Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

A.-W.

v.

UNESCO

121st Session **Judgment No. 3578**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr R. A. A. A.-W. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 23 May 2013 and corrected on 18 June, UNESCO's reply of 1 October, corrected on 10 October 2013, the complainant's rejoinder of 20 February 2014 and UNESCO's surrejoinder of 13 June 2014;

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 summarily dismiss him for serious misconduct.

Several participants to a Conference organised by the complainant in August 2007 brought complaints to UNESCO's Internal Oversight Service (IOS) alleging misrepresentation of funds. The IOS investigated the matter and concluded that the complainant had misrepresented the attendance of at least six purported participants and fabricated the receipts of transportation allowance for some participants. It therefore recommended that UNESCO initiate disciplinary proceedings and that a

further investigation be conducted to confirm if the participants were properly reimbursed for their expenses.

By a letter of 29 January 2009 the complainant was informed that he was charged with serious misconduct and was asked to provide his comments on the allegations of fraud made against him. The IOS report was attached to the letter. The Human Resources Management (HRM) then asked the IOS to investigate the matter further. Once the investigation had been completed, the complainant was informed by a letter of 8 January 2010 that the Director-General had decided to summarily dismiss him for serious misconduct with immediate effect.

Mid-February 2010 the complainant filed an appeal with the Director-General, contesting her decision and requesting that his case be submitted to the Joint Disciplinary Committee (JDC). The JDC held, in its report of 7 October 2010, that although he had committed misconduct, the measure of summary dismissal was disproportionate. It also found that he had not been heard during the investigation phase and that the case had not been fully and properly investigated by the IOS. On 30 November 2010 the Director-General nevertheless confirmed her decision to summarily dismiss him, which the complainant unsuccessfully contested at the end of January 2011. On 16 May 2011 he filed a notice of appeal with the Appeals Board, which registered it as his second appeal (reference CAP/367).

In the meantime, on 12 September 2010, he became Executive Director of Knowledge at the Royal Scientific Society (RSS) of Jordan. On 10 December the complainant wrote to the Director-General of UNESCO informing her that on 7 December the President of the RSS had suspended his employment because she had been told by a UNESCO representative that UNESCO would stop collaborating with the RSS as long as he worked there. The President of the RSS was concerned and had decided to suspend him pending clarifications from UNESCO. The complainant asked the Director-General to take action to remedy this unjust situation, stressing that he had been sanctioned for his alleged misconduct by UNESCO and should not be sanctioned a second time for the same facts. He asked her to reassure the President of the RSS that his employment at the RSS would not harm the

relationship with UNESCO. To the contrary, UNESCO informed the RSS on 22 December that he had been summarily dismissed from UNESCO for having committed financial fraud. On the same day the RSS notified the complainant of the termination of his contract with effect from 26 December 2010 on the ground that he had not indicated the reasons of separation from UNESCO when he applied to the RSS. On 22 February 2011, following an exchange of correspondence with UNESCO, the complainant filed a notice of appeal with the Appeals Board contesting the disclosure of confidential information concerning his separation from service, first orally on 7 December 2010 and then in a letter of 22 December 2010. This first appeal was registered under reference CAP/366.

The Appeals Board issued two reports on 11 December 2012 concerning the complainant's two appeals. It recommended declaring the complainant's first appeal (CAP/366) irreceivable on the grounds that, at the time of filing, he was not a staff member and that UNESCO had taken no administrative decision against him. With respect to the second appeal (CAP/367) concerning his dismissal, it made three recommendations to the Director-General: (1) to direct that funds were handled by appropriate trained staff to ensure proper accountability, (2) to "request the relevant services to further re-investigate the whole case on a larger scope, so as to identify gaps and other wider responsibilities", and (3) to reconsider the disciplinary sanction imposed on the complainant for "a lesser pain for it was disproportionate".

By a letter of 4 March 2013, which is the impugned decision, the Bureau of Human Resources Management informed the complainant that the Director-General had decided to endorse the Board's finding with respect to his first appeal. Concerning the second appeal she had decided to endorse the Board's first recommendation but not the two others. According to her, the IOS investigation complied with applicable rules and procedures, he was given the opportunity to fully exercise his right to be heard and to respond to the allegations made against him, and the sanction was not disproportionate.

