Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

N. Y. (Nos. 1 and 2)

v.

UNESCO

140th Session **Judgment No. 5050**

THE ADMINISTRATIVE TRIBUNAL,

Considering the first complaint filed by Ms C. N. Y. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 9 March 2022, UNESCO's reply of 22 September 2022, the complainant's rejoinder of 2 February 2023 and UNESCO's surrejoinder of 19 May 2023;

Considering the second complaint against UNESCO filed by the complainant on 16 February 2023, UNESCO's reply of 17 July 2023, the complainant's rejoinder of 19 September 2023 and UNESCO's surrejoinder of 31 January 2024;

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 cases may be summed up as follows:

The complainant challenges the decisions taken by the Organization concerning the request for the reclassification of her post.

In her first complaint, the complainant impugns the decision, taken in respect of her internal appeal against the decision to cancel the desk audit of her post – post No. SC-447 – arranged in the context of consideration of her request for the reclassification of her post from grade G-4 to grade G-6, to resume the desk audit of the post in order to

verify the need for such reclassification, and not to award her damages. In her second complaint, she impugns the decision, taken following the desk audit procedure, not to reclassify post SC-447 to grade G-6.

The complainant joined UNESCO on 1 October 2013, under a temporary appointment at grade G-4, which ended on 31 March 2005. She rejoined UNESCO on 1 February 2007 under another temporary appointment. On 2 July 2007 she was transferred to post SC-447, a grade G-4 post, as Secretarial Assistant within the Administrative Unit of the Natural Sciences Sector (SC Sector) and her temporary appointment was converted to a fixed-term appointment.

On 6 August 2018 the complainant submitted a request for the reclassification of her post, in accordance with Staff Rule 102.2. By a memorandum of the same date, the Assistant Director-General of the SC Sector at the time, Ms S., informed the Director of the Bureau of Human Resources Management that she had received requests for reclassification from two staff members in the SC Sector, including that of the complainant requesting the reclassification of her post to grade G-6. The Assistant Director-General of the SC Sector indicated in her memorandum that following the restructuring of the Sector in 2016, the complainant's tasks had shifted from a secretarial to a human resources assistant role, requiring the establishment of a new, updated job description, a draft of which was attached to the memorandum.

The Bureau of Human Resources Management advised the complainant that an external classification expert would conduct a desk audit of her post and that the draft job description prepared by the Assistant Director-General of the SC Sector would be used during the audit in order to verify that her functions and responsibilities were properly described. As part of the desk audit of the complainant's post, the classification expert conducted individual interviews with the complainant and her supervisor in June and July 2019, the substance of which she set out in a report.

Meanwhile, on 1 April 2019, a new Assistant Director-General of the SC Sector, Ms N.-B., took up duties.

By an email of 6 August 2019, the Bureau of Human Resources Management forwarded a copy of the report on the desk audit conducted by the classification expert to the complainant and her supervisor for their review and signature. In this email, the Bureau of Human Resources Management indicated that the post would subsequently be reclassified. The complainant signed the report on 20 August 2019. Her supervisor also signed it, while making comments expressing his disagreement with the content of the report, particularly in relation to the accuracy of the account given of his own statements and the substance of the draft updated job description.

By emails dated 27 September 2019 and 1 February 2020, Ms N.-B. requested the complainant to provide supporting documents in relation to certain tasks for which she had stated she was responsible during the desk audit of her post, in particular with regard to recruitment. The complainant provided the information requested.

On 24 April 2020 Ms N.-B. sent a memorandum to the new Director of the Bureau of Human Resources Management, in which she indicated that she found that the information provided by the complainant during the desk audit of her post was misleading and did not reflect the nature of the functions that she actually performed. She further stated that the work samples provided by the complainant in response to her requests of 27 September 2019 and 1 February 2020 were irrelevant and did not serve to illustrate the recruitment tasks that she claimed to perform. On that basis, Ms N.-B. and the complainant's supervisor concluded that the complainant was unable to prove that her post should be reclassified at grade G-6, but, since her functions had changed from a secretarial to a human resources assistant role, recommended that her job description be revised, without prejudice to the job classification at G-4 level, to reflect these new functions.

