

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

K. (No. 11)

v.

UNESCO

139th Session

Judgment No. 4924

THE ADMINISTRATIVE TRIBUNAL,

Considering the eleventh complaint filed by Mr L. K. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 19 June 2023 and corrected on 6 July 2023, UNESCO's reply of 19 October 2023, the complainant's rejoinder of 18 January 2024 and UNESCO's surrejoinder of 22 April 2024;

Considering the additional documents submitted by UNESCO on 11 and 14 October 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 termination of his appointment on disciplinary grounds.

Facts relevant to this case are set out in Judgments 4922 and 4923, also delivered in public this day, concerning the complainant's sixth and tenth complaints. Suffice it to recall that the complainant joined UNESCO on 2 December 2002 as a grade G-3 security officer, assigned to the Security Unit within the Security and Safety Section,

under a two-year fixed-term appointment that was renewed several times.

On 20 October 2016 Mr K., a security officer and the complainant's colleague, sent to the then Chief of the Security and Safety Section a detailed report concerning, inter alia, purported "[a]busive remarks [made concerning security] officers"* that had been addressed to him on the same day by Mr D., the Deputy Chief of Section. Four other security officers were present at the material time, but not the complainant.

On 31 October 2016 the complainant – who felt that the “insulting and abusive remarks”* reported by his colleague were directed at him – submitted an internal complaint of harassment against Mr D., alleging in particular an affront to his dignity and that of his profession.

On 5 December 2016 a meeting took place between the complainant, the then Ethics Adviser, Ms T., and the Ethics Officer, Mr Do. UNESCO asserts – but is vehemently contradicted by the complainant – that he was informed at this meeting that, since he was not present during the incident of 20 October, his internal complaint was “not receivable”* according to the Anti-harassment Policy applicable at the material time. Nevertheless, he was told that the information contained in his internal complaint, including in its annexes, would be forwarded for all purposes to the senior management of the Security and Safety Section.

The same day, the complainant sent an email to Ms T. to “share [his] impressions with [her]”* of what had been said at the meeting in question. He did not refer to his internal complaint being closed or forwarded to his superiors. He merely stated that, in his view, Ms T. had minimised the seriousness of Mr D.'s behaviour during the discussion, although “the way [Mr D. had] long treated and belittled”* security officers was “quite simply scandalous and totally unacceptable and unforgivable”*.

* Registry's translation.

On 16 December 2016, during a meeting with the security officers, the Assistant Director-General for External Relations and Public Information explained that, after consulting the parties concerned by the incident of 20 October and with the support of the Ethics Office, he had taken steps to end the dispute.

By an email of 19 December 2016, the complainant wrote to Ms T., enquiring about the “official status”^{*} of his internal complaint against Mr D. He reiterated his enquiry on 10 January 2017.

On 31 May 2017 Mr D. retired. His successor officially took up his duties on 22 January 2018.

On 31 October 2018 Ms T. left UNESCO. She was replaced from 1 February 2019 by a new Ethics Adviser, Ms D. On 19 June 2019 the Organization introduced a new Anti-harassment Policy. In particular, it provided that formal internal complaints should henceforth be sent directly by the person concerned to the Internal Oversight Service (IOS). On 31 July 2019 the former Chief of the Security and Safety Section also left the Organization.

On 2 February 2020 the complainant – who explains his silence over several years by his fear of retaliation following what he describes as “threats”^{*} made by the former Chief of Section on 6 December 2016 and who considers that those threats materialised during his biennial performance appraisal for 2016-2017 – sent an email to the Director IOS and Ms D. “to ascertain the official status”^{*} of his internal complaint of 31 October 2016. He stated that, since the meeting of 5 December 2016, he had not received any official response regarding this matter, despite his numerous requests.

