

The Administrative Tribunal,

Considering the complaint filed by Miss E. S. R. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 12 April 2006, UNESCO's reply of 1 August, the complainant's rejoinder of 3 October and the Organization's surrejoinder of 14 December 2006;

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

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. The complainant, a Spanish national born in 1968, joined UNESCO in September 1997 as a supernumerary. In July 1998 she was given a temporary contract as a secretary and was assigned to the Division of Public Relations and Cultural Events of the Bureau for Support and Services and placed under the supervision of Ms F.T.

In a memorandum of 13 November 1998 addressed to the Bureau of Personnel, the complainant's supervisor stated that she did not satisfy the requirements for the proper performance of her duties and requested that her appointment be terminated on 30 November. Having been asked to draw up a performance report covering the complainant's probationary period from 5 July to 4 October 1998, Ms F.T. gave her a "D" rating on 30 November 1998. According to the rating scale this rating indicates a quality and quantity of work slightly below the level required for the performance of some assigned tasks. The complainant contested this rating and on 11 January 1999, after the Administration had intervened by way of mediation, she was given a "C" rating, indicative of a quality and quantity of work corresponding to the level required for the performance of assigned tasks.

As from 1 June 1999 the complainant was appointed for two years to a grade GS-3 post with the UNESCO Medical Benefits Fund under the supervision of the Organization's Chief Medical Officer. She took sick leave on two occasions, from 23 July to 8 November 1999 and in February 2000.

In August 2000 the complainant was authorised to take sick leave in Spain, her home country, on the basis of a medical certificate recommending rest in a family environment under medical supervision. From September 2000 onwards she sent the Organization a series of certificates in which her doctor in Spain requested an extension of her sick leave.

By a letter of 30 January 2001 the Deputy Director of the Bureau of Human Resources Management (HRM) informed the complainant that her "entitlement to sick leave on full pay ha[d] been exhausted on 30 November 2000" and that she had been placed on "UNESCO half pay" since that date.

By a letter of 16 May 2001, which the complainant received on 28 May, the Deputy Director of the Bureau of HRM informed her that, as she had exhausted her entitlement to sick leave on half pay, since 23 March her half pay had been disbursed by the Medical Benefits Fund, and that her fixed-term contract would not be extended beyond its expiry date of 31 May 2001. The complainant challenged this decision by submitting a protest to the Director-General on 13 June, in which she stated that, according to her physician, her state of health was "triggered by the moral harassment" she had suffered at UNESCO. On 18 September she lodged a notice of appeal with the Appeals Board followed, on 31 October 2001, by a "detailed appeal" in which she asserted that her supervisor had subjected her to moral harassment.

By letter of 30 May 2002 the Deputy Director of the Bureau of HRM informed the complainant that it had been decided, "in a spirit of consideration" towards her, "to grant [her] exceptionally a three-month indemnity calculated on the basis of the salary that [she] ha[d] received from the Medical Benefits Fund for April 2001" and that consequently the proceedings pending before the Appeals Board no longer served any purpose. In a letter dated 16

July 2002 the complainant reiterated her allegations of moral harassment and asked the Director-General to express an “objective opinion” in order that a settlement be reached. The Director of the Bureau of HRM replied to the complainant by a letter of 2 December 2002 in which she assured her that her file had been examined in a completely objective manner and informed her of the amount she would be paid.

The parties were heard by the Appeals Board on 17 November 2005. In its report of 7 December 2005 the Board found that, having regard to the applicable rules, the expiration of the complainant’s contract on 31 May 2001 was not tainted by any flaw. It nevertheless recommended that she be awarded an amount equivalent to six months’ salary, calculated on the basis of the salary she had received in April 2001, for moral damage due to the lack of a proper investigation of her allegations of harassment and the failure to issue a performance appraisal.

By letter of 16 January 2006 the Director-General informed the complainant that he had decided to accept the Appeals Board’s recommendation. That is the impugned decision.

B. The complainant asserts that she was subjected to moral harassment by her supervisor, Ms F.T., which has had serious repercussions on her health. She describes in detail the various forms that this harassment took. For example, she states that Ms. F.T. started to spread rumours about her. She kept constant watch on her, even going so far as to keep “excessively strict time checks” on her. When giving her instructions, Ms F.T. “made no effort to speak clearly, or she mumbled something” and then accused her of not listening. She levelled false accusations at her and then claimed that they were only “jokes”. Ms F.T. tried to “discredit” her and to “belittle” her in front of her other superiors because she wanted to give the complainant’s post to another staff member.