The complainant asks the Tribunal to set aside the decision to summarily dismiss him, to order that he be reinstated at UNESCO

with retroactive payment of salary and allowances; or in the alternative to be granted an amount equivalent to all salaries, benefits and "emoluments of any kind" he would have been entitled to from the date of his dismissal to the date of his retirement in 2019, or payment of the equivalent of two years' salary plus allowances, repatriation grant and indemnity, educational grants, family allowances and other benefits. He also asks the Tribunal to grant him material damages for the two years' salary and allowances he would have obtained had his contract not been terminated (at a rate of 9,180 United States dollars per month), 100,000 euros for "loss of future earning capacity" together with moral and exemplary damages. Lastly he asks that the Tribunal order UNESCO to publish this judgment on its website and to send him a formal letter of apology, and that the Tribunal award him costs.

UNESCO asks the Tribunal to dismiss the complaint as irreceivable with respect to alleged disclosure of information to the RSS and otherwise unfounded. It also asks the Tribunal to declare that the decision to summarily dismiss him was lawful.

CONSIDERATIONS

1. The complainant commenced employment with UNESCO in 2000 based in the Cairo office. He was summarily dismissed by the Director-General on 8 January 2010. Events leading to his dismissal will be discussed shortly. The complainant took up employment with the RSS in September 2010. In December 2010 the complainant's employment with the RSS was suspended and terminated with effect from 26 December 2010.

In very late 2010 and early 2011, the complainant pursued within UNESCO's internal grievance resolution mechanisms a grievance about both his dismissal from UNESCO and events leading to his dismissal from the RSS. As to the latter, the complainant contended there had been inappropriate and unlawful communication between UNESCO and the RSS. On 22 February 2011 the complainant filed a notice of appeal with the UNESCO Appeals Board in relation to what he alleged was a decision concerning UNESCO's communications

with the RSS. This became matter CAP/366. On 16 May 2011 the complainant filed a notice of appeal with the Appeals Board against the decision to summarily dismiss him from UNESCO. This became appeal CAP/367. In relation to appeal CAP/366, the Appeals Board recommended to the Director-General in a report dated 11 December 2012 that she declare the appeal (CAP/366) not receivable. The Director-General accepted this recommendation and informed the complainant by letter dated 4 March 2013. In that same letter she addressed the Appeals Board's recommendations in relation to appeal CAP/367. What the Director-General decided in relation to appeal CAP/367 will be discussed shortly. However the letter of 4 March 2013 is the impugned decision in these proceedings in the Tribunal.

2. It is desirable to deal with a procedural issue about the receivability of the complaint challenging the impugned decision insofar as it related to the subject matter of appeal CAP/366. UNESCO argues that the complaint is irreceivable in this respect. The complainant contends it is receivable. The gravamen of UNESCO's argument is that the Staff Regulations and Staff Rules (Chapter XI together with Annex A) make provision for internal appeals by staff members but not by former staff members. At the time the events occurred which founded appeal CAP/366 and which are said by the complainant to have given rise to a "decision" and at the time the complainant filed his internal notice of appeal, he was no longer a member of UNESCO's staff. Thus he had no right to bring an internal appeal. UNESCO argues what the complainant should have done was to lodge an appeal directly, by way of a complaint, with the Tribunal within the time specified under Article VII, paragraph 2, of the Tribunal's Statute. In support of this proposition, UNESCO cites Judgments 2944, under 20, and 3202, under 9. Because the complainant did not do so, his complaint, insofar as it relates to any "decision" of UNESCO challenged in appeal CAP/366, is time barred. The complainant's response is threefold. First, he argues that Annex A properly construed does provide for internal appeals by staff members who have separated from the Organization having regard to paragraph 7(a) of the Annex (which deals with preliminary procedures) which speaks of an internal protest

being brought within two months of the date of receipt of the decision or the contested action "if he or she has been separated from the Organization". The complainant also points to the use of the same language in paragraph 7(c) concerning time limits for filing a notice of appeal with the Appeals Board. He also argues that if the rules are ambiguous they should be construed *contra proferentem* in favour of staff, in accordance with Judgments 1755, under 12, and 2396, under 3. The second argument is that former officials can, in any event, avail themselves of internal means of redress as indicated in Judgment 2111, under 6. The third is that part of an organisation's duty of care towards staff is to provide procedural guidance to a staff member who is mistaken in the exercise of an appeal right as stated in Judgment 2345, under 1. In its surrejoinder, UNESCO cites Judgment 2944, under 20, in which the Tribunal explicitly said in relation to the relevant UNESCO Staff Regulations and Staff Rules that a former staff member could not have access to the internal appeal procedure in order to challenge a decision adopted after the date on which the termination of her appointment took effect. The Tribunal observed that the complainant in that matter had been entitled to file a complaint directly with the Tribunal.

