

**G.**  
**v.**  
**UNWTO**

**133rd Session**

**Judgment No. 4455**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms A. G. against the World Tourism Organization (UNWTO) on 18 April 2019 and corrected on 7 June, UNWTO's reply of 22 October, the complainant's rejoinder of 21 December 2019 and UNWTO's surrejoinder of 8 April 2020;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the decision to suspend her pending disciplinary proceedings.

The complainant was Chief of the Information and Communication Technologies Programme at UNWTO, a grade P5 position, when the new Secretary-General took office on 1 January 2018. In February, the Secretary-General informed all staff that he had decided to conduct a review of the internal control systems in relation to strategic activities with a view to ensuring their soundness and compliance with internal procedures and with the overall objective of strengthening the Organization's internal governance. He added that a consultancy firm involved in the review would start its activities straightaway.

On 7 March 2018 the complainant was handed a memorandum from the Secretary-General informing her that she was under investigation as the consultancy firm had identified some irregularities in the performance of her duties. The investigation aimed at establishing the facts in order

to determine whether she had engaged in unsatisfactory conduct that could amount to misconduct. An investigation report would be submitted to the Secretary-General and he would decide whether to close the investigation, to initiate disciplinary proceedings or to take any other managerial decision as necessary. The complainant was heard by the consultancy firm a few minutes later. At the end of the interview, she was given five days to submit a written response to the allegations discussed during the interview. She received the transcript of the interview only on 19 March, that is to say after the deadline to submit her written response.

On 4 May the complainant was handed a memorandum of the same day from the Secretary-General informing her that, on the basis of the report of the consultancy firm, he had identified sufficient factual basis indicating that she had engaged in unsatisfactory conduct. He provided details of the established facts that were contrary to applicable rules; these facts had occurred between 2009 and 2018. He indicated that the sanction of summary dismissal was envisaged and that, in light of that envisaged sanction, the seriousness of the allegations, and her position as Chief of a highly sensitive security area, the complainant was suspended with pay with immediate effect. He stressed that this was not a disciplinary measure. The complainant was asked to leave the premises immediately and to return any equipment belonging to UNWTO.

On 16 May the complainant submitted a protest to the Secretary-General against the decision to suspend her. The Secretary-General rejected her protest on 15 June, thus maintaining the suspension decision. He stated that there was evidence of several wrongful actions on her part and that the suspension was justified by the high risk that her continuance in service presented not only for the Organization but also for the integrity of on-going investigations and disciplinary proceedings. The complainant subsequently filed an appeal with the Joint Appeals Committee (JAC) challenging the decision of 16 May.

Having heard the complainant, the JAC issued its report on 8 November 2018. It concluded that the contested decision was taken in accordance with the applicable Staff Rules and Regulations. On 12 December the JAC replied to the Human Resources' request for clarifications on its report of 8 November 2018.

In the meantime, on 13 July 2018, the complainant was summarily dismissed.

On 17 January 2019 the Secretary-General informed the complainant that, based on the JAC's finding that the suspension decision had been adopted in accordance with applicable rules, he had decided to reject her appeal in its entirety. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, to order her reinstatement to her post and to award her material and moral damages. She also seeks costs in the amount of 20,000 euros.

UNWTO argues that the claims relating to the award of damages, in particular material damages, are irreceivable for failure to exhaust internal means of redress. It asks the Tribunal to dismiss the complaint in its entirety as unfounded.

#### CONSIDERATIONS

1. The complainant was, at relevant times, the Chief of the Information and Communication Technologies Programme on the staff of UNWTO until her summary dismissal on 13 July 2018. This complaint concerns the decision to suspend her with pay on 4 May 2018.

2. The complainant seeks the joinder of this complaint with her second complaint, impugning the decision to summarily dismiss her. The joinder is opposed by UNWTO. While the facts in these two complaints are part of the same continuum of events, the legal issues raised are quite discrete. Accordingly, the complaints will not be joined (see, for example, Judgment 4169, consideration 1).

3. The complainant requests an oral hearing under Article 12, paragraph 1, of the Tribunal's Rules. The Tribunal however notes that the parties have presented ample submissions and documents to permit the Tribunal to reach an informed decision on the case. The request for an oral hearing is therefore refused.

4. The Tribunal has considered another two complaints concerning the suspension of another staff member of UNWTO in the same period, and some of the commentary in the judgment concerning that other staff member (see Judgment 4452) is, to the extent relevant, repeated in this judgment.

5. The power to suspend an official was conferred on the Secretary-General of UNWTO by Staff Rule 29(1), which provided:

- “(a) If the Secretary-General considers, in circumstances that appear to call for the application of a sanction, that the continuance in service of the official concerned pending consideration of the matter may prejudice the service, he may suspend the official from his duties pending such consideration, the suspension being without prejudice to the rights of the official.
- (b) Suspension may be with or without salary provided that an official shall be suspended without salary only in cases that appear to call for the sanction of summary dismissal. If the official is not summarily dismissed, he shall be paid for any period of suspension without salary. If the official is summarily dismissed, the dismissal may be made effective as from the date of the suspension. For purposes of this Rule, ‘salary’ shall mean salary and allowances.”

