

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

R. (No. 2)

v.

UNESCO

140th Session

Judgment No. 5053

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr B. R. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 28 August 2023, UNESCO's reply of 6 February 2024, the complainant's rejoinder of 20 March 2024 and UNESCO's surrejoinder of 19 June 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 case may be summed up as follows:

The complainant challenges the decision to reassign him to a field office.

The complainant had been a staff member of UNESCO at the Organization's Headquarters since 1 August 1992. He was reappointed several times, latterly on fixed-term contracts, and successively promoted until reaching grade P-5 with effect from 14 March 2008 within the Communication and Information Sector (CI) in the Knowledge Societies Division as Chief of the Section for Universal Access and Preservation, a role he held until shortly before his summary dismissal for disciplinary reasons, decided on 25 March 2020.

On 18 June 2018 the Director of the Bureau of Human Resources Management (DIR/HRM) notified the complainant of the Director-General's intention, having noted that he had served continuously at Headquarters for nearly 26 years, to transfer him to a field post, and mentioned three proposed geographical postings. On 3 July 2018 the complainant replied that he was interested in such a transfer but only "at the end of this biennium"* finishing at the end of 2019, because of both his professional responsibilities in his department and his family duties, the latter concerning mainly the custody of his minor daughter granted by his decree of divorce. Discussions between the complainant and DIR/HRM continued throughout 2018, without the complainant's envisaged transfer in 2018 being pursued.

On 7 December 2018, as part of the introduction of a new mobility policy, Administrative Circular AC/HR/65 was published, amending, in particular, the provisions on geographical mobility exercises laid down in Item 5.10 of the Human Resources Manual (hereinafter "the HR Manual"), inter alia on the possibility of deferring a reassignment on personal grounds.

On 25 February 2019 the complainant was informed of his inclusion in the 2019 managed geographical mobility exercise and of the fact that he would therefore be invited to consider the vacancies and to apply for up to three of them. On 15 March 2019 the complainant requested that his reassignment be deferred for personal reasons, mentioning the custody of his daughter and relying on the amended version of paragraph 54(c) of Item 5.10 of the HR Manual, which provided for a possible deferment for a maximum of two years when the "staff member ha[d] a child that [was] within 2 years of graduating from high school in the current duty station".

On 5 April 2019 the complainant was informed that his deferment request had been rejected and that he had been retained in the "mobility pool"*, which DIR/HRM confirmed on 18 April, explaining that the decision had been taken in the light of all the elements presented and that the complainant's wish not to be transferred to a field office until

* Registry's translation.

the end of 2019 would be taken into account in determining the timing of any reassignment. That decision is the subject of the complainant's third complaint to the Tribunal, ruled on in Judgment 5052, also delivered this day.

On 10 July 2019 the complainant was notified, by an email from the Mobility Team acting on behalf of DIR/HRM, of the Director-General's decision to reassign him to the post of Head of Office in Brazzaville and UNESCO Representative in the Republic of Congo, to take up his post "by 1st October 2019, subject to receipt of Government clearance [...], appropriate visas and a satisfactory medical examination". The complainant lodged a protest against this decision on 16 July 2019.

On 15 August 2019 the post the complainant held at the Organization's Headquarters was advertised for recruitment in the 2019 geographical mobility exercise.

As he did not receive a reply to his protest, the complainant lodged a notice of appeal with the Appeals Board on 19 August 2019 against the implied decision of rejection and submitted his detailed appeal on 16 September 2019. According to him, in taking this arbitrary, unfounded and discriminatory decision to reassign him, the Director-General had not applied the regulation in force concerning UNESCO's mobility policy and, consequently, the decision to reassign him should be cancelled and he should be reinstated in his post at Headquarters, with compensation for his professional and moral injury.

On 8 October 2019 the Organization notified the complainant of a temporary reassignment at Headquarters under the Assistant Director-General for Priority Africa and External Relations (ADG/PAX, for short), pending his clearance by the Congolese Government to allow him to transfer geographically to the Brazzaville Office.

