

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

K. (No. 12)

v.

UNESCO

139th Session

Judgment No. 4926

THE ADMINISTRATIVE TRIBUNAL,

Considering the twelfth complaint filed by Mr L. K. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 17 April 2024;

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

Having examined the written submissions;

CONSIDERATIONS

1. The complainant, a former staff member of UNESCO, complains essentially of the refusal of the Internal Oversight Service (IOS), and then of the Director-General, to open an investigation into what he describes as the “disappearance of a highly important official letter”^{*} dated 7 June 2017 informing all security officers – of whom he was one – of the progress made in dealing with their requests for post reclassification and of the measures which the Director-General intended to take in that regard.

^{*} Registry's translation.

2. Article II, paragraphs 1 and 5, of the Statute of the Tribunal provides that the Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of an official's appointment and of the provisions of the staff regulations of the organisation that employs her or him. As the Tribunal has repeatedly stated in its case law, it may be inferred from these provisions that, for a complaint to be receivable, among other requirements, the staff member must have a cause of action (see, for example, Judgments 4337, consideration 6, 4296, consideration 6, or 3426, consideration 16). The case law has made it clear that a staff member cannot be recognised to have a cause of action unless her or his claims are based on the rights or obligations arising under her or his terms of appointment or the provisions of the staff regulations (see, in particular, Judgments 4337, consideration 6, 4145, consideration 5, 4048, consideration 5, and 3426, consideration 16) and, for there to be a cause of action, the staff member must demonstrate that the contested administrative action caused injury to her or his health, finances or otherwise, or that it is liable to cause her or him injury (see, for example, Judgments 4722, consideration 5, 4296, consideration 6, 4007, consideration 4, 3739, consideration 8, and 3168, consideration 9).

3. In the present case, it must be found that the complainant has no cause of action. He does not derive a right to have an investigation conducted into the "disappearance"* of the contested letter from any term of his appointment or provision of the Staff Regulations and Staff Rules.

4. Obviously, there is no reason to open an administrative investigation into facts reported by a staff member unless those facts are such as to cause her or him identifiable injury. Regrettable as it may be, the non-receipt of the letter of 7 June 2017 is not such as to cause injury in the circumstances of the case.

* Registry's translation.

On the assumption that the letter in question contained a decision, the fact that this decision was not notified had the effect of extending the time limit applicable to it and therefore did not deprive the complainant of the opportunity to challenge it, contrary to what he submits. Moreover, the Tribunal notes that the letter, in which the Director-General announced her intention to have post audits conducted to examine the merits of the requests for reclassification submitted by several security officers, was merely a step in the procedure for dealing with that request and not, in any event, a challengeable decision. Finally, even supposing that the letter in question had been inadvertently distributed to one or more third parties – which has not been established – this would not have caused any injury to the complainant given the nature of the information it contained, it being further observed that his suggestion that this letter could have been “deliberately misappropriated by someone for whom the [r]equest for a post classification review was annoying/unwelcome”^{*} is clearly irrelevant.

In these circumstances, the failure to open an investigation into the non-receipt of the above-mentioned letter of 7 June 2017 did not breach the rights conferred on the complainant by his terms of appointment or the provisions of the Staff Regulations.

5. The complainant seeks compensation for the excessive length of the internal appeal procedure. However, in view of the lack of a cause of action identified above, the Tribunal finds that this length of time could not have caused him injury warranting the award of such compensation in the particular circumstances of the case.

6. It follows from the foregoing that the complaint must be summarily dismissed as clearly irreceivable in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal.

^{*} Registry’s translation.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 15 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