By a memorandum dated 4 May 2020, the Bureau of Human Resources Management informed the complainant that because of the conclusions of her supervisor and Ms N.-B., the desk audit of her post had been cancelled and her job description would be updated to reflect human resources assistant responsibilities at grade G-4.

On 25 May 2020 the complainant filed a grievance against the decision of 4 May 2020, then, having received no reply from the Director-General to this grievance, submitted an internal appeal to the Appeals Board on 23 June 2020.

On 1 September 2020 the complainant received her updated job description.

On 5 August 2021 the Appeals Board issued its opinion, in which it found that "the evaluation of the complainant's post was not conducted in accordance with Item 3.1 of the [Human Resources] Manual", since "the grade [of the complainant's post] was not established following the desk audit conducted and the complainant's post was accordingly not graded"[*]. The Appeals Board considered that, "by cancelling the desk audit of the complainant's post without valid reason, the Organization abused its power" and that "the classification review of the complainant's post was therefore flawed"[*]. The Appeals Board further found that UNESCO had breached its duty of care and consideration because of the delay in processing the complainant's request for the reclassification of her post. Concerning the plea of alleged discrimination and inequality of treatment raised by the complainant in her internal appeal, the Appeals Board considered that it was unfounded. The Appeals Board recommended that the Director-General should take the following measures:

> "(i) Take into consideration when reclassifying post SC-447, occupied by the complainant, the job description adopted in the audit carried out by the classification expert;
>
> (ii) Award the complainant damages for moral injury in the amount of 1,000 euros;
>
> (iii) Exercise greater care and diligence in processing post reclassification requests;
>
> (iv) Dismiss the remainder of the claims in the appeal."[*]

On 13 December 2021 the Legal Adviser of UNESCO informed the complainant of the decision taken by the Director-General on her appeal. The Director-General had decided to accept the first recommendation of the Appeals Board ("recommendation (i)") with the following

[*] Registry's translation.

practical modalities: "(i) Resume the desk audit of the post SC-447 initiated in 2019 on the basis of the job description of this post used/prepared for this desk audit, while taking into account: a) your main functions formally assigned and performed on a regular and recurring basis. b) the comments from your supervisor(s) relating to the tasks performed by you and observed at the time of the desk audit. (ii) Finalize the desk audit report of the post SC-447 with the comments of your supervisor(s), which are still pending. (iii) Conduct the desk-audit evaluation taking into account the abovementioned elements". With regard to the second recommendation of the Appeals Board ("recommendation (ii)"), the Director-General decided to decline to follow it, since she considered the delay in the audit procedure to be justified by the significant discrepancies between the complainant and her supervisors with regard to the substance of the post, reflected in the audit report, and the need to conduct further verifications. Lastly, the Director-General decided to accept the last recommendation of the Appeals Board ("recommendation (iv)"). That is the decision impugned by the complainant in her first complaint.

On 12 January 2022 the complainant was transferred to the post of Secretary, at grade G-4, within the Division of Priority Africa Coordination. Between January and August 2022, she was placed on sick leave, then on maternity leave.

In October 2022 the external classification expert resumed the desk audit of post SC-447 initiated in 2019. In a job evaluation report dated 6 October 2022, she recommended that the post be classified at grade G-4.

By a memorandum dated 16 November 2022, the Director of the Bureau of Human Resources Management informed the complainant that the job evaluation undertaken following the desk audit of post SC-447 had confirmed the classification of the post at G-4 level. That is the decision impugned in the complainant's second complaint.

In her first complaint, the complainant asks the Tribunal to set aside the impugned decision insofar as it did not award her "fair compensation"* and "includes conditions incompatible with the current rules and the principles of equality of arms, impartiality, independence and objectivity of the task of job evaluation in accordance with [United Nations system] reclassification standards and criteria"*. She seeks fair compensation for all of the physical, material and moral injury she considers she has suffered, as well as for the loss of opportunity to have had the right to a "prompt and due process"* and for the delay in the internal appeal procedure. Lastly, she invites the Tribunal to determine whether to refer the case back to UNESCO and requests the award of costs in the amount of 3,000 euros. In her rejoinder, she also claims punitive damages in the amount of 25,000 euros.