On 9 October 2019 the complainant's post at Headquarters was assigned on an *ad interim* basis to someone else, while on 23 October the Organization informed him that the Congolese Government had refused to grant him clearance.

In the meantime, on 22 October 2019, the complainant had been informed of his reassignment to a short-term mission at the Kingston Office, Jamaica, from 28 October 2019 to 31 January 2020, which the Organization confirmed on 25 October 2019, asking him to make the necessary arrangements to take up his duties as soon as possible.

The opinion of the Appeals Board (CAP/488) dated 16 July 2019 concerning the decision to reassign the complainant to Brazzaville, which followed his protest of 16 July 2019, was communicated to him on 3 March 2023. The Appeals Board did not recommend that this decision be cancelled, considering that the request had become redundant in view of the complainant's eventual situation, as his transfer to the Republic of Congo could not take place. It also took the view that the Organization could have observed the standard practice of keeping him in his post at Headquarters until the effective implementation of his assignment and that his replacement in that post had been precipitated without appearing to be warranted by any usefulness or urgency. The Board therefore concluded that the complainant had suffered injury for which he should be awarded appropriate compensation.

On 2 June 2023 the Director-General's final decision regarding his reassignment to Brazzaville was notified to the complainant. The Director-General followed the Appeals Board's recommendation not to cancel the decision of 10 July 2019 but refused to follow the recommendation to award compensation for moral injury, noting that the appeal related only to the reassignment decision and not to the complainant's replacement in his former post. That is the impugned decision.

The complainant asks the Tribunal to set aside the decision to reassign him to the post of Head of Office in Brazzaville and UNESCO Representative in the Republic of Congo, and to compensate him for professional and moral injury. He also requests a finding that the delay in dealing with his internal appeal was unreasonable and liable to cause him injury. He therefore claims fair compensation for the moral injury suffered as a result of this delay, as well as punitive damages for the Organization's conduct and an order that the Organization pay the costs of the five procedures that he was forced to bring before the Tribunal.

Lastly, he seeks compensation for the material injury caused by preparing for the proceedings he brought before the Tribunal, in the amount of 10,000 euros for each case.

UNESCO asks the Tribunal to dismiss the complaint as irreceivable or unfounded.

CONSIDERATIONS

1. The complainant requests the setting aside of the Director-General's decision of 2 June 2023 rejecting his appeal against the decision of 10 July 2019 to transfer him to Brazzaville, Republic of Congo. He also asks the Tribunal to order compensation for all the professional and moral injury suffered as a result of this decision, which he considers arbitrary, unfounded and discriminatory, as well as for the injury suffered as a result of the unreasonable delay in dealing with his protest.

2. In four other complaints filed with the Tribunal, the complainant also seeks the setting aside of the decisions to refuse to defer his geographical reassignment, to refuse to reinstate him at Headquarters, to reassign him to the Kingston Office, to dismiss him summarily, and to reject his internal complaints of harassment.

The complainant seeks the joinder of the present complaint with these four other complaints. However, in Judgment 5052, also delivered this day, the Tribunal has already dismissed a request for the joinder of the same complaints. There is therefore no need to make a further decision on this matter.

3. The Organization firstly challenges the receivability of the complaint on the basis of four considerations: firstly, the decision to reassign the complainant to the Republic of Congo did not constitute a final decision, since it was subject to the agreement of the Congolese Government and to confirmation of the complainant's medical fitness; secondly, as this decision was never put into effect, it could never have adversely affected him; thirdly, the complaint is also irreceivable on the

ground that it is redundant, in that the complainant in fact seeks to challenge the decision to reject his request for deferment of reassignment, which is the very subject of another complaint filed with the Tribunal; fourthly and finally, the complainant in any event does not demonstrate any legal interest in bringing proceedings against that decision, since he does not put forward any pleas specifically directed against it.