3. In the present case the conduct complained of and any decision by UNESCO raised in appeal CAP/366 took place and was made when the complainant was no longer a staff member of UNESCO. The provisions in paragraph 7 of Annex A referred to in the preceding consideration and on which the complainant relies, do not relate to a former staff member in respect of whom a decision was made which did not concern that staff member's employment with UNESCO. It is unnecessary to explore the boundaries of the operation of those provisions because, in this case, any "decision" made in December 2010 was not referable to the complainant's employment with UNESCO, which had ceased in January 2010, almost twelve months earlier.

4. Also, at that time, UNESCO had no duty of care which, in relation to a former staff member, might have required it to inform that person that the procedure adopted (in this case, the filing by the

complainant of the internal appeal with the Appeals Board on 22 February 2011) was not correct and that other steps should be taken. It is true that Judgment 2345, cited by the complainant, treats that duty as continuing after a staff member has retired. However in that matter, the sequence of events were that the impugned decision was made on 20 December 2002 (to maintain the complainant's post at grade G-4), the complainant retired on 1 January 2003 and the complainant wrote to the Director-General on 27 February 2003 seeking leave to appeal to the Tribunal. Having received no reply, the complainant filed his complaint with the Tribunal on 18 April 2003. The Tribunal held that the Organisation should have told the complainant, on receipt of the letter of 27 February 2003, that authorisation was unnecessary and he could appeal to the Tribunal directly. However this Judgment does not stand for the principle that for an indefinite period after a staff member ceases employment with an organisation, the organisation has an obligation to inform that former staff member of what steps might be required to be taken to challenge "a decision" of the organisation taken months or years after the cessation of employment. In the present case, UNESCO had no such obligation towards the complainant. In the result, the complaint, insofar as it challenges the conduct of UNESCO in December 2010 as contested in appeal CAP/366, is irreceivable as time-barred.

5. One further procedural issue should be noted. The complainant sought a hearing and nominated three individuals who would give evidence. One witness's evidence concerned the issues arising in appeal CAP/366 and would be irrelevant as this aspect of the complaint is time-barred. The evidence of the other two is unnecessary and the Tribunal is satisfied it has adequate material in the pleas and documentary evidence to deal with the complaint in a fair and balanced way.

6. The Tribunal now turns to consider the complaint in so far as it concerns the decision to terminate the complainant's employment in January 2010. The events leading to this decision and the subsequent internal review of the decision are as follows. The complainant was involved in the organisation of a conference on "Sustainable

Development and Management of Water in Palestine" (the Conference) under the auspices of UNESCO held between 27 and 29 August 2007 in Amman, Jordan. Complaints arose about the management of the Conference particularly in relation to financial matters and this led to an investigation by the IOS. The focus of the investigation was the complainant's conduct. In the IOS's first report (the first IOS report) published in December 2008, the object of the investigation was described as "establish[ing] potential misrepresentation of expense claims with regards to the liquidation of expenditures relating to [the Conference]".

The first IOS report noted that the complainant had received from the UNESCO Cairo office, through the UNESCO Amman office, 28,010 United States dollars for settlement of Conference expenses. The IOS substantiated expenditure of 21,099 dollars for the reimbursement of air tickets and ground transportation for the Conference participants. In an email dated 12 November 2007 (annexed to the first IOS report) to the head of the Amman office (copied to the head of the Cairo office), the complainant set out the basis on which he was explaining the settlement of the advance of 28,010 dollars. The complainant noted that he had received the advance but that the actual expenses "paid by [him] for this event" were 21,099 dollars "as some participants from Gaza were not able to participate in the Conference due to Israeli blockage on Gaza borders". The first IOS report noted that the complainant had submitted a list of 80 participants who the complainant said had received compensation for air tickets, ground transportation and/or transportation allowance. The report said that, following IOS's investigations, it appeared that six people of the 80 on the complainant's list of participants did not attend the Conference and a further eight, who did attend, had not received payment and eight of the 14 aforementioned people (though only 13 had been contacted) had said receipts of payments purportedly signed by them had been signed by someone else. The first IOS report concluded by saying the complainant had misrepresented the attendance of at least six purported participants and fabricated the receipts of transportation allowance of those six and eight actual participants. The IOS recommended,

amongst other things, disciplinary proceedings against the complainant and further investigation.

