or instead resulted from acceptable management decisions or sheer tactlessness. Furthermore, whilst the complainant plainly had a very difficult relationship with the Director of the Office, that circumstance, which may well be explained by work-related conflicts or even by purely personal antagonism, does not in itself support a finding that the complainant was, as she alleges, a victim of systematic discrimination, retaliation or other conduct amounting to harassment.

6. In the circumstances of the case, a hearing of Mr E. Z. – which the complainant has requested in her complaint form although she has not formally requested oral proceedings – would not establish whether the complainant's allegations were well-founded, especially given that the conflict characterising his own relationship with the Director of the Office would inevitably cast doubt on the objectiveness of his testimony. The Tribunal does not therefore consider it necessary to order this hearing.

7. Nevertheless, the fact that it is impossible for the complainant to have her internal complaint of harassment examined owing to the failure to conduct an investigation at the time of the incidents constitutes a serious violation of her right to effective means of redress.

It has caused her considerable moral injury which, in the Tribunal's view, justifies a higher amount of damages than that already awarded by the Director-General in the impugned decision.

8. The various flaws which, according to the complainant, affected the preliminary assessment of her internal complaint as well as that of another internal complaint lodged on the complainant's behalf by Mr E. Z., do not, in this case, warrant redress for an injury distinct from that identified above. However, in her complaint and rejoinder, the complainant raises various other irregularities which, in her view, increase UNESCO's liability.

9. The complainant challenges the lawfulness of the proceedings before the Appeals Board. She takes issue with the fact that she was not told the names of the Administration's representative or observer at Appeals Board hearings and that she did not receive various documents in the Organization's possession which, according to her, the Board should have ordered it to disclose.

However, firstly, an official's right to be informed of the composition of the Appeals Board, the main purpose of which is to enable members of the Board to be recused, does not entitle her or him to be given the names of the Administration's representative and observer, who are not members of the Board. The complainant was in fact provided with a complete list of the members of the Appeals Board who would hear her case in a memorandum dated 12 February 2016.

Secondly, even assuming that the complainant was entitled to be provided with the documents that she wished to consult, the evidence does not show that the failure to disclose those documents had, in this case, a material impact on her right to be heard.

10. Neither can the Tribunal accept the complainant's argument of "arrogation by the Administration of medical expertise", which relates to the statement made by the Administration in the reply brief that it submitted to the Appeals Board that she suffered from a "feeling of persecution". Indeed, it cannot be inferred from this statement,

as the complainant does, that the Organization thus intended to make a medical assessment of her state of health and to insinuate that she suffered from mental health problems.

11. Conversely, the complainant's contention that in this case UNESCO breached the time limits prescribed in the provisions governing the appeals procedure and that in general the procedure was excessively long is well founded.

The evidence shows that rather than being held, as paragraph 14 of its Statutes stipulates, "not later than two months after [receipt of the Administration's] reply", the Appeals Board's hearing was not held until 17 March 2016, though the reply had been submitted on 11 September 2014, over a year and a half earlier. Moreover, paragraph 19 of those Statutes provides that the Appeals Board's report must be forwarded to the Director-General and a copy sent to the official "as soon as possible", but the report was not in fact issued until 30 June 2016 and was forwarded only on 7 July, more than three and a half months after the hearing, which does not seem consistent with the requirement stipulated in paragraph 19. Lastly, as stated above, the Director-General's final decision was taken on 16 January 2017, more than six months after the Appeals Board delivered its report, whereas paragraph 20 of the Statutes provides that the Director-General "shall make a decision thereon as soon as possible".

It is true that, as UNESCO rightly points out, the delays identified above were partly attributable to the complainant, who, amongst other things, requested extensions of time limits for filing her own submissions, and that they can also be explained by the unusual complexity of the case. It should likewise be borne in mind that the Director-General's final decision was preceded by discussions with the complainant aimed at reaching a settlement, which obviously delayed its adoption.

Nevertheless, the Organization was obliged, in accordance with the principle *tu patere legem quam ipse fecisti*, to adhere more strictly to the procedural time limits laid down in the Statutes of the Appeals Board. Its failure to do so added unduly to the total length of the internal appeal procedure, three and a half years in all, which is indisputably too long.

Moral injury was thereby caused to the complainant, for which she legitimately claims redress (see, for similar cases, Judgment 3688, under 11, and aforementioned Judgment 3935, under 16).

12. The remaining arguments put forward by the complainant would not justify the award of additional damages, in particular the exemplary damages that she seeks, but she is entitled to compensation for the injuries examined in considerations 7 and 11, *in fine*, above.

In the circumstances of this case, the Tribunal considers that these two injuries will be fairly redressed by awarding the complainant moral damages in the total amount of 25,000 euros, in addition to the amount that has already been awarded to her under the decision of 16 January 2017.

13. As she succeeds in part, the complainant is entitled to costs, which, in view of the fact that she did not engage a lawyer, the Tribunal sets at 1,000 euros.

14. Mr E. Z. has submitted an application to intervene in this case. However, under Article 13, paragraph 1, of the Rules of the Tribunal, the sole purpose of such an application is to obtain an order that a judgment on a complaint shall apply to an official who is in a similar situation in fact and in law to the complainant. In this case, however, neither the fact that Mr E. Z. lodged an internal complaint against the Director of the Office for similar conduct to that alleged by the complainant nor the fact that he lodged another internal complaint on the complainant's behalf supports a finding that he is in a similar situation in fact and in law to the complainant which would justify ordering that this judgment be applied to him. His application to intervene will therefore be dismissed.

DECISION

For the above reasons,

1. The decision of the Director-General of UNESCO of 16 January 2017 is set aside to the extent that it limited compensation for the injury suffered by the complainant to 53,400 United States dollars.
2. UNESCO shall pay the complainant, in addition to the sum already awarded pursuant to the aforementioned decision of 16 January 2017, moral damages in the amount of 25,000 euros.
3. It shall also pay her 1,000 euros in costs.
4. All other claims are dismissed, as is the application to intervene.

In witness of this judgment, adopted on 27 April 2018, 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 26 June 2018.

*(Signed)*

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