

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**T. (No. 2)**

**v.**

**UNESCO**

**126th Session**

**Judgment No. 4037**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms C. T. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 13 July 2015 and corrected on 24 August, UNESCO's reply of 25 November 2015, the complainant's rejoinder of 18 April 2016 and UNESCO's surrejoinder of 22 July 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 case may be summed up as follows:

The complainant challenges the non-renewal of her temporary appointment.

Facts relevant to this case are to be found in Judgment 3202 concerning the complainant's first complaint.

Suffice it to recall that the complainant entered the service of UNESCO in 1995 and worked as a consultant, as a supernumerary and as a holder of temporary appointments, with breaks in service between these various contracts. By a memorandum of 17 August 2010 she was informed that the temporary appointment which she had held since 1 July 2007 would not be renewed when it ended on 30 September 2010 and that she would, exceptionally, receive a separation payment

equivalent to three months' salary. The complainant signed the memorandum but added the following handwritten note: "subject to the preservation of all my rights acquired during my 16 years of service within the Organization".

On 6 September 2010 the complainant lodged a protest with the Director-General against the decision of 17 August. She sought the annulment of that decision, the redefinition of her "succession of contracts" so as to preserve her "rights acquired since 1995", as well as redress for the injury she considered she had suffered. Her protest was dismissed in a decision of 29 September 2010. It was explained to her that the needs of the sector in which she worked had changed and that the renewal of her appointment was no longer justified. The complainant left the Organization on 30 September.

On 27 October 2010 she lodged an appeal with the Appeals Board against the "administrative decision notifying [her] of the unreasoned cancellation of [her] temporary contract as of 30 September". Considering that as a former official she no longer had access to the internal means of redress, she then filed her first complaint with the Tribunal on 3 January 2011. At her request, the internal appeal proceedings were suspended. In Judgment 3202, delivered in public on 4 July 2013, her complaint was dismissed as irreceivable for failure to exhaust internal means of redress and the case was referred back to the Appeals Board for it to issue an opinion on the appeal.

In her detailed appeal, which she submitted to the Appeals Board on 31 July 2013, the complainant sought the annulment of the decision not to renew her appointment, the redefinition of her employment relationship with UNESCO, redress for moral and material injury and an award of costs. The Appeals Board communicated its opinion to the complainant on 20 January 2015. With respect to the complainant's argument that UNESCO had violated its duty of care by ending her affiliation to the United Nations Joint Staff Pension Fund (UNJSPF) six months before she reached the five years of contributions necessary for her to be able to draw a pension, the Board found that as the complainant had worked for UNESCO over a period of 16 years, greater efforts should have been made to enable her to be affiliated to

the UNJSPF. Nevertheless, the Board considered that the decision not to renew the complainant's contract had been taken in compliance with the rules applicable to temporary appointments, and it therefore recommended that the decision be upheld. By a letter of 13 April 2015, which constitutes the impugned decision, the complainant was informed of the Director-General's decision to endorse the Appeals Board's recommendation.

On 13 July 2015 the complainant filed a complaint with the Tribunal seeking the setting aside of the impugned decision and the decision of 17 August 2010. She also requests the Tribunal to order UNESCO to redress the material injury that she considers she has suffered, firstly, in respect of the redefinition of her employment relationship, by paying her all the constituent elements of her salary and other emoluments of which she has been deprived, with interest, and, secondly, in respect of her separation from service, notionally reinstating her for a period of two years. Lastly, she claims moral damages and an award of 15,000 euros in costs for the proceedings before the Appeals Board and the Tribunal.

UNESCO requests the Tribunal to find that the non-renewal decision is not tainted by any flaw and to dismiss the complaint as unfounded in its entirety.

### CONSIDERATIONS

1. The complainant asks the Tribunal to set aside the decision of the Director-General of 13 April 2015 endorsing the recommendation of the Appeals Board, as well as the decision of 17 August 2010 ending the temporary appointment which she had held since 1 July 2007. She also requests the Tribunal to order UNESCO to redress the material and moral injury that she considers she has suffered in connection with the redefinition of her employment relationship. With respect to her separation from service, she requests that the material injury be redressed by ordering her notional reinstatement for two years, and she also seeks an award of moral damages. Lastly, she seeks an order for

the Organization to pay her the sum of 15,000 euros in costs for the internal appeal proceedings and the proceedings before the Tribunal.