On 29 January 2009, the Director of HRM wrote to the complainant. The letter served two purposes. One was to provide the complainant with the first IOS report which was annexed to the letter. The other was to provide the complainant with four charges of misconduct (said to be of such a magnitude as to potentially constitute serious misconduct) and to invite him to respond to the charges and provide countervailing evidence within 10 working days of receipt of the letter. The complainant responded in writing on 18 February 2009 (the February response) and this response was revised in writing on 14 April 2009 (the April response).

The gist of the February response was that the complainant had been very busy at the Conference. He received the 28,010 dollars on the last day. The complainant said in his written response that he tried to pay all the participants during coffee and lunch breaks and that he had paid most of the people "per the payment receipts and signatures in persons". The complainant was a co-chairman of the Conference and the other co-chairman was Dr A. The complainant said in his written response that just after the Conference's concluding session had ended, he was given a list by Dr A., informing him "that those people did not get their ground travel allowances" and that they could not be reached in person. The complainant asked Dr A. how to handle them and Dr A. proposed (and promised) to pass the allowances to those people. Of some importance, the complainant went on to say in his February response that he looked at his list (fairly clearly a list of Conference participants) and "found that [he] had paid around 66 persons so far. [He] took [Dr A.'s] list of names [the list of unpaid participants] of around 14 persons and [he] simply accepted his suggestion in good faith. [He] handed to [Dr A.] the total allowances for those persons." A little later in the February response the complainant said "I could not verify if all the 14 enumerated participants really attended or received their allowances. I only know that the total number of people supported by UNESCO who attended the Conference was 80 participants." It appears that the allegations about the complainant

were made in August 2008 and were made by Dr A. In the February response, the complainant set out the case to establish that Dr A. had, by then, grievances about him.

In the February response, the complainant was comparatively certain about the number of participants he had paid and the number, on his account, he had entrusted Dr A. to pay. In the April response (characterised by the complainant in the document as a revision of the February response) this numerical detail was not repeated. What the complainant then said was that "[he] tried to pay all the participants during coffee and lunch breaks; [he] paid most of the people per the payment receipts and signatures in persons". The complainant also pointed to the fact that the participant identified in the first IOS report as an attendee who had not received payment, had confirmed in writing that he had.

7. In May 2009 the IOS produced a further report (the second IOS report) that was provided to the complainant for comment on 5 June 2009. The second IOS report was said to be a product of a follow-up investigation. In its report the IOS noted that it had contacted a further 53 individuals (a total of 67 including the 14 in the first investigation). These enquiries revealed that a further 10 additional participants had not been paid or not paid in full (that is, the amount in the receipt) and that they had not signed themselves the receipts of payment submitted by the complainant. The IOS also noted that the complainant had contacted three participants requesting them to "misrepresent the facts and reply in his favour to IOS inquiry". The IOS concluded, in summary, that "more than 30% of all indicated participants den[ied] having attended or being paid or paid in full and/or having signed the receipts". The IOS detailed several subsidiary matters of fact said to support the proposition that the complainant had engaged in fraud.

The complainant responded to the second IOS report in writing on 7 July 2009. He claimed that the process was procedurally flawed, the investigation may potentially have been biased and challenged some matters of detail. What the complainant did not do was come to

grips with the obvious inconsistency between the defence he maintained in the February response (that the non-payment of 14 individuals could be attributed to Dr A. and he had paid the remainder) and the evidence and related findings by the IOS that there were payment irregularities in relation to at least 10 participants.

8. As noted earlier, the complainant was dismissed on 8 January 2010. The letter conveying the Director-General's decision encapsulated the complainant's conduct founding the decision by saying "there is a set of precise and concurring presumptions that you misrepresented Conference participants, falsified payment receipt and made fraudulent claims for travel expenses and allowances with the intention to misappropriate the Organization's funds". On 16 February 2010 the complainant appealed to the Director-General against the dismissal decision and requested her to submit his case to the Joint Disciplinary Committee (JDC). This occurred and on 26 August 2010 the JDC met and heard submissions from the complainant's counsel and a representative of UNESCO. In its report of 7 October 2010 the JDC noted that the complainant's counsel focused on three points. The first was that the investigation had not been conducted in conformity with the rules and procedures in force and the "Uniform Guidelines for Investigations". The second was that the investigation was not conducted with total impartiality and, in particular, countervailing evidence provided by the complainant was not considered. The third was that for those reasons, the summary dismissal decision was illegal and disproportionate. After this hearing, the JDC sought clarification from the IOS about a number of matters and, after receiving a reply, the JDC met again on 4 October 2010 and spoke to representatives of the IOS.

