

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

B. (No. 4)

v.

UNESCO

139th Session

Judgment No. 4928

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Ms E. B. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 15 February 2024 and corrected on 19 March 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 of the complainant;

CONSIDERATIONS

1. At the material time, the complainant was a UNESCO staff member serving as Conference Clerk, at grade G-5, in the International Centre for Theoretical Physics (ICTP) in Trieste, Italy, under a fixed-term appointment. During her years of service at ICTP, she developed some health issues which led her to be absent from work periodically on certified sick leave. On 14 June 2018, her medical condition was deemed chronic, and both the ICTP Medical Officer and the UNESCO Chief Medical Officer recommended a reduced workload. On 21 August 2018, the complainant received an email from her new supervisor, who was not aware of those work restrictions, and asked the complainant to keep her informed about the overall backlog. The new supervisor also advised the complainant that a solution would have to

be found to carry out the work within the given deadlines and further stated that she would need some time to organize the work assignments.

On 30 August, the complainant filed a protest under paragraph 7(a) of the then applicable Statutes of the Appeals Board challenging what she identified as the “violation of [s]taff [r]ights to sick leave, medical privacy and [d]uty of [c]are”. She referred to her prolonged and frequent absences due to her medical condition and contended, among other things, that the 21 August email showed that, in spite of this, there was an increase in her workload and that this was in violation of her rights. On 18 November 2018, she filed a notice of appeal with the Appeals Board expressly challenging the 21 August email. She asserted that she had received no reply to her protest of 30 August.

On 28 November 2018, the Administration informed the complainant that she did not clearly identify an administrative decision in her protest but rather referred to several exchanges with her new supervisor concerning the tasks assigned to her, including the 21 August email, which constituted managerial decisions relating to her work assignments following her absences from work and were not administrative decisions *per se*. Nevertheless, since the complainant had explained that she considered she was being “unfairly targeted”, and in light of the allegations of harassment contained in her protest, the Administration informed her that her case was being referred to the Ethics Office. The complainant submitted her detailed appeal to the Appeals Board on 26 March 2019.

2. The Appeals Board issued a report on 6 October 2023 dealing with this appeal and several other ones lodged by the complainant. With respect to the appeal of 18 November 2018, it recommended rejecting the appeal as irreceivable *ratione materiae* as the 21 August 2018 email did not constitute an administrative decision having a direct impact on the complainant’s terms of appointment.

By a letter dated 16 November 2023, the complainant was informed that the Director-General had decided to endorse the Appeals Board’s recommendation. That is the impugned decision.

3. The Tribunal entirely agrees with the findings and recommendation of the Appeals Board, which the Director-General followed in the impugned decision. Under the Tribunal's case law, an act by an officer of an organisation constitutes an administrative decision only if it has a legal effect (see, for example, Judgments 4499, consideration 8, 3141, consideration 21, 2573, consideration 10, 1674, consideration 6(a), and 532, consideration 3).

In the present case, the Tribunal is satisfied that the 21 August 2018 email, objectively construed, did not have any legal effect. This is because that email only informed the complainant of possible measures which would be taken later regarding work assignments but did not contain in itself an administrative decision within the meaning of that case law. The complainant's appeal was correctly rejected on that basis and the present complaint is clearly irreceivable for the same reason.

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

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.

PATRICK FRYDMAN

JACQUES JAUMOTTE

CLÉMENT GASCON

MIRKA DREGER