She mentions the cases of various colleagues in the Division of Public Relations and Cultural Events who, she says, were also harassed.

The complainant submits that her state of “confusion” caused her “stress” and “physical illness” which ultimately led her attending physician to prescribe sick leave for “considerable nervous exhaustion”. She asserts that she personally informed the former Director-General of the harassment she was suffering, but that he “did nothing”. In her opinion “[t]he Organization’s Medical Officer did not do all he could have done to sort out the situation” and “senior management did not want to know”.

She contends that her supervisor’s impunity is explained by the fact that the former Director-General had “pulled wires for her” and that the Administration’s “submissive attitude” was “rooted in fear”.

The complainant says that she accepted a “C” rating only because she “wanted no further conflict”. She explains that she agreed to her transfer to the Medical Benefits Fund because she “was running on empty” and her “health had been undermined”. She adds that the transfer in question “was not a voluntary personal decision, but the result of the complete disintegration of [her] professional career due to persecution” by her supervisor.

She emphasises that she was notified that her contract would not be renewed only three days before it was due to expire, and she therefore considers that the applicable procedure was not followed and that Staff Regulation 9.3 was breached inasmuch as the three months’ notice stipulated in her contract was not observed.

The complainant points out that she “built” her internal appeal around three issues: “[c]omplaint of moral harassment”; “[s]ubmissive attitude” of the senior management towards her supervisor’s aggression and “[t]olerance and promotion” of moral harassment by the Administration; and “[f]ailure to comply with the lawful procedure for dismissal”. She accuses the Administration of not giving her “the means to defend herself”, by considering her request to be “without foundation and pointless”, and of “persistently ignoring [her] case”. She submits that the Organization’s insistence on “always confining the case to the issue of the employment contract” proves that it “d[id] not wish to bring to light a case of moral harassment”. By doing so, in her opinion, UNESCO infringed Administrative Circular No. 2232 of 20 April 2005 concerning its anti-harassment policy, for she asserts that from the outset her “protest” always revolved around moral harassment.

Lastly, she contends that the Appeals Board underestimated the seriousness of her case and that the amount of the indemnity it recommends “is not commensurate with the damage” she suffered.

The complainant requests: that UNESCO recognise that she has been subjected to moral harassment and acknowledge all the repercussions this has had on her “human dignity and professional life”; that the Director-General and the Administration apologise to her and her colleagues in the Division of Public Relations and

Cultural Events; that the Organization grant her a “proper personal and vocational rehabilitation indemnity”; and that it pay her “120,000 euros in economic relief”, “compensation” for “moral and human damages”, as well as a “monthly vocational and personal integration indemnity in an amount to be assessed” by the Tribunal. She also applies for the hearing of witnesses.

C. In its reply UNESCO submits that the complainant’s claims concerning alleged moral harassment are irreceivable *ratione materiae* because the requirement that internal remedies be exhausted has not been met. On the one hand, the allegations of harassment are unrelated to the decision not to renew the complainant’s fixed-term contract, which is the impugned decision; on the other, the claim for damages for alleged moral harassment was not made before the Appeals Board. Moreover, the claim that apologies be made to third parties is irreceivable *ratione personae* because the principle that judgments have *res judicata* authority only for the parties to a dispute implies that the complainant cannot ask the Tribunal to order the Organization to apologise to third parties, even if they are members or former members of staff.

On the merits the Organization submits that the complainant may not contest the lawfulness of the decision not to renew her fixed-term contract, which expired on 31 May 2001. Staff Rule 109.3 provides that “[a] fixed-term appointment or a temporary appointment shall expire automatically and without notice or indemnity on the expiration date specified in the letter of appointment”.

Subsidiarily the defendant asserts that since Administrative Circular No. 2232 was issued after the events in question and does not have retroactive effect, it is clearly not applicable to this case. It adds that the Administration has nevertheless always taken accusations of moral harassment very seriously. It must, however, be noted that the complainant has offered no proof in support of her serious accusations. Moreover, in its recommendation the Appeals Board did not consider that harassment had been proved. UNESCO observes that the complainant’s career was not affected in any way by her relations with her supervisor in the Division of Public Relations and Cultural Events, because when her temporary contract ended she was appointed to another post at the same grade for two years. In fact, in the defendant’s opinion, the complainant is inviting the Tribunal to endorse her point of view regarding her emotional relations with her supervisor, whereas the Tribunal should not take sides in matters strictly confined to human relations.