In her second complaint, the complainant asks the Tribunal to set aside the decision of 16 November 2022 and the classification evaluation of post SC-447. She also claims fair compensation for the injury she considers she has suffered as a result of the "loss of [...] opportunity [to see] her right to the finalization of a regular reclassification process to a successful conclusion"*, as well as the damage to her career and prospects of advancement. Should the Tribunal not refer the case back to UNESCO, she assesses her material injury at 103,368 euros, corresponding to the difference in salary between grade G-4 and grade G-6 between 2010 and 2022. She claims interest on this sum. She further seeks moral damages, including for the delay in the classification process for post SC-447. Lastly, she claims costs in the amount of 3,000 euros.

UNESCO asks the Tribunal to dismiss both complaints in their entirety. It argues that the second complaint is totally irreceivable for failure to exhaust internal means of redress, that certain elements of the submissions in the first complaint are also irreceivable and that both complaints are moreover unfounded.

* Registry's translation.

CONSIDERATIONS

1. In her first complaint, the complainant impugns before the Tribunal the decision of 13 December 2021 whereby the Director-General of UNESCO ruled on her internal appeal contesting the cancellation of the desk audit arranged in the context of consideration of her request for the reclassification of the secretarial assistant post she occupied at the time within the Natural Sciences Sector, from grade G-4 to grade G-6. By this decision, the Director-General announced, in accordance with the recommendations of the Appeals Board, the resumption of the cancelled desk audit, for which she specified certain modalities, while dismissing – contrary to the same recommendations – the complainant's claim for compensation for the injury caused to her by the decision of 4 May 2020 having initially set aside this decision.

In her second complaint, the complainant impugns the decision of 16 November 2022 confirming, based on the job evaluation conducted following the desk audit and despite the acknowledged evolution of the complainant's tasks towards a human resources assistant role, the classification of the post in question at G-4 level.

2. Both complaints essentially seek the same redress, in that both relate to the complainant's claims for the reclassification of her post to grade G-6, and are interconnected, since they challenge decisions taken in the context of the same evaluation procedure for this post. Furthermore, they are based on partly similar arguments of fact and law. They may therefore be joined to form the subject of a single judgment.

3. With regard to the first complaint, the Tribunal notes at the outset that the main subject matter of the decision of 13 December 2021, which allowed the complainant's internal appeal on this point, was to resume the classification review of the complainant's post that had been terminated on 4 May 2020. This decision, which further specified, as has been stated, certain modalities for the desk audit which was thereby resumed, can therefore be seen as merely a step in the process of reaching a final decision on the request for the reclassification of the post in question – bearing in mind that that decision is, in this case, the

decision of 16 November 2022, which is the subject of the second complaint.

The complainant appears to share this view, since she indicates, in the rejoinder filed in connection with the second complaint, that "the decision of 13 December 20[21] and that of 16 November 2022 are part of the same final decision-making process"[*].

The Tribunal has consistently held that, when a decision is thus taken in the procedure leading to a final administrative decision, it must be regarded merely as a preparatory step and is not therefore challengeable in itself, although it may be challenged in the context of an appeal directed against that final decision (see, for example, Judgments 4635, consideration 5, 3893, consideration 8, 3712, consideration 3, 3433, consideration 9, or 2366, consideration 16).

4. The Tribunal considers that, in the present case, this case law is applicable to the decision of 13 December 2021, insofar as that decision relates to the points referred to under the previous consideration, and that the complaint is therefore, to that extent, irreceivable. The complainant, clearly, does not criticize this decision inasmuch as it reverses, as she requested in her internal appeal, the cancellation of the desk audit previously decided by UNESCO. While the complainant, in her complaint, challenges the modalities for the resumption of the audit set out in this same decision and which, in her view, are detrimental to her interests and unlawful under various heads, the Tribunal finds that this aspect of the decision in question is inseparable from that announcing the resumption of the classification process in respect of the disputed post. The substance of the modalities in question can be challenged only in an appeal against the final decision on the request for the reclassification of this post.