In its report the JDC noted the agreement of all members of the JDC on four matters. The first was that the JDC was of the opinion that the case had not been fully and properly investigated. This was based on the fact that the complainant "was not given the possibility to be heard during the investigation phase". The second was that the JDC considered there was enough concrete evidence for the Director-General to make a decision on the case. However the substance of the

complainant's conduct identified by the JDC was that the complainant failed to record properly the expenses of the Conference he organised and also that he had contacted Conference participants with the intention of impeding the IOS investigation. The JDC did not express a view about whether the complainant had engaged in fraud. The third was that the complainant had been given "sufficient possibility to provide evidence" in the disciplinary phase but not during the investigation phase. The JDC then said that "[i]n light of the above" (a reference to the three matters just summarised) there was misconduct on the part of the complainant that warranted a disciplinary measure but that the measure of summary dismissal was disproportionate. In a letter dated 30 November 2010, the complainant was informed that the Director-General considered that the complainant had been given the opportunity to fully exercise his right to be heard and respond to the allegations and that summary dismissal was warranted having regard to the evidence in the IOS reports. The letter concluded by saying that the Director-General decided to confirm the decision of summary dismissal. The letter noted that there was an established practice of zero tolerance for fraud.

9. On 21 January 2010 the complainant protested against the dismissal decision resulting in a letter dated 24 March 2011 indicating the Director-General had decided to confirm the decision of summary dismissal. Thereupon the complainant appealed to the Appeals Board. As noted earlier, the Appeals Board reported to the Director-General on 11 December 2012. In its report, the Appeals Board summarised, in detail, the arguments of the complainant and the arguments of UNESCO. Its report concluded with eight brief paragraphs containing observations or conclusions and a final paragraph containing three recommendations. All of the eight paragraphs were expressed at a high level of generality and none involved any real analysis of the arguments that had been advanced by the parties. Such analysis as there was, was superficial. The first three paragraphs said, in substance, that the procedures for handling the finances of the Conference were not particularly robust. The next two paragraphs effectively criticised the IOS by saying that its investigation was too limited, did not bring

out the roles of all the players but rather concentrated on the complainant "who arbitrarily and solely endorsed the entire responsibility". What this means is unclear. In the next three paragraphs the Appeals Board effectively noted the findings of the JDC, without either expressly endorsing them or questioning them, that the complainant's "handling of the Conference was improper and that there was misconduct on his part" and that there had been irregularities in the investigation. It also noted the JDC's conclusion that the complainant's misconduct warranted a disciplinary measure but that the measure of summary dismissal imposed on him was disproportionate.

In the final paragraph of its report the Appeals Board made the following recommendations to the Director-General to:

> "(i) direct that funds are handled by appropriate trained staff to ensure proper accountability
>
> (ii) request the relevant services to further re-investigate the whole case on a larger scope, so as to identify gaps and other wider responsibilities
>
> (iii) reconsider the disciplinary sanction imposed on the [complainant] for a lesser pain for it was disproportionate".

10. The difficulty with the report of the Appeals Board is that it did not come to grips with the question of whether or not the complainant engaged in fraud. It is possible, though the Appeals Board does not say so, that its conclusion that the IOS's investigation was too narrowly focused meant that, in the absence of a wider investigation and the revelation of more facts, it was inappropriate to express a view about whether the complainant engaged in fraud. However if that was the reason why the Appeals Board did not engage in a discussion about the complainant's conduct and whether it could be characterised as fraud, then it was inappropriate for it to say that the sanction (of dismissal) was disproportionate. If, in fact, the complainant had engaged in fraud then it would be surprising if the sanction of summary dismissal was not imposed subject, of course, to whatever may have been, if any, extenuating circumstances.

