

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**L.**  
**v.**  
**UNESCO**

**129th Session**

**Judgment No. 4223**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms C. L. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 23 January 2017 and corrected on 3 February, UNESCO's reply of 22 May, the complainant's rejoinder of 30 June and UNESCO's surrejoinder of 9 October 2017;

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 impugns UNESCO's refusal to grant her claim for a lump sum in lieu of a special post allowance.

The complainant joined UNESCO in 1981 and from 8 April 2010 held a post at grade G-7 in the Bureau of Human Resources Management under a fixed-term appointment. From 11 April 2011, following the departure on maternity leave of her supervisor, Ms G., the complainant carried out some of the latter's tasks in relation to the coordination of a project. On 12 December 2011 Ms G. was transferred to another post and the coordination of that project was assigned to Ms C., under whose supervision the complainant was placed. When Ms C. went on maternity leave on 23 April 2012, the complainant continued to perform the tasks

in question in addition to those listed in her post description, for which she was paid a special post allowance of 489 euros on 30 November 2012.

On 4 May 2015 the complainant signed a mutually agreed separation agreement in which she undertook “not to file any challenge or appeal”<sup>\*</sup> concerning the terms of her separation. She was to leave on 27 May 2015, and it was agreed that she would be paid a termination indemnity equivalent to 18 months of net pay, three months’ notice and a sum corresponding to the commutation of her accrued annual leave. On 26 May 2015, the day before the complainant left, Ms C., who considered that the complainant had performed tasks of a higher level than grade G-7 since 2011, sent a memorandum to the Acting Director of the Bureau of Human Resources Management requesting him to evaluate the new job description drawn up on the basis of the tasks that the complainant had carried out in the final years of her employment, which according to her corresponded to grade P-1/P-2. Should the classification at P-1/P-2 level be confirmed, she recommended that the complainant be paid a lump sum in lieu of a special post allowance for the period from 11 July 2011 to 27 May 2015. On 16 June the Acting Director approved the request by annotating the memorandum of 26 May. Ms C. informally advised the complainant accordingly.

Between July and September 2015, numerous exchanges took place between the Bureau of Human Resources Management and Ms C. regarding the financing and budget allocation of the lump sum, assessed at 19,700 euros. On 24 September 2015 Ms C. was informed that the Bureau’s new Director had decided not to pay the sum in question. Ms C. informally advised the complainant of this the following month.

On 7 May 2016 the complainant submitted a request to the Director-General seeking a lump sum in lieu of a special post allowance for the tasks that she had carried out in the four years before her departure from the Organization. She referred to the existence of a practice to that effect within UNESCO in such cases and stated that, although she would understand if the new Director of the Bureau of Human Resources Management had decided to put an end to that

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<sup>\*</sup> Registry’s translation.

practice, she considered that it would be unfair if that decision were applied to her retrospectively, given that the Bureau's Acting Director had approved Ms C.'s initial request. She also criticised the Bureau for having assigned her tasks corresponding to a higher level than that of her post without drawing up a revised job description, in violation of the applicable rules on reclassification and the principle of "equal pay for equal work". On 2 August 2016 her request was refused, firstly on the grounds that it was irreceivable – because as a former staff member she could not file a protest under the Statutes of the Appeals Board and because the memorandum of 26 May 2015 which she had attached to her request was not an administrative decision – and, secondly, because it had no legal basis.

On 30 September 2016, the complainant filed a notice of appeal with the Appeals Board against the decision of 2 August. By a letter of 18 October 2016, which constitutes the impugned decision, the Executive Secretary of the Appeals Board advised her that the Board was not competent to examine her case as she was no longer a UNESCO staff member and no decision had been notified to her. The Executive Secretary informed her that she was entitled to file a complaint directly with the Tribunal, which she did on 23 January 2017.

The complainant requests the Tribunal to declare the complaint receivable and well founded, to find that the failure to compensate her for the higher tasks that she performed constitutes a violation of the Organization's practices and the Tribunal's case law, and to "recommend" to the Director-General that the lump sum of 19,700 euros be paid to her with interest. In the alternative, should the Tribunal consider that the payment of such a sum cannot be regarded as an established practice, she seeks an order for the retrospective payment of a sum "commensurate with the principle of equal treatment"\* . Lastly, she claims compensation for the moral, physical and material injury which she considers she has suffered, and costs.

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\* Registry's translation.

UNESCO requests the Tribunal to declare the complaint irreceivable owing to the existence of a clause waiving all right of appeal in the mutually agreed separation agreement of 4 May 2015, the lack of an appealable decision and the fact that the complaint is time-barred; and, in the alternative, on account of the complainant's failure to exhaust internal means of redress. It asks the Tribunal in any event to dismiss all of the complainant's claims as unfounded.