On 4 February 2020 the Ethics Office, drawing his attention to the fact that his email of 2 February referred to a period before the new Ethics Adviser took up her position, stated that it had reviewed the file, including the previous emails sent to Ms T. which had remained unanswered – a circumstance that was described as “regrettable”^{*}. Noting that in 2016 Ms T. “had deemed it appropriate for [his case] to be managed administratively, rather than conducting an investigation”^{*}

^{*} Registry’s translation.

and that she had therefore “raised the information of which [the complainant had] apprised her with [his] superiors”*, the Office concluded that it was impossible for it to reopen the file, especially in the light of the fact that, since the new Anti-harassment Policy had taken effect on 19 June 2019, it had not been responsible for formal internal complaints of harassment.

On 25 February 2020 the complainant sent the Director-General an “[i]nformal protest against the administrative decision of the Ethics Office [of 4 February] to close [his] complaint without taking action”*. On 28 March 2020 he submitted a notice of appeal against that decision, then on 30 March he sent a detailed appeal to the Appeals Board. The Organization submitted its reply on 26 March 2021, appending a witness testimony, signed by Mr Do. and dated 15 January 2021, stating that Ms T. had explained to the complainant, at the aforementioned meeting of 5 December 2016, that his internal complaint was irreceivable. The outcome of that internal appeal procedure is the subject of the complainant’s sixth complaint.

On 12 April 2021 the complainant sent the Director IOS an internal complaint of “untrue statements”* against Mr Do. In support of the complaint, he submitted that the statements contained in the testimony of 15 January 2021 did not reflect the truth and insulted his honour and credibility since, at the meeting on 5 December 2016, Ms T. had not informed him of any decision.

By an email of the IOS Head of Investigations dated 19 April 2021, the complainant was informed that on 16 April the Director IOS had decided to close the screening of his internal complaint of 12 April for “lack of evidence calling into question the veracity of the contested statements”* made by Mr Do.

On 27 April 2021 the complainant sent the Deputy Director-General a request for the administrative review of the decision of 16 April 2021 to close the screening of his internal complaint of 12 April, which was rejected on 10 June. On 6 July 2021 the complainant submitted a notice of appeal, then on 14 September 2021

* Registry’s translation.

he sent a detailed appeal to the Appeals Board. The outcome of that internal appeal procedure is the subject of the complainant's tenth complaint.

On 25 May 2021 the IOS Head of Investigations informed the complainant that the Director IOS had decided to open an investigation into the potentially malicious nature of his internal complaint of 12 April 2021 against Mr Do. The complainant was interviewed the next day.

In June 2021 IOS finalised its investigation report. It concluded that the internal complaint of 12 April 2021 constituted a malicious accusation since, on the one hand, the complainant had knowingly and in bad faith accused Mr Do. of disciplinary offences and, on the other hand, by acknowledging that Mr Do.'s testimony "put him in difficulty in a case pending before the Appeals Board"* , the complainant had recognised a personal interest in his attempt to discredit the Ethics Officer. IOS therefore recommended that disciplinary proceedings against the complainant be initiated.

On 21 June 2021 the Director of the Bureau of Human Resources Management informed the complainant of the charges against him, namely malicious accusation and attempted fraud in the form of a malicious accusation seeking to mislead UNESCO's internal system of justice and obtain an undue advantage in an appeal procedure. The complainant submitted his comments on 16 July 2021, in which he stated that he was innocent of the charges against him.

By a memorandum of the Director of the Bureau of Human Resources Management of 5 November 2021, the complainant was informed of the Director-General's decision to impose the disciplinary measure of termination of appointment, which took effect the same day, with payment of his salary instead of the three months' notice. The Director-General considered that the charges against him had been established; that, by the malicious accusation with which he was charged, he had cast doubt on the professional integrity of a staff member of the Organization and undermined the credibility and

* Registry's translation.

integrity of one of its core functions (namely the Ethics Office); and that he had thereby broken the bond of trust between himself and UNESCO.

On 15 December 2021 the complainant sent the Deputy Director-General a request for the administrative review of the decision to terminate his appointment. On 20 February 2022 he lodged a notice of appeal, then on 29 April 2022 he submitted his detailed appeal to the Appeals Board.