11. In the impugned decision of 4 March 2013, the Director-General indicated she accepted the first recommendation but rejected the second and third. She expressed the belief that the IOS investigation had been undertaken in compliance with the rules and procedures in force and that the complainant had been given the opportunity to fully exercise his right to be heard and respond to the allegations. She rejected the suggestion that the disciplinary measure was disproportionate.

12. In his legal brief, the complainant argues, in detail, that the investigation had been procedurally flawed and there had been insufficient proof of the facts ultimately relied on to dismiss him. Under the latter general heading, the arguments were grouped under two subheadings. One was that there had been an omission to investigate the essential facts and the second was that wrong conclusions had been drawn from the evidence. The complainant also argues that he was subjected to biased and discriminatory treatment and lastly argues that there had been a transgression of the principle of proportionality. For reasons that will emerge shortly, it is unnecessary to engage in as detailed an analysis of these propositions as undertaken by the complainant in his brief.

13. The complainant's first argument concerning procedural issues depends on the scope of the operation of Item 3005.6 of the UNESCO Administrative Manual. One further matter of fact should be noted. On 17 August 2008 the Director of UNESCO's Cairo Office (DIR/CAI) met with three officials from the Palestinian Territories including Dr A. Minutes were kept of the meeting. Those minutes recorded "recurrent problems" involving the complainant which included events at the August 2007 Conference which, in turn, included the complainant "disappear[ing]" without paying many participants their ground transportation. The minutes concluded by recording that the DIR/CAI expressed his very strong concerns about the views the participants had expressed and that "UNESCO w[ould] do its best to investigate those allegations in order to rectify such problems and to restore the reputation of UNESCO in general and the UNESCO Cairo

Office in particular". The complainant argues that these minutes had to be dealt with in a particular way having regard to Item 3005.6. UNESCO argues, correctly, that this Item has no application to this document. The Item concerns a report from a staff member's immediate supervisor to the Director of HRM about conduct for which a disciplinary measure may be imposed. The Item requires the report to contain a full account of the facts that are known and should attach documentary evidence including signed written statements by witnesses and any other document or record relevant to the alleged misconduct. The minutes of the 17 August 2008 meeting was not such a document and, accordingly, Item 3005.6 had no application. It follows that Item 3005.7, which deals with what needs to be done when such a report is received by the Director of HRM (including the possible reference of the matter to the Director of the IOS by the Director-General), similarly had no application. If it had, the complainant needed to be informed and given a copy of the report at an early stage. As UNESCO points out in its pleas, an investigation by the IOS can be triggered by other means and it has a mandate to investigate, inter alia, fraud.

14. The complainant also alleges violation of the Uniform Guidelines for Investigations which, by operation of Item 1.6 of UNESCO's Administrative Manual, should be followed by the IOS. Those Guidelines, in substance, require a person who is the subject of an investigation to be given the opportunity of answering allegations that are the subject of the investigation. The Guidelines do not mandate when in the investigation process this should occur, and confer a measure of discretion to the investigators when to do so, "keeping in mind fairness to the subject, the need to protect the integrity of the investigation and the interests and rules of the organization" (Article IV, paragraph D1, of the 2003 Guidelines). There is no obligation to inform a person in advance that an investigation will be undertaken (Judgment 2605, under 11). No violation of the Guidelines is established by the complainant.

15. The complainant's submissions in relation to proof descend into great detail. However what they fundamentally fail to do is

engage with the fairly simple proposition based on the fact that the complainant in his response in February 2009 to the first IOS report stated unambiguously that he had paid around 66 people when Dr A. showed him a list of about 14 people who needed to be paid. This statement was made in the context of the first IOS report which had identified 14 people who had either purportedly been paid but who had not attended the Conference or who had attended and had not been paid. So an inference can readily be drawn that what the complainant was really doing in his February response was taking the case against him, as he understood it (involving 14 people) and moulding his response to answer the case. In the second IOS report, this statement appears, at the beginning of the report, as one of the complainant's claims "[w]hen confronted with" the first IOS report. This characterisation is entirely reasonable.

As the second IOS report found, there were a further 10 participants who had either not been paid or not paid the amount stated on the receipt. What the complainant did not say in his response to the first IOS report was that either he paid about 56 participants and Dr A. paid (or purported to pay) the remaining 24 or thereabouts, or that he simply could not recall how many he paid. Had he given that response, real doubts could have arisen about his culpability. But the answer he actually gave was precise and contrary to the facts as established by the IOS (at least as to who was not paid either in full or in part the amount on the receipt). It was an answer cast in terms to exculpate the complainant. However, to the contrary, it is evidence of a pattern of conduct consistent with guilt.