### CONSIDERATIONS

1. The complainant, who left UNESCO on 27 May 2015, challenges the refusal by the Organization's authorities to pay her a lump sum in lieu of the special post allowance ordinarily paid to staff members to whom duties of a higher grade than the post which they hold are assigned temporarily. Although she did not fulfil the legal requirements to claim that allowance, she considers – as did her former direct supervisor, Ms C., who submitted a request on her behalf on the day before the complainant left – that from April 2011 to May 2015 she had carried out tasks at P-1 or P-2 level though she held a post at the G-7 level, which, according to her, entitles her to compensation in the form of a lump sum.

In essence, the complainant is requesting that the Tribunal set aside the decision of the Director-General of 2 August 2016 dismissing the request for that allowance which she ultimately submitted herself on 7 May 2016, almost one year after she had left the Organization.

2. However, the Tribunal notes at the outset that the claims thus submitted by the complainant are, as UNESCO correctly points out, irreceivable on account of the commitments undertaken by the complainant when she left UNESCO.

3. The evidence in the file shows that the complainant left the Organization under a mutually agreed separation agreement dated 4 May 2015 concluded as part of a voluntary separation programme provided for in an administrative circular dated 23 March 2015. That

agreement, which conferred on the complainant various financial benefits which were explicitly and specifically stated – including, in particular, in compliance with the provisions of the circular, a termination indemnity increased by the equivalent of six months’ salary compared to the amount prescribed under Staff Rule 109.7 – contained a clause specifying that “[b]y accepting the terms of the separation agreement thus offered, [the complainant] undertakes not to file any challenge or appeal concerning that mutually agreed separation against UNESCO in particular, with the Appeals Board of the Organization or the Administrative Tribunal of the ILO”\*.

4. There is no doubt that that agreement, which the complainant signed without reservation, must be construed as having intended to list exhaustively the various sums granted to her by UNESCO when she left the Organization. Consequently, by claiming a financial benefit in addition to those thus listed, the complainant is plainly challenging the terms of her separation specified by that agreement, even though she attempts to refute this in her submissions. It should also be noted that, contrary to what the complainant seems to believe, the fact that the said agreement was concluded as part of a general voluntary separation programme provided for in a circular of the Organization has no bearing on the legal effect of the commitments undertaken by its signatories.

5. It follows from these observations that, pursuant to the aforementioned clause preventing any challenge or appeal by the complainant concerning the terms of her departure from UNESCO, this complaint is irreceivable, as was, for the same reason, the request for the disputed allowance submitted to the Organization (see, for a similar precedent, Judgment 1934, consideration 7, or Judgments 2368, consideration 7, 3486, consideration 5, 3867, consideration 16, and 4161, consideration 11).

6. In an attempt to show that her claim is receivable, the complainant submits that when signing the mutually agreed separation agreement of 4 May 2015, she was unaware that her waiver of any

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\* Registry’s translation.

recourse against the terms of her departure from UNESCO would prevent her from claiming a lump sum in lieu of the special post allowance to which she considered herself to be entitled. Indeed, it appeared to her that the issue of the recognition of her entitlement to that sum bore no relation to the provisions of the agreement.

However, since there is no evidence to show that the complainant signed the said agreement as a result of misrepresentation or duress on the Organization's part, her consent to its provisions cannot be considered to have been vitiated. The lawfulness of the provisions of that agreement, which, as stated above, rule out any claim to a financial benefit except those specified therein, is hence not open to challenge.

7. If on her departure from UNESCO the complainant had intended to claim a lump sum in respect of her performance of tasks of a higher level than those usually assigned to grade G-7, she should obviously have claimed that benefit before signing the aforementioned separation agreement and, if necessary, made her signature subject to the settlement of that matter.

The Tribunal further notes that while the complainant mentions in her submissions that such a lump sum had been paid to another staff member, Ms A., who was in a similar situation to hers, a memorandum dated 15 October 2013 in the file shows that the latter, who also left UNESCO under a voluntary separation agreement, had taken care to negotiate the grant of that benefit before agreeing to sign the separation agreement that was offered to her.

8. Lastly, the circumstance, referred to by the complainant, that in administrative exchanges after her departure various officials within the Organization indicated that they were in favour of her receiving the lump sum that she was ultimately denied has no bearing on the irreceivability of her claims established above.

9. It follows from the foregoing that the complaint must be dismissed in its entirety, without there being any need to rule on the other objections to receivability raised by UNESCO.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2019, Mr Patrick Frydman, 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 10 February 2020.

*(Signed)*

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