However, the Tribunal considers that these objections to receivability must be dismissed.

Firstly, the Director-General's initial decision of 10 July 2019 to reassign the complainant to the post of Head of Office in Brazzaville did constitute a decision capable of producing legal effects, even if its actual implementation still depended on two external factors over which the Director-General had no control. Similarly, the Director-General's final decision of 2 June 2023 on the complainant's appeal is itself, indisputably, a final decision which may also be set aside by the Tribunal.

Secondly, the fact that the decision to reassign the complainant to the post of Head of Office in Brazzaville was not ultimately implemented does not mean that that decision could not adversely affect him.

Thirdly, and contrary to what UNESCO asserts, the impugned decision is clearly identified, both in the complaint form and the appended brief, and it is not confused with the decision to refuse the complainant's request to be granted a deferment of reassignment in the 2019 geographical mobility exercise.

Fourthly, it is clear that the complainant has an interest in bringing the present complaint, since whether or not he puts forward pleas that could lead to the impugned decision being set aside is one of the issues to be examined in the consideration of the merits of the dispute.

4. Since the impugned decision constitutes a reassignment decision within the meaning of the provisions applicable at UNESCO, which is comparable to a transfer, the Tribunal recalls its settled case law on the matter that a decision to transfer an employee of an international organisation, as in the present case, lies within the discretion of the executive head of the organisation concerned and is,

for that reason, subject to only limited review. Therefore, such a decision may be set aside only if it was taken *ultra vires*, if it shows formal or procedural flaws or a mistake of fact or law, if some material fact was overlooked, if a clearly wrong conclusion was drawn from the evidence, or if there was abuse of authority (see, for example, Judgments 4609, consideration 4, 4451, consideration 6, 3488, consideration 3, 2635, consideration 5, 1556, consideration 5, and 883, consideration 5).

5. In support of various pleas, the complainant considers that the rejection of his request for a deferment of his reassignment under the 2019 geographical mobility programme is unlawful, as he argues in his third complaint. Since the complainant's reassignment to Brazzaville could only have been decided following that refusal to defer his reassignment, itself unlawful, it was, in his view, also unlawful by implication.

However, the Tribunal notes that the decision refusing to defer the reassignment to which the complainant refers was the subject of his third complaint, which was dismissed by Judgment 5052, also delivered this day.

It follows that the complainant's various pleas concerning that decision must be dismissed on the same grounds as those set out in the abovementioned judgment.

6. As to the remainder, in a first plea, the complainant submits that no reason was given for the decision to reassign him to Brazzaville, which is contrary to the Tribunal's case law.

According to the case law, the reasons for a decision must be sufficiently explicit to enable the staff member concerned to take an informed decision accordingly (see, for example, Judgments 4900, consideration 22, 4547, consideration 3, and 4164, consideration 11).

The Tribunal also recalls its settled case law according to which the reasons for a decision need not necessarily appear in the decision itself (see, for example, Judgments 4877, considerations 2 and 8, 4368, consideration 15, 3914, consideration 15, and 1750, consideration 6),

but may also be communicated to the staff member concerned in another way, such as at a meeting (see, for example, Judgment 3914, consideration 15), in other documents or even orally (see Judgments 4880, consideration 9, 4451, consideration 11, 3662, consideration 3, or 1590, consideration 7).

In this case, it is true that the initial decision of 10 July 2019 to reassign the complainant to Brazzaville merely states that this decision was taken as part of the 2019 geographical mobility programme. However, it is apparent from the parties' submissions that the complainant was fully aware of the context in which this mobility exercise was taking place, as well as the reasons why it had been decided to reassign him as part of it. In this respect, it is clear from the file that the complainant was aware of the reasons for his transfer to Brazzaville.

The first plea is therefore unfounded.

7. In a second plea, alleging a breach of paragraph 7(d) of Item 5.10 of the HR Manual, the complainant submits that no consideration was given to the preferences he had expressed in 2018 regarding his choice of the various postings offered to him at the time. The Brazzaville Office was not one of his choices.

