

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

R. (No. 5)

v.

UNESCO

140th Session

Judgment No. 5054

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr B. R. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 26 October 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. Exchanges 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 submitted a request for a deferment of his reassignment for personal reasons.

On 5 April 2019 the complainant was informed that his request for deferment had been rejected and that he had been retained in the "mobility pool"*. That decision is the subject of the complainant's third complaint to the Tribunal, which was 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

* Registry's translation.

take up his post “by 1st October 2019, subject to receipt of Government clearance [...], appropriate visas and a satisfactory medical examination”. That decision is the subject of the complainant’s second complaint to the Tribunal, which was ruled on in Judgment 5053, also delivered this day.

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

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, 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.

On 5 November 2019 the complainant wrote to DIR/HRM to review his administrative situation and his requests for reinstatement in his former post at Headquarters and for suspension of the recruitment procedure for that post, which he had made on 24, 26 and 31 October 2019. On 13 November 2019 he was informed of the decision to reject his requests for reinstatement in his post at Headquarters and for suspension of recruitment to that post. That decision is the subject of the complainant’s sixth complaint to the Tribunal, ruled on in Judgment 5056, also delivered this day.

Meanwhile, following his mother’s death, the complainant was granted special leave with pay from 11 to 23 November 2019, then family leave from 25 to 29 November. The new DIR/HRM therefore asked him to begin his short-term mission in Kingston on 2 December

2019. However, it is clear from the file that the complainant did not report to this duty station on that date and so did not take up his duties there. In addition, he was placed on sick leave from 6 to 13 December 2019, then on annual leave from 16 to 20 December 2019.

On 6 January 2020 the complainant was notified of the Director-General's decision to reassign him for an initial period of two years to the newly created post of "Senior Programme Coordinator" in the UNESCO Kingston Office, to take up his duties by 20 January. He was also informed that, as a result of this transfer, his appointment would be extended for a two-year period from the date of his transfer. However, on 17 January 2020 the complainant stated that he only signed the letter of acceptance, which had been sent to him for signature, without prejudice to his right of appeal and pending clarification of the points raised in the email appended to that letter. He also submitted a protest against that decision on 20 January 2020. Moreover, he failed to report to his duty station and so did not take up his duties there.

As he did not receive a reply to his protest, the complainant lodged a notice of appeal on 21 February 2020 against the implied decision of rejection and submitted his detailed appeal on 19 March 2020. In his view, the decision to reassign him to Kingston was discriminatory and unfounded in that it lacked clear and precise reasons, and in that it had been taken outside the 2019 geographical mobility exercise. It was also tainted by procedural flaws, particularly the failure to consult him beforehand or to take account of the preferences he had expressed regarding his assignment, inconsistent time limits and irregular preparation of the job description. Consequently, in his view, the decision to reassign him to Kingston should also be cancelled, and he should be reinstated in the post he had held at Headquarters and receive compensation for his professional and moral injury. Lastly, he sought "the suspension of previous abusive procedures and the cancellation of unlawful decisions constituting [in his view] institutional harassment"*.

* Registry's translation.

On 25 March 2020 the complainant was notified of the Director-General's decision to impose on him the disciplinary measure of summary dismissal for serious misconduct due to the insubordination constituted by his general disregard for instructions issued by the Director-General and senior officials under her authority, evidenced by his refusal to report to his duty station in Kingston and to take up his duties there, initially during his short-term mission and subsequently upon his transfer for a period of two years. That decision is the subject of the complainant's fourth complaint to the Tribunal, ruled on in Judgment 5055, also delivered this day.

In its opinion of 9 June 2023 (CAP/493), the Appeals Board found that the Administration had complied with the legal framework in which the decision to reassign the complainant to Kingston was taken, in that the Director-General was entitled to assign a staff member under her general authority pursuant to Staff Regulation 1.2, even as a secondary measure following the failure of the geographical mobility programme in respect of a staff member and even if that staff member was not responsible for the failure, which was the case here. However, it recognized that a time limit of only nine working days to comply with the reassignment decision was not justified, even if it complied with procedural requirements.