6. The power to suspend is enlivened when the Secretary-General considers, in the specified circumstances, that continuation in service of the official may prejudice the service. The power is founded on the opinion of the Secretary-General on the question of prejudice.

7. When the complainant was suspended with pay by memorandum dated 4 May 2018, the approach of the Secretary-General was, on its face, orthodox and in conformity with Staff Rule 29. First the Secretary-General said that a sanction was being considered and identified it as summary dismissal. Secondly the Secretary-General addressed the question of prejudice and gave a rational, albeit brief, explanation why the interests of the service may be prejudiced if the complainant continued in service.

8. The grounds for reviewing the exercise of the discretionary power to suspend are limited to questions of whether the decision was taken without authority, in breach of a rule of form or procedure, was based on an error of fact or law, involved an essential fact being overlooked or constituted an abuse of authority (see, for example, Judgment 2365, consideration 4(a)).

9. In her complaint brief, the complainant points to three matters which underpin a submission that the suspension with pay was not lawful. The first is that UNWTO breached its duty to provide a motivated decision. The second is that the disputed decision had been taken in breach of the

Staff Rules. The third is that the decision to suspend was based on a flawed procedure.

10. The Tribunal addresses the first legal argument, namely that UNWTO breached its duty to provide a motivated decision. The complainant points to the report of the JAC of 8 November 2018, its recommendation which, in substance, was to dismiss the appeal, and the decision of the Secretary-General of 17 January 2019 to do so (the impugned decision in these proceedings). The complainant argues that the report of the JAC and the Secretary-General in the impugned decision provide no reasons. If true, in some cases, this has provided a basis for setting aside the impugned decision dismissing the internal appeal (see Judgment 3995, consideration 4).

11. However, there is an anterior issue, namely whether the complainant was provided with adequate reasons for the decision to suspend her with pay bearing in mind that suspension is a matter of some gravity (see Judgment 3496, consideration 2). As noted earlier, one relevant question arising under Staff Rule 29(1) for which reasons should be provided at least in case such as the present, is why the decision-maker (the Secretary-General) concluded that continuation in service of the official may prejudice the service. Ordinarily the other question arising under Staff Rule 29(1), whether it is a case that appears to call for a sanction, can readily be answered by reference to the actual or pending charges and the then known or alleged facts. Generally, the source of those reasons can be a document other than the document communicating the decision and indeed can be what an official is told at a meeting (see, for example, Judgment 4037, consideration 7, and Judgment 3914, consideration 15).

12. The memorandum of 4 May 2018 contained not only the decision to suspend the complainant but also, in great detail, the charges and the factual circumstances relied on by the Administration to support the charges. There can be no doubt that this constituted the reasons why the Secretary-General concluded that circumstances existed that appeared to call for the application of a sanction for the purposes of Staff Rule 29(1). The reasons for that conclusion were adequately explained.

13. As already noted, the Secretary-General addressed in that memorandum of 4 May 2018 the question of prejudice and gave a rational, albeit brief, explanation why the interests of the service may be prejudiced if the complainant continued in service. A further explanation was given in a memorandum of 15 June 2018 dealing with a contestation of the initial decision to suspend, in which the Secretary-General identified how prejudice might arise. Again, looking at these two documents, the reasons for the conclusion about prejudice were adequately explained.

14. The second legal argument, namely that the disputed decision had been taken in breach of the Staff Rules, is dealt with in the preceding considerations. In the result the first and second legal arguments should be rejected as unfounded.

15. The third legal argument is that the decision to suspend was based on a flawed procedure. The gravamen of the complainant's argument is that she received no effective forewarning of the charges on which the suspension was based nor was she given an opportunity to answer them before she was suspended. Additionally, she contests the lawfulness of the involvement of the consultancy firm in the initial investigation. The short answer to this argument is, in the main, found in Judgment 3138, consideration 10. The Tribunal observed:

“Suspension is an interim precautionary measure which, in principle, must be adopted urgently, and this will often make it impossible to invite the person concerned to express their opinion beforehand. However, this person's right to be heard must be exercised before the substantive decision is taken to impose a disciplinary sanction (see Judgment 2365, under 4(a)).”

There is no general legal obligation on an organisation to give a member of staff an opportunity to contest a prospective decision to suspend her or him. Thus, there was no flawed procedure.

16. In the result, the complainant has not demonstrated that the decision to suspend her was legally flawed. Her complaint should be dismissed.

## DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 29 October 2021, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 27 January 2022 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

DRAŽEN PETROVIĆ