5. While it should be noted that the complainant does not raise the matter of this irreceivability in her written submissions, that does not prevent, in itself, such a finding in the present judgment. It is well-

[*] Registry's translation.

established case law that, because they involve the application of mandatory provisions, issues of receivability can be raised by the Tribunal of its own motion (see, in particular, Judgments 4635, consideration 5, 3648, consideration 5, 3139, consideration 3, 2567, consideration 6, or 2097, consideration 24) and, while plainly it will not do so unless the file makes such irreceivability clear, that is the situation in the present case.

6. Nevertheless, in the highly particular circumstances of the case, the case law recalled in consideration 3 above does not preclude the complainant from impugning before the Tribunal the decision of 13 December 2021 insofar as it dismissed her claims for the award of damages.

This decision, while constituting, as has been stated, a preparatory step towards the final decision taken on 16 November 2022, ruled on the internal appeal lodged by the complainant against the decision of 4 May 2020 which initially cancelled the desk audit of the disputed post. This initial decision did adversely affect the complainant, who was therefore entitled to challenge it, and the decision of 13 December 2021 only partly allowed her appeal since it dismissed her claims for compensation. Consequently, the complaint is receivable – subject to the reservations detailed below – insofar as it seeks to have this part of the impugned decision set aside.

7. In this respect, the complainant maintains first that the decision of 13 December 2021 was flawed in that the dismissal of the claims in question was not supported by adequate reasons. But, while it is true that the Director-General, since she departed on this point from the recommendations of the Appeals Board, was bound to state the reasons for this choice (see, for example, Judgments 4762, consideration 8, or 4598, consideration 12), it is clear from the review of the impugned decision that it does explicitly state these reasons. This plea must therefore be dismissed.

8. As to the grounds for the dismissal of these claims for compensation, as well as how to deal with the similar claims presented once again in the complaint itself – which, for the sake of convenience, the Tribunal will examine together here –, the complainant develops a substantial argument claiming alleged injuries caused by flaws in the audit and evaluation procedure for her post, the excessive length of the procedure and the alleged unlawfulness of maintaining the classification of the post at grade G-4. However, the Tribunal considers that, in accordance with the above-mentioned case law on the rules governing disputes relating to preparatory acts, the scope of application of which extends to compensation claims based on the unlawfulness of such acts, this argument can only be validly raised as part of a challenge to the final decision on the classification of the post in question. It must therefore, in any event, be dismissed in its entirety.

It follows that the complainant's claims for compensation for alleged material injury – relating in particular to the incorrect, in her view, classification of her post – and "physical injury"[*] – vague as this is – must therefore fail. So too must the complainant's claims for compensation for moral injury submitted under various other heads, insofar as they are based on the argument referred to above.

9. Only the remainder of the complainant's claims relating to the claim for moral damages, namely those specifically related to injuries that might have arisen from the decision of 4 May 2020 which initially cancelled the desk audit and that are separable from the challenge to the decision of 16 November 2022, may be allowed in the consideration of the first complaint.

In this respect, it should be recalled that, according to the Tribunal's case law, an unlawful decision does not entitle the staff member concerned to moral damages unless that decision has caused her or him more severe injury than that resulting from the unlawfulness itself (see, for example, Judgments 4886, consideration 5, 4879, consideration 6, 4818, consideration 25, or 4425, consideration 10).

[*] Registry's translation.

In particular, the mere fact that a decision was initially flawed but was later corrected, including in connection with the internal appeal procedure, does not suffice to warrant awarding damages for moral injury (see, for example, Judgments 4531, consideration 11, 4156, consideration 5, and 1380, consideration 11).

The Tribunal considers that, in the light of this case law, the complainant's claims at issue here must, in any event, fail.

10. In cancelling, by the decision of 4 May 2020, the desk audit of the complainant's post, initiated in April 2019, UNESCO based its decision on the fact that the complainant's hierarchical superiors did not agree with her analysis of her functions and reached the conclusion that there was no need to review the classification of her post.