The Organization affirms that the complainant never attempted to report any instances of harassment to the Administration. The only dispute which the complainant brought to the attention of the Administration was that concerning her performance report, and it was settled through mediation.

UNESCO emphasises that the complainant had been authorised to spend her sick leave with her family in Spain solely for the month of August 2000 but, despite her promises to the Organization’s Chief Medical Officer, she never returned to work. First she pleaded a gynaecological obstetric examination as an excuse, then she tried to extend her sick leave by sending a certificate from her doctor in Spain every month requesting an extension of her stay in Spain. These medical certificates, which never recorded a precise diagnosis, were nonetheless accepted “on humanitarian grounds” by the Organization’s Chief Medical Officer, even though he wondered about the actual nature of the complainant’s illness, whether she had really received treatment (for which she was not reimbursed) and about the true reasons for her stay in Spain. Since after 30 April 2001 the certificates in question were not accepted, as from 1 May 2001 the complainant was no longer authorised to stay away from work on sick leave. It follows that she was not on sick leave when her contract expired on 31 May 2001.

The Organization rejects the “complainant’s *a posteriori* allegation that her illness is attributable to her work at UNESCO”. It submits that nothing in her complaint makes it possible to establish a link between the past and present physical and mental health problems she reports and her working conditions during her service with the Organization. It underlines that no request for compensation for a work-related illness was sent by the complainant to the Advisory Board on Compensation Claims. Nevertheless, it acknowledges that it is regrettable that the Administration did not hold a medical inquiry in both France and Spain in order to confront the complainant with experts’ reports which might have confirmed the opinion of the Chief Medical Officer of UNESCO. But it adds that in any event “any inconvenience which the complainant may have suffered owing to notification that her employment contract had expired was amply compensated by the Director-General’s decision of 16 January 2006”. In the Organization’s view, by accepting the Appeals Board’s recommendation, the Director-General increased the indemnity awarded to the complainant to a total of nine months’ salary, thus going well beyond the Organization’s obligations towards her.

D. In her rejoinder the complainant expresses regret that she did not refer the matter of her performance report to the Reports Board and that she allowed herself to be intimidated. She rejects the Organization's accusation that she refused to return to work, recalling that her medical certificates were accepted until 30 April 2001. She asserts that she was never informed that these certificates would no longer be accepted after that date and that she discovered this only on reading the defendant's reply. She wonders "what precise diagnosis was needed by the Organization's Chief Medical Officer in order to identify moral harassment", given that "[h]e knows very well that [her] certificates refer to anxious depressive prostration accompanied by psychosomatic symptoms as a reaction to a conflict at work". She considers that it is unacceptable now to hold it against her that her certificates did not contain a precise diagnosis, when no request for clarification was sent to her doctors in Spain.

The complainant submits that she does not understand the "supplementary" indemnity awarded to her by the Director-General. She takes the view that if the Organization has granted her an indemnity for moral damage it is because it recognises the existence of such injury. However, she rejects the view that the injuries she suffered have been "amply compensated".

Returning to the issue of the circumstances in which her "dismissal" occurred while she was on sick leave, she considers that the Organization has violated her "human rights" and that it must provide relief for all the injury it has caused her. She maintains that the decision she challenged before the Appeals Board was not the decision that her fixed-term contract should not be extended and that her protest always related to moral harassment. She denies that she is presenting new claims.

She asserts that although Administrative Circular No. 2232 does not have retroactive effect, it would be incumbent upon senior management to take the necessary steps to prevent harassment.

The complainant explains that she did not submit her case to the Advisory Board on Compensation Claims because she was unaware of all her rights and obligations. Moreover, she points out that the existing rules require that claims for compensation be submitted within four months of the injury, or of the manifestation and diagnosis of illness, and wonders how, in a case of moral harassment, these conditions can be met.