However, the Tribunal notes that the three postings proposed in 2018 concerned that year's mobility exercise, and not the geographical mobility exercise for 2019. With regard to the 2019 exercise, the Tribunal observes that the evidence shows that the complainant had been asked, by an email of 6 May 2019, to express his interest in the three posts he preferred from among those published on the Organization's website under that mobility exercise, but that he did not respond to that express invitation.

Accordingly, the plea is factually unsound.

8. In a third plea, the complainant, referring to the opinion given by the Appeals Board on 27 February 2023, argues that UNESCO erred in law by replacing him *ad interim* from 9 October 2019 in the post he held at Headquarters, even though, at that date, the Congolese

Government had not yet agreed to his assignment to Brazzaville and did not ultimately approve it.

However, the Tribunal recalls that the present dispute concerns a challenge to the decision to reassign the complainant, and not to the decision to reject his request for reinstatement in the post he held at Headquarters. That issue is the subject of the complainant's sixth complaint to the Tribunal, ruled on in Judgment 5056, also delivered this day. In any event, the error of law criticised in the Appeals Board's opinion has no bearing on the lawfulness of the complainant's reassignment to Brazzaville.

The third plea must therefore be dismissed.

9. In a fourth plea, the complainant criticises UNESCO's "institutional harassment"* of him on account of its clear intention to "reassign him to a field post at all costs"* without taking account of his rights and without observing the rules and procedures applicable to mobility.

However, the Tribunal notes that this allegation of institutional harassment goes beyond the scope of the complaint under consideration and therefore does not need to be dealt with here. Furthermore, it gave rise to the complainant's sixth complaint and reference is therefore made to Judgment 5052, also delivered this day, ruling on that complaint.

10. The complainant seeks compensation for the injury allegedly caused to him by the excessive delay in the internal appeal procedure, which lasted more than three years and eight months. In this regard, he considers that it was possible for the Organization to organise meetings of the Appeals Board during the lockdown owing to the Covid-19 pandemic and that, in any event, "[s]ince 31 July 2022, no valid reason [could] be advanced for refusing [him] a face-to-face meeting of the Appeals Board"*.

* Registry's translation.

According to the Tribunal's case law, international civil servants are entitled to expect that their cases will be considered by internal appeal bodies within a reasonable timeframe and that failure to comply with this requirement of expeditious proceedings constitutes misconduct on the part of the organisation concerned (see Judgments 4727, consideration 14, 3510, consideration 24, and 2116, consideration 11). Moreover, the amount liable to be granted under this head ordinarily depends on two essential considerations, namely the length of the delay and the effect of the delay on the employee concerned (see Judgments 4727, consideration 14, 4635, consideration 8, 4178, consideration 15, 4100, consideration 7, and 3160, consideration 17).

In the present case, it is not unreasonable for the Organization to have considered that it was inappropriate to hold face-to-face meetings of the Appeals Board during the Covid-19 pandemic, especially as strict rules had been laid down by the French authorities for the three lockdowns ordered during the pandemic. Nor can the complainant complain that a virtual meeting of the Appeals Board was not arranged during that period, since he himself expressly declined that possibility in an email of 19 March 2021.

Although the complainant points out that he requested, twice and the first time by email of 3 June 2022, that a face-to-face meeting of the Appeals Board be organised since the restrictions relating to the Covid-19 pandemic had been "lifted [...] for several months"^{*}, the eight-month period taken to organise such a meeting does not appear excessive given that, as the Organization rightly observes, the complainant's appeal was considered on 2 February 2023, that is at the first meeting that could be held face-to-face by the Appeals Board after the restrictions had been lifted.

It is therefore not appropriate to grant the complainant's claim for compensation under this head.

^{*} Registry's translation.

11. It follows from all the foregoing considerations that the complaint must be dismissed in its entirety, including the claims for compensation, punitive damages and costs.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 13 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.