In the opinion it issued on 23 January 2023 having heard the parties, the Appeals Board recommended that the appeal should be dismissed as unfounded. Considering that the charges against the complainant had been established, it found, in respect of the choice of sanction, that the complainant “[had] gone very far in his actions and challenges and no longer seem[ed] to show any regard for authority”*, which justified the termination of his appointment. By a letter of 20 March 2023, the complainant was informed that the Director-General had decided to follow the recommendation of the Appeals Board. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, as well as the implied rejection of his request for an administrative review and the decision of 5 November 2021. He also seeks his reinstatement with effect from the date of the termination of his contract, as well as the payment of all salaries, emoluments and allowances that he would have received from 5 November 2021 or, instead of and in preference to reinstatement, the payment of compensation equivalent to all salaries and allowances of any kind that he would have received for the 13 years of service remaining before his retirement. He requests that interest for late payment at the rate of 10 per cent per annum be paid on these sums. As he considers that he was denied the opportunity to obtain a post at grade G-5 or G-6, he claims compensation in the amount of 20,000 euros. Lastly, he claims total compensation of 55,000 euros for the moral injury he considers he has suffered and costs in the amount of 10,000 euros.

* Registry’s translation.

UNESCO asks the Tribunal to dismiss the complaint as unfounded. It further submits that the claim for compensation for the alleged loss of opportunity to obtain a grade G-5 or G-6 post is irreceivable because it was not presented in the internal appeal procedure.

CONSIDERATIONS

1. The complainant impugns before the Tribunal the decision of 20 March 2023 by which the Director-General of UNESCO, in accordance with the recommendation of the Appeals Board, dismissed his internal appeal against the decision of 5 November 2021 to terminate his appointment on disciplinary grounds mainly on account of a “malicious accusation”^{*} which, according to the Organization, he was guilty of making against Mr Do., the Ethics Officer.

The malicious accusation allegedly consisted in the submission of an internal complaint of “untruthful statements”^{*} which the complainant had lodged against Mr Do. on 12 April 2021. The complaint was based on the purported falsity of a written testimony prepared by Mr Do. on 15 January 2021, which had been produced by UNESCO before the Appeals Board during the examination of the appeal challenging the closure of the complainant’s internal complaint of moral harassment against Mr D., the former Deputy Chief of the Security and Safety Section. The rejection of that appeal is the subject of the complainant’s sixth complaint to the Tribunal, on which it ruled by Judgment 4922, also delivered in public this day. Suffice it to recall here that, in the contested statement, Mr Do. testified that, at a meeting on 5 December 2016 at which he had been present, the then Ethics Adviser, Ms T., had “explained”^{*} to the complainant that the Anti-harassment Policy in force at that time did not, in her view, apply to his internal complaint and that “the Ethics Office could not consider [that] complaint [...] receivable”^{*}. The Appeals Board, whose opinion the Director-General endorsed in her decision of 22 June 2022 on the appeal in question, relied on that testimony in finding that the complainant had been duly

^{*} Registry’s translation.

informed at that meeting of the decision to close his internal complaint of moral harassment and that the protest lodged by him in this regard on 25 February 2020 was therefore irreceivable because it was time-barred.

The complainant's internal complaint of untrue statements against Mr Do. had been closed at the screening stage pursuant to a decision of the Director of the Internal Oversight Service (IOS) of 16 April 2021, for "lack of evidence calling into question the veracity of the contested statements". The rejection of the complainant's internal appeal challenging that decision is the subject of his tenth complaint, on which the Tribunal ruled by Judgment 4923, also delivered in public this day.

2. Following the closure of the internal complaint of untrue statements, the Director IOS, by a decision of 25 May 2021, had opened an investigation into the possible maliciousness of that complaint, during which the complainant and Mr Do. were interviewed, among other witnesses. The report issued at the end of the investigation concluded that the submission of the complaint did indeed constitute a malicious accusation. It was that report which gave rise to the disciplinary procedure – conducted pursuant to the provisions of Item 11.3 of the Human Resources Manual applicable in this area – culminating in the decision to terminate the complainant's appointment challenged in the present complaint.

