

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**T.**  
**v.**  
**UNESCO**

**121st Session**

**Judgment No. 3581**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms J. T. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 16 November 2012 and corrected on 20 February 2013, UNESCO's reply of 3 June, the complainant's rejoinder of 4 September, UNESCO's surrejoinder of 11 December 2013, the complainant's additional submissions of 4 March 2014 and UNESCO's final comments of 8 August 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 challenges the decision to summarily dismiss her for serious misconduct.

At the material time, the complainant, who had been recruited in 1995, was working in the Islamic Republic of Iran as Chief of Cultural Programmes at grade P-4 in UNESCO's Tehran Office, to which she had been assigned in 2003. In July 2010 the Director-General received a letter from the Iranian authorities formally requesting that the complainant be replaced by another official. In August the Administration

proposed her a transfer to a P-3 post in New Delhi (India), which the complainant declined. By a letter dated 17 November 2010, she was informed that the Director-General had decided to transfer her with immediate effect to a P-4 post at UNESCO's Headquarters in Paris (France). The complainant did not respond to this communication. On 28 November 2010 she received an internal memo requesting her to take immediate actions to contact the Bureau of Human Resources Management. She did not reply to this communication either.

In an e-mail dated 2 December 2010, the Administration requested the complainant to take immediate steps to implement the Director-General's decision on her transfer. She was informed that any failure on her part to do so within 48 hours would be considered as insubordination and would trigger disciplinary procedures for serious misconduct. On 5 December the complainant replied that the proposal for her transfer "was not agreeable" and raised a number of concerns with regard to it. She indicated inter alia that there had been no consultation with her, that the transfer was foreseen on a temporary basis, that there was no job description and that she was surprised that her transfer had been motivated by a request from an Iranian Government official. An exchange of correspondence ensued, in which the complainant repeatedly asked to be provided with the exact reasons for her transfer in writing, whilst UNESCO contended that those reasons had already been given to her and insisted that she implement the transfer decision without delay. On 14 March 2011 the Administration informed her that she was requested to be in Paris on 15 March at the latest. The complainant stayed in Tehran and on 16 March 2011 the Director-General decided to place her on special leave and to officially charge her with insubordination. In a communication dated 30 March 2011, the complainant denied the charges against her, arguing that she had never declined the transfer proposal, and she informed the Administration that she had decided to undertake the mission to Paris from 3 to 7 April 2011. On 4 April she arrived at UNESCO's Headquarters in Paris.

On 6 April 2011 the complainant was informed that the Director-General had decided to summarily dismiss her for serious misconduct with immediate effect. She submitted a protest against this decision on

20 May 2011 seeking reinstatement or financial compensation. Failing that, she asked for an agreement to waive the Appeals Board's jurisdiction so that she could bring her case directly before the Tribunal. On 9 August 2011 the complainant was informed that the Director-General had decided to confirm her decision and to refuse the request to waive the Appeals Board's jurisdiction. Thus, the complainant filed a notice of appeal with the Appeals Board on 28 September.

The Appeals Board delivered its report on 18 June 2012 on the basis of the parties' written submissions. It noted that the security considerations raised by the Administration were "key and enough justification" to have the complainant transferred from Tehran to Paris and that this had been in the best interest of both parties. It considered that the Administration had not acted in an unreasonable manner whereas the "persistent non-mobility by the [complainant] from November 2010 to April 2011 was rather long and amounted to insubordination". The Board recommended the confirmation of the Director-General's decision and the rejection of all other claims. On 22 August 2012 the complainant was informed that the Director-General had decided to follow the Appeals Board's recommendation. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to order her reinstatement in a P-4 post corresponding to her former level of responsibilities. Alternatively, she claims financial compensation for the material and moral prejudice she suffered. Additionally, the complainant claims costs.

UNESCO invites the Tribunal to dismiss all the complainant's claims as devoid of merit and not being supported by evidence.

#### CONSIDERATIONS

1. The complainant commenced employment with UNESCO in December 1995. In 2003 she commenced working as the Chief of Cultural Programmes in Tehran. She was still in this position in 2010. Central to this complaint are two critical events. The first was a decision of the Director-General to transfer the complainant from her post in

Tehran to a post at Headquarters in Paris (the transfer decision). The complainant was informed of this decision on 17 November 2010. The second was a decision of the Director-General to summarily dismiss the complainant for serious misconduct, namely insubordination (the dismissal decision). The complainant was informed of this decision on 6 April 2011.