The complainant advances an argument akin to a forensic examination of the receipts and whether writing on them could be said to be a "signature". The complainant then argues in his brief that he had been accused of misappropriating 5,763 dollars "on the pretext that [he] had forged the list of participants [...] and their 'signatures' on the payment receipts". This proposition appears earlier in his brief when the complainant says "it will be shown that there is insufficient evidence establishing my culpability, and that there is nothing to prove that I did indeed misappropriate the Organization's funds by

forging the list of participants and their signatures on the receipts for payment". But this is not the substance of the case revealed by the evidence. At its most basic, the allegation of fraud is founded on the fact that when acquitting the payment of 21,099 dollars in an internal memorandum of 12 November 2007, the complainant provided, as an attachment, a list of 80 individuals who he said had been participants and had been paid sums totalling 21,099 dollars. He also attached what he described in the memorandum as "[s]igned original receipts with all supporting materials". With possibly one qualification, 13 of the individuals to whom the first IOS report related said that they had not signed the relevant receipt. Whether, on detailed analysis, what appeared on each receipt (and the receipts for the ten referred to in the second IOS report) was a signature does not deal with the more fundamental question of whether the receipts were a bona fide reflection of the fact that the recipient had been paid at all or paid the amount referred to in the receipt. They had not been paid and necessarily the receipts were false. The one exception is a Mr B., who is one of the individuals who said he had not received any transportation allowance but later corrected this. Similarly, the receipts were false in relation to 10 individuals who were the subject of the second IOS report. On the complainant's account in the February response he said he paid most of the people "per the payment receipts and signatures in person" and, in relation to those who were not paid by him and would be paid by Dr A. (around 14 persons in this February response), he reached agreement with Dr A. that "their names be written openly on the payment receipt (which is different from falsifying signatures)". Even accepting, in the complainant's favour, that events unfolded in this way and that Dr A. did not pay the 14 for whom receipts were created at the Conference and before payment, there is no explanation about the false receipts for the further 10 participants covered by the second IOS report. In his pleas, the complainant really does not address or answer this case.

Also, the complainant annexed to the February response an email from Dr A. dated 20 October 2007 which suggested there had been an agreement with Dr A. to make payments for a nominal number of participants to meet a commitment to pay the hotel where either the

participants stayed or the Conference was conducted or both. However the complainant did not advance this arrangement as an explanation of what happened. In addition, it would probably render the claims in the acquittance of 12 November 2007 fraudulent but on a different basis.

Thus the complainant does not demonstrate, which the evidence otherwise shows at the appropriate high standard of proof of beyond reasonable doubt (see Judgments 969, under 16, 2786, under 9, and 2849, under 16), that UNESCO did not have a basis for summarily dismissing him. It is true that aspects of the investigation process might have been approached differently. For example, the IOS in the second report does not address the fact that Mr B. (one of the original 14) effectively withdrew the allegation that he had not received the transportation allowance. But this should not distract from the fact that the Director-General was entitled to act on the basis that the complainant had engaged in fraudulent conduct and should be dismissed. The remedy of summary dismissal was not disproportionate and the conclusions of the JDB and the Appeals Board to the contrary are not the product of reasoned analysis. In any event, the Tribunal's role in reviewing the proportionality of a disciplinary sanction is limited (see Judgment 2944, under 50). Also, for this reason, it was open to the Director-General to deal in a fairly cursory way with the Appeals Board's recommendation notwithstanding that, as the complainant points out, there is a general obligation for a decision maker to explain why she or he rejected a recommendation of an internal appeal body (Judgment 2699, under 24, and Judgments 2092, 2261, 2347 and 2355 cited therein).

16. The complainant's argument that he was subjected to biased and discriminatory treatment has, at its foundation, the failure of the IOS to investigate Dr A. Perhaps it should have done so, as the JDC and the Appeals Board had concluded. However it was the conduct of the complainant founded on the terms of his acquittance of 12 November 2007 of the expenses which was the focus of the IOS investigation and any failure to broaden the scope of its enquiries does not taint its conclusions in relation to the falsity of that acquittal. Nor would it justify an award of moral damages as claimed by the complainant.

17. In the result, the complaint should be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 23 October 2015, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 February 2016.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

DRAŽEN PETROVIĆ