3. The complainant suggests that the present complaint, his eleventh, be joined with his tenth complaint, referred to above. However, while they are interdependent, the two complaints are based only in part on the same facts and present clearly distinct questions of law for judgement. Joinder is not therefore justified (see, for similar cases, Judgments 4753, consideration 7, and 4600, consideration 2).

4. In support of his claims, the complainant submits, inter alia, that UNESCO has not produced evidence of the actions of which he is accused, namely making a malicious accusation against Mr Do. and

* Registry's translation.

committing attempted fraud in connection therewith – which will be discussed below.

According to the Tribunal's case law, the burden of proof that the employee did indeed engage in the misconduct of which she or he is accused in a disciplinary procedure lies with the employing organisation (see, for example, Judgments 4051, consideration 5, 3875, consideration 8, 3297, consideration 8, or 2849, consideration 16) and that proof must be established beyond reasonable doubt (see, for example, Judgments 4663, consideration 12, 4289, consideration 10, 2849, consideration 16, or 2786, consideration 9).

5. In this case, it should be stated at the outset that, in the light of the evidence, the Tribunal has no doubt as to the honesty of Mr Do.'s written testimony of 15 January 2021 and the truth of its account of the facts. The complainant observes that, as Mr Do. himself pointed out in the testimony, it referred to a meeting that had taken place more than four years earlier, certain points of which he could only vaguely recall. However, in the Tribunal's view, the precautions taken to carefully define the limits of the testimony only serve to underscore the author's desire to adhere to the truth and thus to strengthen the credibility of his assertions of the facts which he recollected clearly.

Moreover, in Judgment 4923, ruling on the complainant's tenth complaint, which, as stated above, concerned the challenge to the closure of the internal complaint of untruthful statements that the complainant had submitted against Mr Do. on account of the testimony in question, the Tribunal – although it set aside the final decision impugned in that case on account of a defect in the internal appeal procedure – upheld the lawfulness of the decision to close that internal complaint. The debate initiated by the complainant on the alleged falsity of Mr Do.'s testimony is thus conclusively closed.

Furthermore, it should be noted that, although the inference can be drawn from the written testimony of 15 January 2021 that Ms T. had intended to inform the complainant of a decision to close his internal complaint of moral harassment at the meeting on 5 December 2016, Mr Do. did not assert in that document that such a decision had actually

been notified to the complainant on that occasion. As already mentioned above, he merely stated that Ms T. had “explained”^{*} to the complainant that the Anti-harassment Policy in force at that time did not, in her view, apply to his internal complaint and that “the Ethics Office could not consider [that] complaint [...] receivable”^{*}. Moreover, in aforementioned Judgment 4922 relating to the complainant’s sixth complaint, the Tribunal, without calling into question the veracity of the testimony, considered that it did not establish that the said decision had been properly notified to the complainant at the meeting. Thus, the complainant’s internal complaint against Mr Do., insofar as it sought to accuse him of having falsely stated that a decision had been notified to the complainant on that occasion, related to an assertion that did not even appear in the contested testimony.

6. It is possible that the complainant misunderstood what Ms T. said at the meeting of 5 December 2016 – although the two emails sent to her on 19 December 2016 and 10 January 2017, in which he asked to be informed of “the official status of [his] complaint”^{*} of moral harassment against Mr D., show that he was aware that he had been informed, during that meeting, of the outcome of the complaint – and it is clear, in any event, that the complainant thought that the information he had received on that occasion was merely informal. It is apparent from these emails that he clearly expected to be subsequently notified of an official decision – that is, a decision which he would certainly have expected to be a written decision – and so there was a misunderstanding on this point, which, as these emails went unanswered, was not cleared up as it should have been.

However, these circumstances did not justify the complainant taking the liberty of disputing the honesty of Mr Do.’s testimony by submitting an internal complaint of untrue statements, which was obviously insulting to Mr Do. and liable to harm not just him but the reputation of the Ethics Office, whose very purpose is to combat

^{*} Registry’s translation.

breaches of the duty of integrity and to promote respect for ethical obligations within the Organization.

Accordingly, the Tribunal considers that the internal complaint against Mr Do. was not only patently unfounded but even reckless and therefore wrongful.