Whether the Organization was entitled to terminate the post classification process while it was under way might open debate under various heads. In this regard, it should be noted that, while the Director-General, in the decision of 13 December 2021, followed the recommendation of the Appeals Board to resume this process, the Organization insists, in its written submissions, that this decision was made in a "spirit of conciliation"[*] and did not constitute approval of the Board's conclusion that the decision of 4 May 2020 was flawed.

However, there is no need to resolve the question of whether the initial decision was in fact unlawful in this regard. The Tribunal considers that, since the Organization agreed, following the internal appeal proceedings, to resume the desk audit and since the classification evaluation of the complainant's post was concluded, any flaws that might affect the decision of 4 May 2020 cannot in any event justify, in the circumstances of the case, the award of moral damages.

The position would be different only if the complainant established that the cancellation of the desk audit of her post was the result, as she submits, of malicious bias on the part of her superiors against her or an abuse of authority. The Tribunal considers that the existence of such flaws has not been demonstrated before it.

[*] Registry's translation.

11. As the Tribunal has consistently held, bad faith cannot be presumed and must therefore be proven by the evidence (see, for example, Judgments 4897, consideration 10, 4675 consideration 6, 4333, consideration 15, or 4161, consideration 9). The same principle established in the case law applies in the event of allegations of bias against an official (see, in particular, Judgments 4502, consideration 10, 3914, consideration 7, and 3380, consideration 9) or allegations of abuse of authority (see, in particular, Judgments 4696, consideration 17, 4654, consideration 22, or 4283, consideration 9).

In the present case, while the evidence on file confirms that the complainant's superiors who proposed that the desk audit of her post be cancelled were of the view that a classification review of the post was not really justified, the complainant has adduced no evidence before the Tribunal to prove that this opinion was not given in good faith or was motivated by malicious bias towards her.

Similarly, while the complainant contends that the desk audit was cancelled to save budgetary funds in order to enable the promotion of another official, the fact is that she has, again, not provided any evidence that would demonstrate this alleged abuse of authority.

12. Lastly, while the complainant complains of the injury caused to her by a decision of 12 January 2022 whereby she was transferred, after the impugned decision was taken, to the post of Secretary within the Division of Priority Africa Coordination, the objection raised in this respect is in any event beyond the scope of the present dispute.

13. It results from the foregoing considerations that the claims to have the decision of 13 December 2021 set aside, to the extent that it dismissed the claim for moral damages made by the complainant in her internal appeal, as well as the claims for damages made before the Tribunal, must be dismissed.

14. The complainant requests that UNESCO be ordered to pay her damages for the excessive delay in processing her internal appeal against the decision of 4 May 2020.

It should be recalled that international civil servants are entitled to expect that their case will be dealt with by the internal appeals bodies within a reasonable time and that a failure to comply with this need for expeditious proceedings, where wrongful, warrants compensation, payable by the organization concerned (see, for example, Judgments 4886, consideration 7, 3510, consideration 24, or 2116, consideration 11).

In the present case, the period of 17 months that elapsed between the filing of the complainant's detailed appeal with the Appeals Board on 21 July 2020 and the final decision of 13 December 2021 is, in absolute terms, excessive.

However, on the one hand, UNESCO explains, convincingly in the Tribunal's view, that the operation of its services and that of the Appeals Board itself was considerably disrupted, during the period in question, by the consequences of the COVID-19 pandemic, which inevitably had an impact on the progress of the procedure. On the other hand, it appears from the file that the issuance of the opinion of the Appeals Board was substantially delayed by contingent circumstances, including the serious state of health of one member of that body, for which the Organization may not be held liable. Lastly, it should be noted that the Director-General, for her part, issued her final decision in accordance with the rules setting a time limit for doing so, from receipt of notice, contained in the Statutes of the Appeals Board.

Consequently, the Tribunal considers that, in the particular circumstances of the case, there is no reason to order UNESCO to pay compensation to the complainant on this count.

