

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

M.
v.
UNESCO

138th Session

Judgment No. 4883

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms S. M. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 31 May 2022, UNESCO's reply of 26 September 2022, the complainant's rejoinder of 28 October 2022 and UNESCO's surrejoinder of 30 January 2023;

Considering the additional documents submitted by UNESCO, on 23 and 29 April 2024 and 10 May 2024, in response to a request for further submissions from the President of the Tribunal;

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 challenges the decision to close her harassment complaint at the end of the preliminary assessment procedure.

The complainant joined UNESCO on 20 December 2010 as a security officer assigned to the Security Unit within the Security and Safety Section, at grade G-3, under a two-year fixed-term appointment that was renewed several times. After undergoing a training organised by the United Nations Office in Geneva from 30 May to 3 June 2016, she was cleared to carry a weapon in the performance of her duties.

On 30 April 2018 she submitted a formal harassment complaint to the Director-General against the Assistant Chief of the Security and Safety Section, Mr M. – who, since his appointment by the Organization in December 2017, had been her second-level supervisor, himself under the supervision of the Chief of Section, Mr D. – in which she referred to several incidents that had taken place between February and April 2018 and alleged a breach of the Standards of Conduct for the International Civil Service, casting doubt on Mr M.’s ability to hold his post of Assistant Chief. She stated that she had been subjected to “various forms of repeated and persistent harassment in the workplace” resulting from Mr M.’s inappropriate behaviour, as well as discriminatory treatment and bias against her.

On 23 July 2018 the complainant was informed that, on the basis of the preliminary assessment carried out by Ms T., the Ethics Adviser, the Director-General had decided to close her complaint on the grounds that there was insufficient evidence that Mr M. had engaged in harassment. However, it had nevertheless been decided that he should undertake training with a view to sensitising him to the work environment expected within the Organization. The next day, the complainant sent a memorandum to Ms T., expressing her disagreement with the Director-General’s decision and stating that there was a contradiction between the closing of her complaint and the recommendation that Mr M. undertake training, which, in her view, constituted evidence of his inappropriate conduct. On 3 August 2018 the Ethics Office replied that her allegations had not been corroborated by the witnesses she had cited.

On 16 August 2018 the complainant lodged a protest with the Director-General against her decision of 23 July, then on 14 September, having received no reply, she submitted a notice of appeal to the Appeals Board. In the end, her protest was rejected on 21 September on the grounds that there was no “*prima facie* evidence of harassment”^{*} by Mr M. and that the contested decision had been taken in accordance with the applicable rules and legal principles.

^{*} Registry’s translation.

On 24 September 2018 the complainant requested a copy of the Ethics Adviser's recommendation on her complaint. She received a redacted copy of it on 6 November, then the full version on 11 March 2020.

On 14 January 2019 she was reassigned to the grade G-3 post of mail clerk in the Mail Service.

On 21 February 2019 she lodged her detailed appeal with the Appeals Board, supplementing her notice of appeal of 14 September 2018. She requested the setting aside of the decision to close her complaint without further action and an order for the Organization to pay her compensation of 30,000 euros for the moral injury she considered she had suffered.

On 1 January 2020, while the internal appeal procedure was underway, the complainant was reassigned to the post of assistant in the Interpretation Unit of the Conferences and Cultural Events Management Section of the Division of Conferences, Languages and Documents in the Sector for Administration and Management. On 16 February 2022 her post was reclassified at G-4 with retroactive effect from 1 July 2021.

In its opinion of 2 December 2021 – delivered after hearing the parties and granting their various requests for extension of time limits – the Appeals Board found that the decision of 23 July 2018 had been taken in accordance with the applicable rules and procedures. It also noted that the fact that a training had been proposed to Mr M. “to resolve misunderstandings that may arise”^{*} did not mean that he had engaged in harassment. The Board recommended that the appeal be rejected, but considered nevertheless that it would be beneficial for the parties to undertake mediation in an attempt to resolve their dispute and encouraged the implementation of the applicable provisions relating to the informal dispute resolution method.

^{*} Registry's translation.

By a letter of 9 March 2022, the complainant was notified of the Director-General's decision to accept the Appeals Board's recommendation to dismiss her appeal as unfounded. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to recognise, firstly, that the preliminary assessment of her harassment complaint is unlawful and, secondly, that there was an excessive delay in the internal appeal procedure. She claims damages, in an amount set *ex aequo et bono* at 30,000 euros, as compensation for the moral injury she considers she has suffered.