On 7 August 2023 the Director-General's final decision concerning his reassignment to Kingston was communicated to the complainant. The Director-General endorsed the Appeals Board's opinion and therefore dismissed the appeal. That is the impugned decision.

The complainant asks the Tribunal to set aside the decision to reassign him to the post of Senior Programme Coordinator in Kingston and to find that the impugned decision is based on errors of law and fact, is tainted by substantive and procedural defects and results from proven bias, and that the failure to consult him prior to the transfer, as well as the brevity of the time limit for that transfer, were also unlawful. He seeks the full restoration of his rights and the regularisation of his administrative situation, as well as compensation for his professional and moral injury. He further 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 seeks the setting aside of the Director-General's decision of 7 August 2023 rejecting his appeal against the decision of 6 January 2020 to transfer him to the Kingston Regional Office, Jamaica, for an initial period of two years. He also asks the Tribunal to order compensation for all professional and moral injury suffered as a result of these decisions, 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 protests.

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 reassign him to the Brazzaville Office, to refuse to reinstate him at Headquarters, 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. 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).

4. 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 Kingston 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.

5. The complainant next alleges various procedural flaws, as well as errors of law or fact, affecting the procedure that led to the adoption of the decision to transfer him to Kingston.

6. However, the Tribunal observes first of all that, contrary to what the complainant considers in his written submissions, his reassignment to the Organization's Kingston Office was not decided pursuant to

Item 5.10 of the HR Manual, relating to annual mobility exercises, but pursuant to:

- firstly, the first sentence of Staff Regulation 1.2, according to which “[s]taff members are subject to the authority of the Director-General, and to assignment by him or her, with due regard to their qualifications and experience, to any post in the Organization”;
 - secondly, Item 5.9 of the HR Manual, relating to transfers at equal grade without opening a post to recruitment, which provides as follows in paragraphs 6 to 9 and 17:
 - “6. Transfers at equal grade may take place within a Sector/Bureau/Office or across the Organization without opening a post to recruitment.
 - 7. Transfers between duty stations of International Professional staff and above should normally take place within the geographical mobility policy [...]
 - 8. Before a transfer decision is taken, the staff member concerned shall be consulted as well as the relevant supervisor(s). Where required, the Director of the Regional Office is consulted on transfers at equal grade of P and above staff.
 - 9. The authority to decide on transfers at equal grade is as follows:
 - (a) For P-5 and above staff, by the Director-General, on recommendation from the Senior Mobility Review Panel or ADG/Director of Bureau/Office/Head of field office concerned, in consultation with HRM.
- [...]
- 17. When a staff member is transferred between duty stations, HRM/SES shall consult the staff member and the field office concerned, following which the effective date of transfer shall be determined.”

It follows from the applicable legal framework that the complainant’s various objections must be considered as legally unsound each time he alleges a breach of Item 5.10 of the HR Manual.

7. With that proviso, the Tribunal notes that the complainant complains, firstly, that the Organization breached abovementioned paragraph 8 of Item 5.9 of the HR Manual, in that he was not consulted before the decision to transfer him to Kingston was taken on 6 January 2020.

The Tribunal notes that, in Judgment 4609, which also concerned UNESCO and was based on paragraph 7 of Item 5.10 of the HR Manual, now paragraph 8 of Item 5.9, it recalled its case law that the failure to consult the staff member concerned in advance about the nature of the post, and in particular the duties that would be assigned to her or him in the new post, constituted a substantial formal defect with regard to the applicable procedure (see Judgment 4609, consideration 6). The Tribunal inferred from that principle that any staff member, even if she or he has been notified of a possible future transfer, must be informed in advance of the nature of the post proposed for her or him and, in particular, of the duties involved, so that she or he is able to comment on those new duties as well (*ibidem*, consideration 8, and the case law cited therein).