7. However, the Tribunal considers that the internal complaint in question cannot be found beyond all reasonable doubt to constitute a malicious accusation. A complaint can only be so characterised if it was submitted in bad faith. In the present case, however, there is no evidence in the file that would allow it to be stated with certainty that the complainant was clearly aware, when he submitted his complaint of untrue statements against Mr Do., that the accusations it contained were false.

As stated above, the possibility cannot be discounted that the complainant did not properly understand the explanations provided to him by Ms T. at the meeting of 5 December 2016. It is also possible that his own memory of the content of what was discussed at the meeting had become distorted over time. Furthermore, the fact that the complainant misconstrued Mr Do.'s written testimony as indicating that he had been notified of the decision to close his internal complaint of moral harassment against Mr D. at that meeting appears to have been a mistake committed in good faith, especially as UNESCO, which produced the testimony in question before the Appeals Board in order to establish the existence of this alleged notification, itself gave it this interpretation. Moreover, both the Appeals Board, in its opinion on the appeal against the decision to close the internal complaint of moral harassment, and the Director-General, in her decision of 22 June 2022 dismissing the appeal as irreceivable on the ground that the initial protest was time-barred, considered that it was apparent from Mr Do.'s testimony that the decision of closure had indeed been notified at the meeting of 5 December 2016 and thus committed the same error as the complainant in this respect

Lastly, the Tribunal observes that the circumstance, emphasized in the conclusion of the IOS investigation report, that the complainant had acknowledged, during his interview with the investigators, that “[Mr Do.’s] testimony put him in difficulty in proceedings pending before the Appeals Board”^{*} is not such as to establish by itself that the complainant was clearly aware that the allegations in his internal complaint of untrue statements were false. The fact that the complainant had a tangible interest in submitting such a complaint, in that its outcome could have furthered his cause in the case in question, does not in itself necessarily imply that he submitted the complaint in bad faith.

the Tribunal therefore considers, in view of all the evidence in the file, that UNESCO could not lawfully find the complainant guilty of the “malicious accusation”^{*} which constituted the main reason for the sanction of termination of appointment imposed by the decision of 5 November 2021.

8. According to that decision, the sanction in question was also based on a second ground, consisting of “[a]ttempted fraud in the form of a malicious accusation seeking to mislead UNESCO’s internal system of justice and obtain an undue advantage in an appeal procedure”^{*}. The charge in question referred, of course, to the fact that the complainant’s internal complaint of untruthful statements aimed to prevent the Appeals Board from taking into account Mr Do.’s written testimony when considering the appeal against the decision to close his internal complaint of moral harassment.

The Tribunal firstly observes, in that regard, that the decision of 5 November 2021 to terminate the complainant’s appointment presents the attempted fraud both as a type of misconduct separate from the malicious accusation – as did the letter sent to the complainant on 21 June 2021 notifying him of the charges – and as an aggravating circumstance of a single instance of misconduct constituted by that malicious accusation. The confusion caused by this ambiguity is unacceptable in a decision such as a disciplinary sanction – and, what

^{*} Registry’s translation.

is more, a dismissal – the grounds of which must be stated with particular precision.

However, the second charge could not in any event be sustained. It is clear from the way in which the description of that charge is worded that the attempted fraud of which the complainant was accused took “the form of [the] malicious accusation”^{*} with which he was also charged. Since the Tribunal considers, as stated in the previous consideration, that the malicious accusation itself is not established, the attempted fraud is deprived of its essential constituent element.

Moreover, the Tribunal observes that even if the malicious accusation had been established, the attempted fraud still could not have been legally upheld. In considering that attempted fraud had been committed, the Director-General relied on the provisions of Item 3.14 of the Administrative Manual, entitled “Prevention of Fraud and Corrupt Practices”, in force at the time, and more specifically on paragraph 2.1 thereof, which defines fraud as an act consisting, in particular, of “a knowing misrepresentation of the truth or concealment of a material fact aiming at misleading another party in view of obtaining a financial or other benefit”. While this provision would make it possible to classify as fraud, for example, the submission of a forged document to one of the Organization’s bodies, the Tribunal considers by contrast that it cannot be applied to the submission of allegations – even malicious allegations – to a body whose very purpose is to assess whether they are well-founded. The submission of the complainant’s complaint of untrue statements to IOS could not, in any event, be regarded as “attempted fraud” within the meaning of aforementioned paragraph 2.1.