2. The complainant contends that the Organization failed to consult the Advisory Board on Individual Personnel Matters, thereby breaching Staff Rule 104.1(b)(v), which provides that this Board must advise the Director-General on the non-renewal of appointments after five years or more of service within the Organization. According to UNESCO, the conditions for applying Staff Rule 104.1 were not met, since only the contracts held by the complainant between 1 January 2006 and 30 September 2010 were to be taken into account for the purposes of this provision, so that the complainant had accrued only four years and nine months of service with the Organization when the decision not to renew her appointment was taken.

3. Staff Rule 104.1 reads in relevant part:

- “(a) There shall be an Advisory Board on Individual Personnel Matters which shall advise the Director-General on individual staff matters, as provided hereunder. The Board shall examine the cases submitted for its consideration, ensuring their compliance with the Staff Regulations and Rules, the administrative provisions in force and such further instructions as the Director-General may prescribe.
- (b) The Advisory Board on Individual Personnel Matters, for the Professional and General Service categories [...] shall give advice on the following matters:
  - [...]
  - (v) non-renewal of appointments after five or more years of service in the Organization [...].”

The Tribunal observes that this provision does not stipulate explicitly that the five-year period of service which triggers the requirement to consult the Board must be unbroken and it is hence inappropriate to impose such a condition. The evidence shows that from 2 January to 30 September 2003 and from 1 January 2006 to 30 September 2010 the complainant held several temporary appointments totalling five years and six months in all. She had therefore accumulated more than five years of service in the Organization when her appointment was not renewed. Thus, by failing to consult the Advisory Board on

Individual Personnel Matters, the Organization breached Staff Rule 104.1, which renders its decision not to renew the complainant's appointment unlawful. The decisions of 13 April 2015 and 17 August 2010 will be set aside on this ground.

4. The complainant also alleges that her right to due process was breached. She states that she was not given an opportunity to express her views before the decision not to renew her appointment was taken.

5. A steady line of precedent has it that a decision not to renew a fixed-term contract must be notified to the official concerned in good time, particularly so that she or he may exercise her or his right to appeal against it (in this connection, see Judgments 2104, under 6, 2531, under 9, and 3362, under 16).

However, this case law does not require that the official be given an opportunity to submit comments before that decision is taken. Since, in this case, the Organization had advised the complainant that her appointment would not be renewed when it ended by a memorandum dated 17 August 2010, to which the complainant replied on 20 August, it complied with its obligations and this plea must be dismissed.

6. The complainant also accuses UNESCO of not having provided the reasons, or at least of not having provided sufficient reasons, for the decision not to renew her appointment. In her view, it was not enough for the Organization to simply refer to a change in its needs, without any further explanation, to justify the non-renewal of her appointment. UNESCO asserts that the complainant was aware of the reasons which gave rise to the contested non-renewal decision. It explains that the decision of 17 August 2010 was based on the fact that the needs of the sector to which the complainant was assigned had changed.

7. The Tribunal recalls that, under its case law, "[a] staff member needs to know the reasons for a decision so that [she or] he can act on it, for example by challenging it or filing an appeal. A review body must also know the reasons so as to tell whether it is lawful. How ample the explanation need be will turn on circumstances. It may be just a

reference, express or implied, to some other document that does give the why and wherefore. If little or no explanation has yet been forthcoming, the omission may be repaired in the course of appeal proceedings, provided that the staff member is given [her or] his full say.” (See Judgment 3914, under 15.)

8. In this case, the evidence shows that the decision of 17 August 2010 referred, albeit in a perfunctory manner, to the special measures taken by UNESCO to put short-term appointments in order and to the on-going restructuring of the sector to which the complainant was assigned. It is also evident from the file that the complainant had been informed of the Organization’s decision to appoint a programme specialist in her sector of activity. The Tribunal hence considers that the complainant was sufficiently informed of the reasons why her appointment was not renewed, as may also be inferred from her extensive comments on this matter in the aforementioned memorandum of 20 August and during the internal appeal proceedings. This plea is thus unfounded.