UNESCO asks that the complaint be dismissed as unfounded in its entirety.

CONSIDERATIONS

1. In addition to compensation for the moral injury she considers she has suffered owing to what she describes as harassment "through sexist comments, abuse of authority and dominant position, intimidation, threats [and] humiliation" by Mr M., Assistant Chief of the Security and Safety Section, against her, the complainant asks the Tribunal to set aside the decision of the Director-General of 9 March 2022 dismissing her harassment complaint and to recognise, firstly, that the preliminary assessment undertaken by the Ethics Adviser, Ms T., was unlawful and, secondly, that there was an excessive delay in dealing with her internal appeal.

2. In the present case, the facts giving rise to the complainant's harassment complaint can, according to her submissions, be summarised as follows:

- (1) at the end of January 2018, she and one of her colleagues were rebuked for not having wished, by reference to a Note of the former Director-General of 1 December 2015 on "Reinforcing security in UNESCO", to adopt Mr M.'s point of view on the question of arming security officers;

- (2) during a discussion on 5 February 2018, Mr M. informed her that the “Firearms Clearance Committee” – a body set up in December 2017, in the context of a plan within UNESCO to arm security staff, in order to issue opinions on applications submitted by security officers who wished to carry a weapon in the performance of their duties – had proposed clearing her to carry a weapon, but had expressed reservations regarding her conduct and the need to modify it in view of the responsibilities that the Organization was preparing to give her. The written submissions show that those reservations related, firstly, to the contempt that the complainant had demonstrated in certain circumstances towards more recently recruited colleagues and, secondly, to a lack of tact and courtesy towards visitors and diplomats on the Organization’s premises. As she had never been interviewed by the Committee or received negative comments regarding her attitude, she expressed her lack of comprehension to Mr M., and he replied that “he consider[ed] the fact that she [did] not share HIS point of view regarding weapons at UNESCO as inappropriate behaviour”*. During the same discussion, she also asked Mr M. to stop “squeezing” her hand when he greeted her. Following that comment, he adopted a scornful air or even ignored her when he met her;
- (3) on 6 and 16 February 2018 she asked the Director of the Bureau of Human Resources Management (HRM) and the Ethics Office to open an investigation into the existence of the “Firearms Clearance Committee” and the justifiability of the reservations that had been expressed in her regard, even though she had already been cleared to carry a weapon following a training organised by the United Nations Office in Geneva. She was told that the Committee’s opinion would not be placed on her personal file. According to her, no action was taken in response to her request for an investigation to be opened;

* Registry’s translation.

- (4) on 16 March 2018, while she was on duty at the guard post, Mr M. again “squeezed” her hand, and that of one of her female colleagues, in the presence of two other male colleagues. Her female colleague complained about that manner of “shaking” hands, and the Assistant Chief then made “sexist, humiliating” remarks, repeating at least twice that “there aren’t any women in uniform”;
- (5) on 10 April 2018 Mr M. decided to move her, as well as two other colleagues, to another team, without that being, in her view, justified by the interest of the service;
- (6) lastly, on 11 April 2018 Mr M. “extend[ed] an open hand to her without closing it and without saying hello to [her]”*. She asked him either to “shake [her] hand properly”* or to refrain from doing so and to “stop humiliating [her]”*. The same day, Mr M. sent her an email in which he denied having treated her contemptuously, informed her that he considered her remark inappropriate, and threatened her to mention it in her performance appraisal.

It should be added that the complainant also submitted a formal harassment complaint against the Chief of the Security and Safety Section, Mr D., for an incident that also took place on 11 April 2018. As that second complaint was also rejected by the Director-General – but, in that case, after investigation – the complainant filed a second complaint with the Tribunal. That complaint is the subject of Judgment 4884, also delivered in public this day.

3. In her first plea, the complainant contends that, following various amendments to the rules and regulations recently adopted by UNESCO, the Organization no longer had a real anti-harassment policy or an effective internal appeal against decisions taken in this area.

4. However, the Tribunal observes that, in the version applicable at the material time, Item 18.2 of the Human Resources Manual, entitled “Anti-Harassment Policy”, provided in paragraphs 27 to 37 that

* Registry’s translation.

if a formal harassment complaint was submitted to the Director-General, the Ethics Adviser was to take immediate steps to conduct a preliminary assessment of it. That assessment was to include, in particular, an interview with the complainant to clarify the allegations, ensure that the complaint bore on harassment-related events, make sure that all the available evidence was submitted and consider the possibility of informal resolution. If the case was to be pursued, the alleged harasser was to be given a time limit to respond to the allegations and provide countervailing evidence. On the basis of the content of the complaint, any such response and the evidence produced, the Ethics Adviser was to evaluate whether there was “*prima facie* evidence of harassment” and, if so, she was to advise the Director-General to refer the case for investigation to the Internal Oversight Service (IOS). By contrast, if the facts resulting from the preliminary assessment indicated that no harassment had occurred, the Ethics Adviser was to recommend to the Director-General that the case be closed.