9. The Tribunal considers that the wrongful nature, identified above, of the internal complaint of untruthful statements could in itself have justified the imposition of a disciplinary sanction on the complainant. The submission of a complaint of this nature contravenes the requirement laid down in Staff Regulation 1.4 that UNESCO staff

^{*} Registry’s translation.

members “shall conduct themselves at all times in a manner befitting their status as international civil servants”. Moreover, the fact that it is not established that the complainant knew that the allegations contained in his complaint were false did not prevent his conduct from being punished, as paragraph 1 of Item 11.2 of the Human Resources Manual provides in any event that misconduct can be constituted by a failure by a staff member to comply with her or his obligations committed “by recklessness”, even if it was not deliberate.

However, it must be found that the disciplinary sanction imposed on the complainant was not based on that ground and that, for the reasons set out above, the misconduct relied on to justify it was not established.

This finding alone must lead the Tribunal to set aside the impugned decision.

10. Furthermore, misconduct consisting of submitting an improper internal complaint could not in itself legally justify the imposition of a disciplinary sanction as severe as a termination of appointment.

Under the Tribunal’s case law, although the disciplinary authority within an international organisation has a discretion to choose the disciplinary measure imposed on an official for misconduct, its decision must always respect the principle of proportionality which applies in this area (see, in particular, Judgments 4457, consideration 20, 3944, consideration 12, 3927, consideration 13, or 3640, consideration 29).

However, despite the aggravating circumstances constituted by the insulting nature of the internal complaint against Mr Do. and the harm that the complaint was liable to cause to the reputation of the Ethics Office, the submission of the complaint could not, in view of the principle of proportionality, suffice to justify the imposition of the sanction of termination of the complainant’s appointment. This finding is inescapable even though – as the Organization points out – that sanction is not the most severe of the disciplinary measures prescribed by Staff Rule 110.1.

11. It ensues from the foregoing that the decision of the Director-General of UNESCO of 20 March 2023, as well as the decision of 5 November 2021 and the implied decision to reject the request for the administrative review thereof, must be set aside, without there being any need to rule on the complainant's other pleas.

12. The Tribunal considers that, in the circumstances of the case, it is inappropriate to order the reinstatement of the complainant in the Organization.

Firstly, it should be noted that, although the complainant requested reinstatement on the complaint form he filed with the Tribunal, he himself states, in the brief that constitutes his complaint properly speaking, that "given the time that has elapsed, compensation appears more appropriate in this case"*.

Secondly, the Tribunal considers that, in any event, reinstatement should not be ordered taking account not only of the time that has elapsed since the events, but also of the fact that the complainant held a fixed-term appointment. According to the Tribunal's case law, the reinstatement of a staff member holding a fixed-term contract is ordered only in exceptional cases (see, in particular, Judgments 4674, consideration 23, and 4063, consideration 11). However, the present case does not fall into that category.

Furthermore, the Tribunal's case law also has it that a staff member's reinstatement must be regarded as inappropriate when the employing organisation has, for legitimate reasons, lost confidence in her or him (see, for example, Judgments 4660, consideration 20, 4310, consideration 13, or 3364, consideration 27). UNESCO strongly contends, in its submissions, that the internal complaint against Mr Do. caused it to lose confidence in the complainant and, while it is not established – as stated above – that that complaint could be described as a malicious accusation, its wrongful nature nonetheless in itself constitutes sufficient grounds to legitimately justify the Organization's objection. UNESCO is correct to point out that, owing to the very nature

* Registry's translation.

of their duties, security officials are bound by particularly strict ethical obligations, as shown by the reference in the complainant's job description to his having to "[set] an example in all circumstances" and that the complainant's conduct in the present case fell short of these requirements.

