

118th Session

Judgment No. 3388

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr N. H. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 2 April 2012, corrected on 21 May;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. The complainant filed the complaint on 2 April 2012. In it, he purportedly challenged the decision dated 7 February 2011 by the UNESCO Advisory Board on Compensation Claims, the final decision of the Director-General of UNESCO dated 29 July 2011 and a decision of 21 February 2012 by the Senior Mediator, which all denied his claim for compensation for mental and physical injuries suffered by him as a result of an explosion in his workplace. This claim was for 2.5 million Pakistani rupees. Those decisions had however upheld his claim for the reimbursement of his expenses for his medical treatment and for replacement hearing aids.

2. It is unnecessary to comment on whether the three decisions are in fact to be treated as impugned for the purpose of the complaint, or on any aspect of the merits of the claim. This is because the complainant appealed directly to the Tribunal. An official may only appeal directly to the Tribunal against a final administrative decision, which he or she seeks to impugn, when all the internal means of redress within an organization have been exhausted.

3. UNESCO's internal Appeals Board is constituted under Regulation 11.1 of UNESCO's Staff Regulations and Staff Rules to hear an internal appeal by a staff member against an administrative decision. Regulation 11.2 of the Staff Regulations and Staff Rules then confers the right of final appeal to the Tribunal from a decision of the Appeals Board. However, Rule 111.2(b) of the Staff Regulations and Staff Rules permits a staff member to appeal directly to the Tribunal where a staff member wishes to do so and the Director-General of UNESCO agrees to waive the jurisdiction of the Appeals Board. It is in such an event that an impugned administrative decision is considered as final and the official is thereby deemed to have exhausted the internal means of redress.

4. The Tribunal notes that the complainant did not seek or obtain a waiver under appeal Rule 111.2(b) to permit him to appeal directly to the Tribunal. As such, the decision which he seeks to impugn is not a final one either in accordance with Rule 111.2(b) of the Staff Regulations and Staff Rules or in accordance with Article VII(1) of the Statute of the Tribunal. The complaint is therefore clearly irreceivable for failure to exhaust all internal means of redress and must be dismissed in accordance with the summary procedure provided for in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaint is summarily dismissed.

In witness of this judgment, adopted on 16 May 2014, Mr Claude Rouiller, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 9 July 2014.

CLAUDE ROUILLER
DOLORES M. HANSEN
HUGH A. RAWLINS
DRAŽEN PETROVIĆ