Under paragraph 1 of aforementioned Item 18.2, “[p]aragraph 20 of the Standards of Conduct for the International Civil Service stipulates that: ‘Harassment in any shape or form is an affront to human dignity and international civil servants must avoid it. They should not engage in any form of harassment and must be above any suspicion of it. International civil servants have the right to an environment free of harassment.’”

Similarly, general harassment and moral harassment were defined as follows in paragraphs 8 and 10 of Item 18.2 of the Human Resources Manual:

- “8. For the purpose of this policy, harassment shall be defined as follows: Harassment is any deliberate, offensive, undesired conduct, incompatible with the Standards of Conduct, in the workplace or in connection with work that can be reasonably perceived as such, and has the purpose or effect of:
- (a) An affront to the identity, the personality, the dignity or the physical integrity of an employee/a group of employees, or
 - (b) The creation of an intimidating, hostile, degrading, humiliating or offensive work environment.

[...]

10. **Moral harassment** covers, *inter alia*, any repeated or persistent aggression, whether physical, verbal or psychological having a negative effect on conditions at the workplace or aimed at humiliating, demeaning, offending, intimidating an individual or a group of individuals, and potentially seriously affecting their health, career or dignity. Acts that constitute moral harassment include but are not limited to the following:
- (a) Persistent, unjustified and unnecessary negative attacks on personal or professional performance intended to offend the employee;
 - (b) Manipulation of an employee's personal or professional reputation by rumour, gossip or ridicule;
 - (c) Offensive comments or behaviour relating to the ethnic origin, physical characteristics or religion of an individual;
 - (d) Exclusion or continued isolation from professional activities;
 - (e) Abuse of authority or power. In the context of this policy, abuse of authority is the improper use of a position of influence, power or authority against another person. This is particularly serious when a person uses his or her influence, power or authority to improperly influence the career or employment conditions of another, including, but not limited to, appointment, assignment, contract renewal, performance evaluation or promotion. Abuse of authority may also include conduct that creates a hostile or offensive work environment which includes, but is not limited to, the use of intimidation, threats, blackmail or coercion. Harassment, including sexual harassment, is particularly serious when accompanied by abuse of authority." (Original emphasis.)

Lastly, contrary to what the complainant submits, the Statutes of the Appeals Board, in the version applicable at the material time, allowed any staff member to protest in writing against an administrative decision, such as the rejection of a harassment complaint, to the Director-General within a period of one month of the date of receipt of that decision in the case of a staff member who – like the complainant – was stationed at the Organization's Headquarters, then, if need be, to address a notice of appeal to the Secretary of the Appeals Board within a one-month time limit (in that same case) to be counted from the date of receipt of the Director-General's ruling on the protest (paragraph 7(a) and (c) of the Statutes). The Appeals Board was to review the lawfulness of any administrative decision where the staff

member considered that it conflicted, either in substance or in form, with the terms of her or his contract or with any Staff Regulation or Staff Rule relevant to her or his case (paragraph 5(a) of the Statutes).

5. In the light of the above provisions, the Tribunal considers that an anti-harassment policy did exist at UNESCO, that the procedure for examining the complainant's harassment complaint was in fact followed, even though, in this case, it did not progress beyond the first stage of that procedure, and, lastly, that the complainant was able to exercise effectively her right of appeal against the decision taken in this respect.

The complainant's first plea is therefore unfounded.

6. Among the other pleas entered by the complainant, there is one that is decisive for settling this dispute. This is the plea alleging that the Ethics Adviser, Ms T., committed an error of judgement in the preliminary assessment of the harassment complaint in that she considered that there was no "*prima facie* evidence of harassment" justifying the opening of an investigation.

7. The Tribunal recalls in this regard that, when such a stage is provided for in the procedure for examining a harassment complaint, the sole purpose of the preliminary assessment is to determine whether there are grounds for opening an investigation into that complaint. It follows that, at the preliminary assessment stage, a *prima facie* finding that some elements alleged by the person lodging the complaint in its support are genuine is, as a rule, sufficient to justify the continuation of the procedure, since it is in the course of the investigation itself, if opened, that the comprehensive search for evidence must be made (see to that effect, in particular, Judgment 4900, also delivered in public this day, considerations 27 and 28, as well as Judgments 4746, consideration 9, and 3640, consideration 5).

