

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

B. (No. 5)

v.

UNESCO

139th Session

Judgment No. 4929

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth 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 in Trieste, Italy, under a fixed-term appointment. On 18 October 2018, she filed a formal complaint of moral and institutional harassment alleging “unjustified and unnecessary repetitive attacks”, “intimidations”, “humiliations” and “affronts to [her] personal and professional dignity” starting from 2001 and linked to her medical condition, which had led to her being absent from work periodically on certified sick leave and to a reduction in her workload. She requested the opening of an investigation. On 22 January 2019, the Ethics Advisor informed her that, following a preliminary assessment

of her complaint, the Director-General had decided to close her case for lack of *prima facie* evidence.

On 21 March 2019, the complainant – who considered that there was “no sense” in addressing a protest to the Director-General to challenge a decision which she had already taken – filed a notice of appeal directly with the Appeals Board to challenge the closure of her case. She referred to both paragraphs 7(a) and 7(c) of the then applicable Statutes of the Appeals Board relating to the protest and the appeal procedures respectively. On 25 November 2019, she submitted her detailed appeal.

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 21 March 2019, it recommended rejecting the appeal as irreceivable for failure to exhaust the internal means of redress as the complainant had not submitted a protest against the 22 January 2019 decision before lodging her appeal.

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.

4. According to Article VII, paragraph 1, of the Statute of the Tribunal, a complaint “shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of redress as are open to her or him under the applicable Staff Regulations”. The Tribunal has consistently held that, on the basis of these provisions, where the staff regulations lay down a procedure for internal appeal, it must be duly followed: there must be compliance not only with the set time limits but also with any rules of procedure in the regulations or implementing rules (see, for example, Judgments 3947, consideration 4, 3027, consideration 6, and 1653,

consideration 6). The case law further states that a staff member of an international organisation cannot of her or his own initiative evade the requirement that internal remedies must be exhausted prior to filing a complaint with the Tribunal (see Judgments 4634, consideration 2, 4056, consideration 5, 3458, consideration 7, 3190, consideration 9, and 2811, considerations 10 and 11, and the case law cited therein).

5. According to paragraph 7(a) of the then applicable Statutes of the Appeals Board, “[a] staff member who wishes to contest any administrative decision [...] shall first protest against it in writing. The protest shall be addressed to the Director-General through the Director of the Bureau of Human Resources Management, within a period of [...] two months [of the date of receipt of the decision] if he or she is stationed away from Headquarters.”

As the complainant lodged an appeal directly with the Appeals Board without first addressing a protest to the Director-General against the 22 January 2019 decision – when, according to her own statement, she was perfectly aware that she normally had to go through this stage – she has failed to exhaust all internal means of redress and the present complaint is therefore clearly irreceivable.

6. 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