E. In its surrejoinder UNESCO reaffirms that the complainant never filed a complaint of harassment. It notes that senior management has done its duty because once it received a contestation of the performance report it took the necessary steps to settle the dispute by mediation, in the spirit of the policy outlined in Administrative Circular No. 2232 though before its entry into force.

In the Organization's view it is the complainant's "personal situation which could explain, or even be the root of her suffering and psychological fragility".

UNESCO submits that it was perfectly entitled not to accept the complainant's medical certificates and states that "it is more than likely that the complainant never really intended to return to work and that [...] she attempted to blame the Medical Service for her continuing illness and the lack of communication".

It points out that the instant case does not pertain to dismissal and submits that the complainant cannot argue that, because she was ill at the end of her contract, she was entitled to have it renewed. It explains that the complainant was awarded an indemnity of three months' salary "as an exceptional measure, out of consideration towards her [...] and in settlement of her protest which concerned above all the late arrival at its destination of the notification of non-renewal". It also points out that, in accordance with the Appeals Board's recommendation, it increased the above-mentioned indemnity in the light of the moral damage suffered by the complainant as a result of the Administration's failure to conduct a proper investigation. In so doing it "recognised that it ha[d] committed a managerial error", but it does not have to "provide further reasons why it chose to follow the Appeals Board's recommendations".

Lastly, UNESCO dismisses the reasons given by the complainant for not submitting a claim to the Advisory Board on Compensation Claims, noting that the document explaining the compensation procedure was given to her when she took up her duties.

CONSIDERATIONS

1. The complainant contends that, while serving in the Division of Public Relations and Cultural Events, she

was subjected to moral harassment to which the Administration did not react; she alleges that this caused her physical and mental health to deteriorate. These allegations were also made in her “detailed appeal” of 31 October 2001.

The defendant contended before the Appeals Board which examined that appeal that the complainant had never submitted a formal complaint of moral harassment to the Administration and that in any case it saw no connection between those allegations and the complainant’s appeal. It added that, during her sick leave in Spain, the complainant had never informed her supervisor of her allegations of harassment, nor had she raised the question of a possible connection between her state of health and the alleged harassment.

The defendant concluded that the appeal should be dismissed on the grounds that it was factually and legally unfounded and that it had become irrelevant since the Administration had acceded to the complainant’s request by exceptionally granting her the three-month indemnity she was claiming.

In its opinion of 7 December 2005 the Appeals Board found that “the expiration of the [complainant’s] two-year contract on 31 May 2001 [was] not tainted by any flaw”. It recommended the award of an indemnity equivalent to six months’ salary, corresponding to her salary as of April 2001, for moral damage, in view of the Administration’s failure to issue the complainant’s performance appraisal in accordance with the rules in force and its failure to investigate her allegations of harassment.

By letter of 16 January 2006 the Director-General informed the complainant that he accepted the Appeals Board’s recommendation that she be awarded six months’ supplementary indemnity, but emphasised that “this decision [was] also prompted by the wish to settle this case once and for all in a humane manner”. That is the decision which is impugned before the Tribunal in the complaint filed on 12 April 2006.

2. The complainant’s claims are set out under B, above. She submits that, had the defendant promptly provided redress for the harassment she says she suffered from her supervisor, she would not be left with a truncated professional career and poor health, and she could have pursued her career within the Organization.

She states that this experience of moral harassment, five years struggling with health problems and the time and energy she has expended on seeking redress have cut her off from the work environment; that she has lost all her self-confidence on account of her delicate health and psychological disorder. She adds that she has attended several interviews for jobs matching her qualifications but that afterwards she did not wish to be recruited because her experiences at UNESCO had made her “nervous”.

She says that she is still undergoing psychotherapy.

Receivability

3. The Organization submits that the complainant’s claims concerning moral harassment are irreceivable because internal means of redress have not been exhausted. It contends that the decision which the complainant contested before the Appeals Board was the decision not to renew her fixed-term contract, and that she therefore cannot present new claims for damages arising from the moral harassment that she allegedly suffered.

It adds that the allegations of moral harassment are unrelated to the decision challenged by the complainant, namely the decision not to renew her fixed-term contract, and that the claim for damages for alleged moral harassment was not submitted to the Appeals Board and hence cannot be entertained by the Tribunal.

