

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**F. R.**  
**v.**  
**UNESCO**

**121st Session**

**Judgment No. 3580**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms A. L. F. R. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 1 October 2013 and corrected on 19 November 2013, UNESCO's reply of 7 March 2014, corrected on 25 March, the complainant's rejoinder of 23 April, corrected on 2 May, and UNESCO's surrejoinder of 18 July 2014;

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, who at the material time held the post of Head of UNESCO's National Office in Kinshasa (Democratic Republic of the Congo), contends that she was subjected to harassment.

On 23 November 2012 the complainant gave birth to a son in Paris. By a memorandum of 18 February 2013 the Director of the Bureau of Human Resources Management informed her that she could no longer be assigned to Kinshasa – because it was a non-family duty station – and that as from 1 March 2013 she would be temporarily assigned to UNESCO Headquarters in Paris as *chargée de mission*. The Director

added that, as an exceptional measure, the complainant – who intended to remain in Paris until the end of her maternity leave – would receive the rental subsidy on her house in Kinshasa until 30 April 2013. On the same date the complainant asked the Director-General to extend the period of notice she had been given to leave Kinshasa. Her request was rejected on 1 March on the grounds that the short period of notice she had been given had already been “compensated” by the extension of the payment of her rental subsidy.

On 27 March 2013 the complainant filed a complaint with the Director-General against the Director of the Bureau of Human Resources Management, whom she accused of “moral harassment through abuse of authority”. She stated that, although she had informed the Administration of her pregnancy in April 2012, it was not until November 2012 – while she was on maternity leave and hospitalised prior to delivery – that the Director contacted her twice to discuss her transfer. She alleged that this had affected her state of health and that of her child and caused his premature birth. She said that she hoped that in view of these “alleged and established facts” her transfer to Headquarters could be suspended. In July she produced further evidence in support of her complaint in the form of notices of personnel action notifying her of her change of duty station and the decision to end her rental subsidy as from 1 May 2013 while she was on either maternity or sick leave. After hearing the parties, the Deputy Director-General forwarded the complaint to the Internal Oversight Service (IOS). In the report which it submitted on 15 July 2013 at the end of its “preliminary investigation”, IOS concluded that there was no evidence that the complainant had been subjected to harassment and recommended that the case be closed. The complainant was informed by a letter of 19 July 2013 that the Director-General had decided to endorse that recommendation. That is the impugned decision.

In the meantime, on 23 May 2013, the complainant had requested authorisation to appeal directly to the Tribunal. On 5 September 2013 she received the reply that there were no grounds for departing from the normal procedure and that she could file a complaint with the Tribunal once she had exhausted internal remedies.

In the complaint which she filed on 1 October 2013, the complainant asks the Tribunal to set aside the decision of 19 July 2013 and to award her 100,000 euros in damages for UNESCO's failure to open a "thorough investigation" following the lodging of her harassment complaint and to afford her due process. In addition, she claims 50,000 euros in compensation for the moral injury stemming from the harassment to which she was allegedly subjected and 3.5 million euros for physical injury. She also requests the setting aside of the decision of 18 February 2013 and the reconstruction of her career as from 1 March 2013 with interest paid on her salary, her assignment to a post as head of office for two years as from 1 January 2014 or, failing that, the payment with interest of the salary and benefits which she would have received had she obtained such an assignment, and the restoration of her pension rights. Lastly, she claims costs in the amount of 10,000 euros.

On 5 November 2013 the complainant submitted a protest to the Director-General in which she requested the setting aside of the decision of 19 July 2013, but she withdrew it on 13 November after receiving a copy of the IOS report which she had requested. In January 2014 she sent a notice of appeal to the Secretary of the Appeals Board and then filed a detailed appeal challenging the "procedure followed by the Deputy Director-General when dealing with [her] harassment complaint".

In its reply, which the President of the Tribunal authorised UNESCO to confine to the issue of receivability, the Organization submits that the complaint is irreceivable because internal remedies have not been exhausted.

### CONSIDERATIONS

1. The defendant organisation submits that the complaint is irreceivable under Article VII, paragraph 1, of the Statute of the Tribunal, because the complainant has not exhausted such means of resisting it as are open to her. It points out that when the written proceedings before the Tribunal ended, no final decision had been taken in the

internal appeal proceedings against the decision of 19 July 2013 which were still pending before the UNESCO Appeals Board.

2. Staff Rule 111.1 provides that UNESCO staff members shall have access to the Appeals Board in accordance with the Statutes of that Board. The Board's jurisdiction is defined in paragraphs 5 to 8 of its Statutes.

Subparagraphs (a), (b) and (c) of paragraph 7 read as follows:

- “(a) A staff member who wishes to contest any administrative decision or disciplinary action 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 or of the action 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.
- (b) The Director-General's ruling on the protest under (a) above shall be communicated to the staff member by the Director of the Bureau of Human Resources Management within one month of the date of the protest if the staff member is stationed at Headquarters, and within two months if he or she is stationed away from Headquarters or if he or she has been separated from the Organization.
- (c) If the staff member wishes to pursue his or her contestation, he or she shall address a notice of appeal in writing to the Secretary of the Appeals Board. The time-limit for the submission of a notice of appeal, to be counted from the date of receipt of the Director-General's ruling (or, if no ruling was communicated to the staff member within the time-limit under (b) above, from the expiry of that time-limit), is one month in the case of a staff member stationed at Headquarters and two months in the case of a staff member stationed away from Headquarters or who has been separated.”

3. The complaint is directed against the decision of 19 July 2013 to close the case in the harassment complaint lodged by the complainant on 27 March 2013. She was notified of this decision on 22 July 2013 and on 5 November 2013 she challenged it in a protest which she withdrew a few days later after having read the IOS report to which the disputed decision referred.

On 8 January 2014 the complainant submitted a notice of appeal, completed on 15 January 2014, challenging the manner in which her harassment complaint had been handled.

The complaint filed with the Tribunal on 1 October 2013 was thus lodged after the expiry of the one-month period laid down in paragraph 7(a) of the Statutes of the Appeals Board, of which the complainant had not availed herself, and after the Director-General's rejection on 5 September 2013 of the complainant's request for authorisation to appeal directly to the Tribunal under Staff Rule 111.2(b).

It may be concluded from the foregoing that the complainant has not exhausted the internal remedies available to her before challenging the decision of 19 July 2013 before the Tribunal.

4. The complainant nevertheless argues that Article VII, paragraph 1, of the Statute of the Tribunal does not render her complaint irreceivable.

She emphasises that she referred her case to the Appeals Board in order to obtain the disclosure of all the documents to which the decision of 19 July 2013 referred. In her view, the subsequent disclosure of that material brought the internal appeal proceedings to an end, and she then had no option but to challenge the decision in question directly before the Tribunal, because the Appeals Board is not competent to hear harassment cases.

5. To the extent that it is comprehensible, this line of argument is devoid of merit.

It is clear from the instructions in Item 18.2 of the Human Resources Manual, entitled "Anti-Harassment Policy", that while they introduce a special procedure applicable to harassment complaints, they do not create any exception to Staff Rule 111.1, which provides that staff members may appeal to the Appeals Board against any decision causing them injury.

Consequently, as UNESCO rightly submits, the complainant had access to the Appeals Board to challenge the decision of 19 July 2013 to close the case in her harassment complaint.

The complaint is therefore irreceivable because internal remedies have not been exhausted and must hence be dismissed.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 12 November 2015, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 February 2016.

*(Signed)*

CLAUDE ROUILLER      PATRICK FRYDMAN      FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