

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

S.

v.

UNESCO

123rd Session

Judgment No. 3765

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr C. S. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 12 March 2014 and corrected on 28 August, UNESCO's reply of 15 December 2014, the complainant's rejoinder of 25 February 2015 and UNESCO's surrejoinder of 8 June 2015;

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 not to extend his appointment beyond the statutory retirement age.

By a memorandum of 12 February 2013, the Assistant Director-General for the Africa Department informed the Director-General that since May 2012 the complainant, a P-5 grade official then aged 61, had been undertaking the functions of Director of the Special Programmes and Inter-sectorial Coordination team in addition to his normal duties as Chief of the Executive Office within the Africa Department. She asked the Director-General to grant the complainant a special post allowance as from 1 August 2012 and requested her approval for him

to be officially designated Director *ad interim* of the above-mentioned team as from 1 February 2013. She explained that until the post of Director *ad interim* was filled, the complainant would continue to occupy it, in addition to performing his role as Chief of the Executive Office, and to receive the special post allowance. That same day, the Director-General added the hand-written comment “I agree” to the memorandum.

On 28 May 2013 the Bureau of Human Resources Management sent the complainant a letter reminding him that pursuant to Staff Regulation 9.5 he would have to retire on 31 July 2013. It invited him to complete the administrative formalities for separation.

The complainant was informed by an e-mail of 7 June 2013 that the Director-General had decided to appoint him Director *ad interim* of the Special Programmes and Inter-sectorial Coordination team with effect from 1 February 2013 and to grant him a special post allowance as from 1 August 2012. This e-mail was also addressed to the Bureau of Human Resources Management.

On 6 August 2013 the complainant, who had retired on 31 July, sent the Director-General an e-mail in which he commented that it was obviously impossible “to appoint someone to new duties [...] while at the same time [...] asking [him] to leave” the Organization. He therefore asked her to “give the necessary instructions for the effective application” of her decision to appoint him Director *ad interim*.

On 6 December 2013, following the approval of the Organization’s new Programme and Budget, the complainant asked the Director-General to inform him of the action she intended to take on his “request regarding the application of [her] decision of 12 February 2013” to appoint him Director *ad interim*. He was advised by letter of 10 January 2014, which constitutes the impugned decision, that, as had been explained to him in a previous letter dated 9 August 2013, in view of UNESCO’s financial situation, considerable savings had to be made, and that the Director-General was therefore obliged to restrict the extension of appointments beyond the statutory retirement age to exceptional cases. The complainant said that he had never received the letter of 9 August 2013 and asked to be sent a copy, which he received on 7 March 2014.

The complainant asks the Tribunal to set aside this decision and seeks his retroactive appointment to the post of Director *ad interim* of the Special Programmes and Inter-sectorial Coordination team until this post is filled or, failing that, the payment of 24 months of salary and allowances and the payment “of all the pension rights and other benefits to which he is entitled as a member of the Professional staff”. Lastly he seeks redress for other moral and material injury which he considers he has suffered.

UNESCO asks the Tribunal to dismiss the complaint as irreceivable, because it is time-barred, moot and groundless and internal means of redress have not been exhausted.

CONSIDERATIONS

1. The complainant impugns the decision of 10 January 2014 by which the Director of the Bureau of Human Resources Management, acting on behalf of the Director-General, rejected the request he had made in a letter of 6 December 2013 for information regarding the final outcome of his request for an extension of his appointment beyond the statutory retirement age.

2. Staff Regulation 9.5 allows the Director-General to defer the retirement of a staff member if he or she considers it to be in the interest of the Organization. According to well-settled case law, a decision to extend an appointment beyond the statutory retirement age is an exceptional measure over which the executive head of an organisation exercises a wide power of discretion. This measure is therefore subject to only limited review by the Tribunal. The latter will interfere with such a decision only if it was taken without authority, if a rule of form or procedure was breached, if it was based on a mistake of fact or of law, if an essential fact was overlooked, if a clearly mistaken conclusion was drawn from the facts, or if there was abuse of authority (see, for example, Judgments 1143, under 3, and 3285, under 10).

3. The complainant provides no proof whatsoever that the impugned decision was tainted with any of these flaws.

In particular, the fact on which the complainant relies, namely that the Organization had appointed him Director *ad interim* of the Special Programmes and Inter-sectorial Coordination team as from 1 February 2013, in no way prevented the Organization from refusing to extend his appointment beyond the date of his statutory retirement, i.e. 31 July 2013. Indeed, contrary to his submissions, these two decisions were not contradictory, especially since the fact that it was stated in the memorandum of 12 February 2013 that the complainant would hold the post until a new director was recruited could not be interpreted as implying that he would retain it after the date on which he had reached the statutory retirement age.

4. The complaint must therefore be dismissed in its entirety, without there being any need to rule on UNESCO's objections to receivability.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 8 November 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakit , Judge, sign below, as do I, Dra en Petrovi , Registrar.

Delivered in public in Geneva on 8 February 2017.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