Contrary to the view put forward by the defendant, the Tribunal considers that the complainant did submit a claim to the Appeals Board for compensation in respect of the injury resulting from the moral harassment that she allegedly suffered while serving in the Division of Public Relations and Cultural Events. That is why the Appeals Board mentioned in its opinion that the complainant also felt that she was entitled to an indemnity in consideration of the harassment of which she claimed to have been a victim during her services in the afore-mentioned Division from July 1998 to May 1999. This objection to receivability therefore cannot be allowed.

Nevertheless, the Tribunal will rule only on the claims that are clearly formulated and on the requests which lie within its competence in accordance with Article II of its Statute.

4. The defendant also argues that the principle that judgments have *res judicata* authority only for the parties

to a dispute implies that the complainant cannot ask the Tribunal to order the Organization to apologise to third parties, even if they are members or former members of staff.

Subsidiarily, it asks the Tribunal to find that there is no factual or legal basis to the complainant's claims that she suffered moral harassment or that she notified the Administration of a case of moral harassment.

In the light of the explanations supplied by the complainant to the effect that she is defending her own personal case, not that of third parties, the Tribunal considers that there is no need to rule on the contention that one of the complainant's claims is irreceivable *ratione personae*.

The merits of the complaint

5. The Tribunal notes that the complainant is mainly requesting relief for the moral and financial injury she says she has incurred owing to the moral harassment which she allegedly suffered and which, according to her, caused a deterioration of her health, resulting in turn in the loss of her job and the disability from which she is still suffering.

A question therefore arises as to whether the complainant informed the Administration of any moral harassment which would have warranted the holding of an objective inquiry.

6. The evidence on file shows that the complainant did report the moral harassment that she claims to have endured while serving in the Division of Public Relations and Cultural Events. This was confirmed by the Appeals Board, which criticised the Administration in its report for not having conducted investigations to determine whether or not the allegations of moral harassment were true and accordingly recommended the award of an indemnity equivalent to six months' salary, corresponding to the complainant's salary as of April 2001. Moreover, it is the defendant itself which points out that "the Administration decided to follow [the] recommendations [of the Appeals Board] precisely because it recognised and accepted the reasons leading to those conclusions".

It adds that it does not need to give any further reasons for choosing to follow the Appeals Board's recommendations and that the conclusion to be drawn is that by following those recommendations it "implicitly recognised that it had committed a managerial error by not holding an inquiry into both relations between the complainant and the person accused of administrative harassment [...] and the authenticity of the medical certificates sent from abroad to justify absence from a service other than that in which the harassment was alleged to have occurred".

7. It emerges from the foregoing considerations that the complainant did accuse her supervisor of harassment, and that the Organization, which was then under an obligation to initiate an objective inquiry into the validity of her accusations, failed to do so and has merely regretted the fact that it held no investigations.

By failing to conduct an inquiry to determine the validity of such serious accusations, the defendant breached both its duty of care towards one of its staff members and its duty of good governance, thereby depriving the complainant of her right to be given an opportunity to prove her allegations. This attitude is liable to have caused serious injury which the indemnity awarded at the proposal of the Appeals Board does not entirely redress.

8. The complainant requests that the length of the internal appeal proceedings be taken into account when assessing the compensation to which she considers she is entitled.

Bearing in mind the fact the notice of appeal was filed on 18 September 2001 and supplemented on 31 October 2001 by a "detailed appeal", and that the final decision was not taken until 16 January 2006, the conclusion may be drawn that the complainant has good reason to complain of the excessive length of the internal appeal proceedings, since the Organization has provided no explanation which might justify such delay.

9. It is plain from all the evidence that the complainant has suffered injury which must be redressed. In view of the fact that she held only a two-year contract which has expired, the award of a sum equivalent to two years' salary, less the six months of salary already awarded, seems fair in order to compensate for injury under all heads.

10. The complainant is entitled to the sum of 2,000 euros in costs.

DECISION

For the above reasons,

1. The impugned decision is quashed.
2. The Organization shall pay the complainant a sum equivalent to two years' salary for injury under all heads, as stated under 9, above.
3. It shall also pay her 2,000 euros in costs.
4. The complainant's other claims are dismissed.

In witness of this judgment, adopted on 3 May 2007, Mr Seydou Ba, Vice-President of the Tribunal, Ms Mary G. Gaudron, Judge, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 7 February 2007.

Seydou Ba

Mary G. Gaudron

Mr Claude Rouiller

Catherine Comtet