15. In her rejoinder, the complainant entered a further claim for compensation requesting that UNESCO be ordered to pay her punitive damages. But the rejection, on the grounds set out above, of the claims for ordinary damages excludes, *a fortiori*, the possibility of such an award, which, under the Tribunal's case law, can be justified only in the event of egregious misconduct on the part of the organization, being made (see, for example, Judgments 4640, consideration 15, or 4391, consideration 14). Moreover, it should be recalled that a complainant

may not enter new claims in his or her rejoinder (see, for example, Judgments 4761, consideration 10, or 4396, consideration 7).

16. The first complaint must therefore be dismissed as irreceivable in part and unfounded for the remainder, without it being necessary to rule on any of the parties' arguments other than those referred to above.

17. With regard to the second complaint, directed, as stated above, against the decision of 16 November 2022 confirming the classification of the complainant's post at grade G-4 at the end of the job evaluation procedure, the Tribunal must note that, as UNESCO rightly submits, this complaint is irreceivable for failure to exhaust internal means of redress.

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".

In the present case, the complainant impugned the decision in question directly before the Tribunal, when she should have first formulated a request for an administrative review of that decision, under paragraphs 9 and 11 of the Statutes of the Appeals Board, then, if need be, an appeal against it before the Appeals Board.

18. Contrary to the complainant's assertion, the fact that she contested before the internal appeals bodies the above-mentioned decision of 4 May 2020 which initially cancelled the desk audit of her post did not dispense her in any way, if she wished to seek the quashing of the decision on her request for the reclassification of this post taken following the resumption of the audit in question, from initiating an internal appeals procedure against the latter decision before filing a complaint with the Tribunal. Furthermore, the fact, on which the complainant also relies, that she found fault with the decision of 16 November 2022 in the rejoinder submitted in the context of her first complaint does not make good the failure to exhaust the internal means

of redress prior to filing a complaint before the Tribunal with a view to having the decision set aside.

19. The complainant is mistaken in her contention that UNESCO's objection to the receivability of the complaint stems from a "breach of the duty of good faith" on its part and that to allow it would result in a "denial of justice"[*]. There was nothing to prevent the complainant from resorting to the above-mentioned means of redress available to staff members and, while she argues in this respect that UNESCO did not challenge the receivability of her complaint against the decision of 13 December 2021, it cannot be inferred from this that the Organization misled her with regard to the requirement to initiate an internal appeals procedure before impugning the decision of 16 November 2022 before the Tribunal.

20. Consistent precedent has it that no exception may be made to the rule laid down in Article VII, paragraph 1, of the Statute of the Tribunal save where the applicable staff regulations provide that the decision in question is not such as to be subject to internal appeal, where for specific reasons connected with the complainant's personal status he or she does not have access to the internal appeals body, where although the complainant has in fact challenged the decision before those bodies there is an inordinate and inexcusable delay in the internal appeals procedure, or where the parties have mutually agreed to waive the requirement that internal means of redress must have been exhausted – as allowed, with regard to UNESCO, by Rule 111.2(b) of the Staff Regulations (see, for example, Judgments 4224, consideration 4, 3947, consideration 4, 3505, consideration 1, 3397, consideration 1, or 2912, consideration 6). Moreover, the complainant bears the burden of establishing that one of these conditions is met (see, in particular, Judgments 3947, consideration 4, and 3714, consideration 12).

[*] Registry's translation.

In the present case, however, it must be found that the complainant does not establish that her situation is one of those in which the requirement that internal remedies be exhausted may be waived.

21. As the Tribunal has repeatedly stated in its case law, a staff member may not on his or her own initiative evade the requirement to exhaust internal means of redress before filing a complaint with the Tribunal (see, for example, Judgments 4909, consideration 6, 3947, consideration 4, 3706, consideration 3, 3458, consideration 7, or 2811, considerations 10 and 11).

The second complaint must therefore be dismissed in its entirety for this reason.

22. It follows from all the foregoing that both complaints must be dismissed in their entirety, without there being any need to order the disclosure of further documents requested by the complainant or to rule on the Organization's request that certain evidence on file be disregarded.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 23 May 2025, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 3 July 2025 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

RENÉ M. VARGAS M.