9. The complainant further contends that UNESCO breached the duty of care incumbent on any organisation by not taking account of her interests and her irreproachable conduct over many years. She explains that she was encouraged to apply for posts, only to be informed subsequently that she did not meet the requirements. She adds that UNESCO should have continued its search and concentrated on identifying an alternative solution to not renewing her contract. Lastly, she objects that the Organization did not take account of the fact that on the date of her separation from service only six months remained before she would acquire the right to draw a retirement pension from the UNJSPF.

10. According to UNESCO, the non-renewal decision complied with the rules in force and implemented the former Director-General’s instructions concerning holders of temporary assistance contracts. It points out that the complainant received a separation payment equivalent to three months’ salary instead of two. It emphasises that

an application for a vacant post does not automatically result in an appointment to that post. In its view, the complainant, who had completed only four years and nine months of service at the time of her separation, was not entitled to claim a retirement pension.

11. The Tribunal observes that, in this case, the complainant objects to the fact that the Organization did not allow her to reach the five years of contributions that would have entitled her to draw a retirement pension from the UNJSPF. However, as the Tribunal has already stated, an international organisation's duty of care towards its officials does not compel it to extend an official's appointment for the sole purpose of enabling her or him to draw a pension from the UNJSPF (see, for a comparable case, Judgment 3874, under 14).

Furthermore, the fact that the complainant did not meet the conditions that would have allowed her to be appointed to certain posts for which she had applied does not, in this case, establish that the Organization breached its duty of care. The plea based on the existence of such a breach is, therefore, unfounded.

12. The complainant also submits that UNESCO breached its duty to "reclassify" her. In her view, UNESCO did not make sufficient efforts to find her a new assignment, although she was "pursuing a career" within the Organization. UNESCO counters that, in any event, the duty of "reclassification" relied on by the complainant arises only when a post is abolished. The Tribunal observes that the Organization is correct in this assertion and notes that, contrary to the complainant's contention, the Organization did seek alternative solutions to the non-renewal of her appointment. In particular, in May 2010 it informed her that it was looking into the possibility of a secondment to Kinshasa, Democratic Republic of the Congo.

13. The complainant seeks the redefinition of her contractual relationship with UNESCO on the ground that she was in fact pursuing a career within the Organization. The Tribunal notes that for much of its existence, that relationship took the form of consultancy, supernumerary or fee contracts, which, according to Staff Rule 100.2, do not confer the

status of staff member on their holders. Moreover, the complainant's submissions do not establish that the Organization made improper use of these various types of contract. The Tribunal further notes that the complainant had never asked for her contractual relationship to be redefined before the non-renewal of her final appointment. In these circumstances, her request for a redefinition of her employment relationship will be dismissed.

14. The complainant also objects to the inordinate length of the internal appeal proceedings which, according to her, lasted for more than 20 months from the time when she lodged her detailed appeal with the Appeals Board. The Organization explains that the length of those proceedings resulted not only from the extensions of time limits that were granted for submitting various briefs but also from the fact that the Appeals Board holds only two sessions each year.

15. The Tribunal recalls that, according to its case law, officials are entitled to expect that their case will be dealt with by the internal appeal body within a reasonable time (see, for example, Judgment 3336, under 6). In this case, the Tribunal considers that while the complainant was partly responsible for the delay of which she complains insofar as she had requested and obtained a two-month extension of the time limit for submitting her rejoinder, the internal proceedings lasted an excessively long time having regard to the nature of the case. Their length caused the complainant moral injury, entitling her to damages which the Tribunal sets at 1,000 euros.

16. As noted under 3, above, the decision not to renew the complainant's appointment must be set aside. The complainant does not seek reinstatement, except in a notional form. She will therefore be awarded the sum of 10,000 euros in compensation for the material and moral injury that she suffered owing to the breach of Staff Rule 104.1, in addition to the sum of 1,000 euros awarded in compensation for the length of the internal appeal proceedings.

17. As she succeeds in part, the complainant is entitled to costs, which the Tribunal sets at 5,000 euros.

### DECISION

For the above reasons,

1. The decision of the Director-General of 13 April 2015 is set aside, as is the decision of 17 August 2010.
2. UNESCO shall pay the complainant compensation in the amount of 11,000 euros for the injury suffered under all heads.
3. It shall also pay her 5,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 3 May 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