13. By contrast, the complainant is entitled to receive full compensation for the material and moral injury caused to him by his unlawful dismissal.

14. In terms of material injury, the Tribunal observes that, from the date on which the termination of his appointment ordered on 5 November 2021 took effect, the complainant was unduly deprived of the remuneration he would ordinarily have received until the end of the contract in force at the time of the termination of his appointment, which expired on 1 December 2022. It should also be taken into account that the complainant was prevented from taking advantage of a definite chance of having his appointment renewed subsequently – as had been the case previously, for periods of two years, since his recruitment in 2002 – even if, in the present case, this chance was considerably diminished by UNESCO's loss of confidence in him, as mentioned above.

In these circumstances, the Tribunal considers that all the injury suffered by the complainant on this account will be fairly redressed by awarding him a sum equivalent to two years' remuneration, which will be calculated on the basis of the last net salary and allowances of any kind received by the complainant at the time of his departure from the Organization, without deducting from this sum the three months' salary paid to him in lieu of notice nor any earnings which he may have received since then.

As this lump sum must be regarded as compensation for all the material injury suffered by the complainant as a result of the termination of his appointment, there is no reason to add the amount of the pension contributions relating to the remuneration in question or to pay interest for late payment thereon.

15. The complainant requests an award of an additional indemnity of 20,000 euros in compensation for the loss of the opportunity to obtain grade G-5 and G-6 posts in the Security and Safety Section, which were advertised in the years following his departure from UNESCO. However, there is no basis for asserting – nor, in the light of the evidence in the file, even thinking – that the complainant would have in fact been assigned one of these posts had he still been employed. In any event, this is a purely hypothetical injury which, as such, cannot give rise to compensation. This claim will therefore be dismissed on this ground, without there being any need to rule on the Organization’s objection to its receivability.

16. The termination of the complainant’s appointment on disciplinary grounds also caused him obvious moral injury since it damaged, by itself, his honour and professional reputation, and inevitably caused him a psychological shock and a feeling of anxiety about losing his job.

An examination of the file does not allow to establish that, as the complainant also submits, his departure from UNESCO Headquarters on the day on which he was informed of the sanction and his subsequent brief return to the premises to consult his personal and medical files took place under conditions that affronted his dignity. However, even if it was not aggravated by such circumstances, the moral injury caused by the contested termination of appointment nevertheless warrants compensation.

17. Lastly, the complainant’s contention that the excessive length of the internal appeal procedure caused him additional moral injury is also well-founded.

It is settled case law that officials are entitled to have their appeals examined with the necessary speed, in particular in view of the nature of the decision which they wish to contest (see, for example, Judgments 4457, consideration 29, 4310, consideration 15, and 4063, consideration 14).

In the present case, 13 months passed between the submission of the complainant's notice of appeal on 20 February 2022, and the notification of the Director-General's final decision on 20 March 2023. This length of time may not appear unreasonable in absolute terms, especially because it is explained, for more than two months, by the fact that the detailed appeal setting out the claims and pleas submitted to the Appeals Board was not lodged until 29 April 2022. However, the Tribunal considers that this length of time is still excessive for a case concerning a challenge to a termination of appointment on disciplinary grounds.

18. In all, the Tribunal considers that the two heads of moral injury recognised above, taken together, will be fairly redressed by awarding the complainant compensation of 30,000 euros.

19. Since he largely succeeds, the complainant is entitled to costs which – in view of the fact that he was not represented by counsel before the Tribunal – will be set at 1,000 euros.

DECISION

For the above reasons,

1. The decision of the Director-General of UNESCO of 20 March 2023, as well as the decision of 5 November 2021 and the implied decision to reject the request for an administrative review thereof, are set aside.
2. UNESCO shall pay the complainant material damages calculated as indicated in consideration 14 above.
3. The Organization shall pay the complainant moral damages in the amount of 30,000 euros.
4. It shall also pay him 1,000 euros in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 14 November 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.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLEMENT GASCON

MIRKA DREGER