2. The complainant pursued an internal appeal in relation to the second decision but not the first. The internal appeal against the dismissal decision culminated in a recommendation by the UNESCO Appeals Board to the Director-General in a report dated 18 June 2012 that the appeal be dismissed. The Director-General decided to follow the recommendation and maintain her decision of 6 April 2011. This is the impugned decision in these proceedings in the Tribunal.

3. The focus of much of the complainant's argument both in her brief and rejoinder is directed to challenging the transfer decision. UNESCO said at the time and has maintained in its pleas in the Tribunal that the transfer decision was made because the Organization had concerns about the safety and security of the complainant in Tehran. In her pleas the complainant disputes that this was the reason or that there was any security risk in relation to her and that, in truth, the reason was to satisfy a request of an Iranian Government official to have the complainant replaced by another official. Many of the complainant's legal arguments are directed to establishing the illegality of the transfer decision. This led to a submission by UNESCO in its surrejoinder that the complainant had never challenged the transfer decision. While UNESCO does not say so expressly, its observation that the complainant had not challenged the transfer decision has legal consequences.

4. It is desirable to discuss those legal consequences as they narrow the focus of the Tribunal's consideration of both the facts and the applicable legal principles. It is not uncommon for a complainant to have been adversely affected by two or more administrative decisions in succession, often months or longer apart, where each decision, not being merely a step in a process, is amenable of both internal appeal

and ultimately complaint to the Tribunal. Sometimes complainants elect to challenge the last of the administrative decisions but not earlier administrative decisions. One comparatively recent example of this is found in Judgment 3439. In that matter a decision was made to abolish the post the complainant then occupied in April 2008 and a later decision was made in July 2009 to terminate the complainant's appointment. In the second of two internal appeals, lodged in March 2010, the complainant sought to challenge not only the unsuccessful reassignment process and the subsequent decision to terminate his appointment but also the earlier decision to abolish the post he had then occupied. An issue arose in this internal appeal as to whether the appeal was receivable insofar as the complainant challenged the decision to abolish the post. The appeal body concluded the appeal was irreceivable in relation to that decision, as did the Director-General whose decision was impugned in proceedings in the Tribunal. Whether the Director-General was correct was a matter the Tribunal had to consider and it concluded she had been. The Tribunal said at consideration 4:

“In Judgment 2933, the Tribunal dealt with a similar argument also raised by WHO which was the defendant organisation. Also, the circumstances are similar. In that case the complainant had been notified by letter on 13 October 2005 that the post to which he was assigned would be abolished on 31 December 2005. He was told that did not necessarily mean the termination of his appointment and that efforts would be made to reassign him through a formal process embodied in the Staff Rules. It transpired that no suitable alternative assignment could be found and his employment was terminated on 31 January 2007. The complainant lodged an internal appeal on 4 December 2006. He challenged the decisions to refuse to extend his appointment, to fail to reassign him to a post carrying responsibilities commensurate with his grade, training and experience, and to terminate his appointment. In the process, he challenged the abolition of his post as not being based on any demonstrated organisational need and that it was illegal.

The Tribunal observed at consideration 8:

‘However, as WHO rightly contends, the complainant failed to submit an appeal against the decision in question [the decision to abolish the post] within [...] the [stipulated] time limit [...]. This decision has therefore become final, with the result that the complainant may not challenge its legality in these proceedings in order to impugn the subsequent decision to terminate his appointment.’

This judgment provides clear authority supporting the argument of WHO that the complainant in this case cannot challenge the abolition decision. This is not a mere technical approach. The Tribunal has consistently said that time limits serve the purpose of, amongst other things, creating finality and certainty in relation to the legal effect of decisions. When an applicable time limit to challenge a decision has passed, the organisation is entitled to proceed on the basis that the decision is fully and legally effective. So it is in this case. To the extent that the complainant seeks to challenge the decision to abolish his post in these proceedings and his internal appeal was time-barred, he has thus not exhausted internal remedies. His complaint, in this respect, is irreceivable.”

5. In the present case the administrative decision against which the complainant maintained her internal appeal was the decision to summarily dismiss her. It is the lawfulness of that decision which arises for consideration by the Tribunal. What does not arise for consideration is the lawfulness of the decision to transfer the complainant from Tehran to Paris and the merits of the complainant’s arguments that the decision was unlawful. That decision has not been the subject of an internal appeal and any claim in this respect is irreceivable having regard to Article VII of the Tribunal’s Statute.