8. In this case, the Tribunal finds that the reality of the facts alleged by the complainant was for the most part corroborated by testimonies gathered during the preliminary assessment.

The Tribunal considers that such facts *prima facie* met the definition of harassment arising from Item 18.2 of the Human Resources Manual quoted in consideration 4, above. The actions and statements of which Mr M. was accused could in fact be reasonably perceived as constituting, in particular, offensive and/or undesired conduct in the workplace having the effect of affronting the complainant's dignity and/or creating an intimidating, hostile, degrading and/or humiliating work environment.

In those conditions, Ms T. was wrong to consider that an investigation did not need to be opened because there was no "*prima facie* evidence of harassment".

That flaw alone is sufficient to justify the setting aside of the impugned decision, without there being any need to rule on the complainant's other pleas.

9. Given this setting aside, the Tribunal should, in principle, remit the case to the Organization for the complainant's harassment complaint to be investigated. However, in the specific circumstances of this case, the Tribunal considers such a course inappropriate for the following reasons.

Firstly, the complainant's harassment complaint dates from several years ago and the time that has passed since it was submitted does not weigh in favour of an investigation. Secondly, the alleged harasser has left the Organization in the meantime and some witnesses of the incident at the guard post do not seem to be in its employment any longer. Lastly, the complainant, who was assigned to a new post in a different service from 1 January 2020, does not ask in her written submissions for the case to be remitted to UNESCO to that end.

10. In this context, the appropriate course is to award the complainant financial compensation for the moral injury caused by the impugned decision. Since the complainant was denied her right to have her harassment complaint properly examined, the Tribunal considers that she suffered moral injury that should be redressed (see for example, in this respect, Judgment 4471, considerations 20 to 22).

In the circumstances, the Tribunal considers that this moral injury will be fairly redressed by awarding her damages of 15,000 euros.

11. The complainant takes issue with what she regards as the excessive length of the internal appeal procedure.

It should be recalled that, under the Tribunal's settled case law, firstly, the unreasonableness of a delay in examining an internal appeal must be assessed in the light of the specific circumstances of a given case and, secondly, the amount of compensation liable to be granted under this head ordinarily depends on at least two considerations, namely the length of the delay and the effect of the delay on the employee concerned (see, for example, Judgments 4727, consideration 14, 4684, consideration 12, 4635, consideration 8, and 3160, consideration 17).

12. In the present case, three and a half years passed between the submission of the notice of appeal, on 14 September 2018, and the notification of the final decision, on 9 March 2022. In absolute terms, such a delay is clearly excessive, particularly so having regard to the nature of the dispute.

However, firstly, the Tribunal notes that the complainant, who asked the Appeals Board three times to extend the time limit for submitting her detailed appeal, herself caused some of the delay in the procedure, and, moreover, it may seem reasonable, in view of the extensions obtained by the complainant, that they were also granted to the Organization. Secondly, the Organization explains, convincingly in the Tribunal's view, that the functioning of the Appeals Board was considerably disrupted in 2020 and 2021 by the successive lockdowns ordered by the French authorities owing to the Covid-19 pandemic, which, in particular, affected the Board's capacity to hold its hearings as usual. Lastly, the evidence shows that, owing to the continuation of the pandemic, to the national lockdown measures adopted on this occasion and to the health rules put in place at the Organization, it was suggested to the complainant on 27 April 2021 that she appear at a hearing before the Appeals Board by videoconference, but that she

wished the hearing “to be held in person when the health situation allow[ed]”*. Only later did the complainant agree for a hearing to be held by videoconference, which eventually could take place on 29 October 2021.

In the circumstances, the Tribunal can understand the time taken by the Organization to deal with the complainant’s appeal and considers that the complainant has not therefore duly established that the delay was wrongful. Accordingly, there is no reason to award her damages under this head.

DECISION

For the above reasons,

1. The decision of the Director-General of UNESCO of 9 March 2022 is set aside.
2. UNESCO shall pay the complainant moral damages in the amount of 15,000 euros.
3. All other claims are dismissed.

In witness of this judgment, adopted on 21 May 2024, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

* Registry’s translation.

Delivered on 8 July 2024 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

MIRKA DREGER