6. The complainant was obliged to comply with the transfer decision and a refusal to do so could have justified summary dismissal. In at least two earlier decisions the Tribunal has said that the failure of an international civil servant to abide by and give effect to a decision to transfer her or him, might justify their dismissal (see Judgments 154 and 325). In the present case the complainant advances in her brief four major arguments. The first is that there had been no unsatisfactory conduct warranting a disciplinary measure. The second is that her summary dismissal breached the principle of proportionality. The third is that incorrect conclusions had been drawn about security risks to the complainant and, in fact, there had been none. The fourth is that there had been a breach of UNESCO’s duty of care to the complainant. The complainant’s rejoinder focuses on the absence of security risks describing that as the “keystone of the present case”. In the rejoinder the complainant also contends that UNESCO breached the principle of independence when deciding to transfer her at the behest of an Iranian Government official. However, these arguments in the rejoinder are

directed to the legality of the transfer decision and can be put to one side as can the third argument in the brief.

7. The gist of the first argument in the brief is that the complainant had never declined the proposal of reassignment but rather was waiting for the Organization to provide her with both the reasons for the transfer decision and adequate information about the post to which she was being transferred. This is said by the complainant to be illustrated by a communication of hers of 30 March 2011 responding to the charges and setting out, from her perspective, the salient events. Of some significance, is her statement in that communication that “I have always been ready to consider agreeing to the transfer”, which suggests that she had some discretion about whether or not to abide by the Director-General’s decision. Under UNESCO’s Staff Regulations and Staff Rules staff members are “subject to the authority of the Director-General, and to assignment by him or her, with due regard to their qualifications and experience, to any post in the Organization” (Regulation 1.2) and the UNESCO Human Resources Manual states the obvious corollary of this, namely “[a]ll staff members must follow the decisions/instructions of the Director-General” (Item 2.2., paragraph 9).

It is true, as the complainant argues, that she was entitled to be told of the reasons for her transfer (see Judgment 2839, consideration 11). The evidence relied on by UNESCO to support the contention that, as a matter of fact, the complainant was told that the reasons were that there were concerns about her security, is somewhat equivocal. That said, there is evidence that, consistent with UNESCO’s account, the complainant would have been told of the reasons in detail (which, it says, it was not prepared to put in writing) at a meeting which had been organised with the Director and Representative of the UNESCO Tehran Cluster Office on 4 November 2010 but which was effectively aborted because the complainant wanted to tape-record it, that being unacceptable to the Director. Thus, at the very least, attempts were made to provide the complainant with what were said to be UNESCO’s reasons. In addition, the failure of UNESCO to provide reasons in a way and in terms requested by the complainant did not relieve her of her duty to comply with the transfer decision. This is particularly so given that

several deadlines were given over several months (after the complainant was informed of the transfer decision in November 2010) in which the complainant could do what was required before she was charged with serious misconduct, namely transfer to Paris. But she did not meet any of them. A reasonable inference can be drawn that the complainant never intended to comply with the decision to transfer her to Paris, probably for reasons that included her belief that the transfer decision had been made for illegitimate reasons. They also included, in all probability, a desire on the complainant's part to remain in Tehran where, after her summary dismissal, she continued to reside.

8. The complainant's second argument in her brief is that the dismissal decision breached the principle of proportionality, that is to say the disciplinary sanction was out of all proportion to the objective and subjective circumstances. She cites Judgments 203, consideration 2, 937 and 2656 in support of this. Further, citing Judgments 210, consideration 6, 1238, 1447 and 2849, the complainant argues there were mitigating circumstances. In her rejoinder, the complainant does not address Judgments 154 and 325 which were cited by UNESCO in its reply and are referred to earlier in this judgment. The Tribunal has accepted that dismissal can be an appropriate remedy if an international civil servant refuses or fails to comply with a decision that she or he is transferred to another post which requires relocation. In the present case it cannot be said that the sanction of summary dismissal was out of all proportion. The complainant failed to abide by and give effect to the decision of the Director-General over a period of almost four and a half months. She showed no real willingness to do what was required of her. The sanction decided upon ultimately involved the exercise of discretion and it certainly cannot be said that the sanction was manifestly out of all proportion and that the discretion therefore miscarried (see Judgments 2944, consideration 50, and 3295, consideration 16).

9. The complainant's argument that UNESCO breached its duty of care towards her is, in substance, directed to the transfer decision. That is to say, the complainant argues that a decision should not have been made to transfer her from her post in Tehran and in making that



decision the Organization breached its duty of care. But, as discussed earlier, whether the transfer decision was lawful or not does not arise for consideration in these proceedings.

10. The complainant has raised one other issue in her additional submissions. The argument is advanced that her communication dated 30 March 2011 was not considered before the decision to dismiss her was made by the Director-General. This is demonstrably incorrect because the record of the decision itself notes that the decision was made after the response was considered. In the result the complaint should be dismissed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 21 October 2015 Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 February 2016.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