In the present case, while it is true that exchanges of views had taken place between the complainant and his supervisors regarding his possible transfer to a field post, it is clear from the evidence that he had never been consulted prior to the decision to transfer him to the Kingston Regional Office for an initial period of two years. The complainant was not informed of this decision until 6 January 2020, that is when he was notified of it, and the letter of appointment was not delivered until the same day, also without prior consultation.

The fact that the complainant had not responded to the request to state in advance his choice of at least three posts included in the list of vacancies in the 2019 geographical mobility exercise did not exempt the Organization from its duty to consult him in advance regarding his transfer to Kingston.

The same applies to the fact that the complainant was consulted in advance regarding his assignment to carry out a three-month temporary mission at the Kingston Regional Office. Such a temporary mission was completely different from a two-year assignment to a post which, moreover, did not involve the same duties.

This plea is therefore well-founded.

8. In a second plea, the complainant submits that the Organization breached both paragraph 17 of Item 5.9 of the HR Manual and the Tribunal's case law on the subject (see, in particular, Judgment 810, consideration 7, cited by the complainant) by not granting him a "reasonable/sufficient"* timeframe to allow him to act on the decision to transfer him to Kingston, and by not consulting him before determining that timeframe. He submits in that regard that nine working days is not reasonable notice and that his colleagues transferred to field posts in the 2019 geographical mobility exercise had two to three months to prepare.

In view of all the circumstances of the present case, the Organization considers that the complainant was in fact given far more than a year's notice to ensure that all personal and family-related matters were settled before he was reassigned to the UNESCO Office in Kingston. It also emphasises that there is no indication that he took any steps to that effect. In its view, this conclusion is all the more compelling given that, even before being transferred to the Kingston Office for an initial period of two years, the complainant had already been informed on 22 October 2019 of the short-term mission he had been assigned to carry out at that office. He had therefore received instructions several months previously to report to that duty station and did not inform the Organization in a timely manner of any difficulties he may have encountered in settling his personal affairs at Headquarters before transferring to Kingston.

9. In aforementioned Judgment 4609, the Tribunal recalled its settled case law that an international organisation that is intending to transfer a staff member is obliged to ensure that the implementation of that measure is preceded by proper notice enabling the staff member to make the necessary arrangements for the change in her or his duty station (consideration 6). In the same judgment, the Tribunal therefore considered that the period of 11 days given to the staff member in that case to take up her new post at Headquarters clearly fell short of that

* Registry's translation.

requirement, particularly given that in practical terms the transfer in question involved moving from Kinshasa to Paris (consideration 10).

10. In the present case, the Tribunal notes that the complainant was allowed 14 days to take up his duties as Senior Coordinator in Kingston. Such a timeframe appears unreasonable, particularly given that in practical terms the transfer in question involved moving from Paris to Kingston.

The Tribunal considers that it matters little in this respect that the complainant was informed in 2018 that a decision was to be made to transfer him to a UNESCO field office. Being informed of such an intention cannot be confused with receiving final notification of the exact office to which a transfer is to take place and the specific terms on which that transfer is to be implemented.

Similarly, the fact that the complainant was informed on 10 July 2019 of his transfer to the Brazzaville Office cannot be confused with the decision ultimately taken to transfer him to the Kingston Office.

11. The Tribunal also notes that, as the complainant rightly maintains, the Organization is required, under paragraph 17 of Item 5.9 of the HR Manual, to consult a staff member who is being transferred from one duty station to another in order to determine the effective date of that transfer. That duty was also breached in the present case.

12. It follows that the plea alleging, firstly, that the time given to the complainant to take up his duties in Kingston was unreasonable and, secondly, that he was not consulted about the effective date of his reassignment is well-founded in both its parts.

13. The defects identified in considerations 5 to 12 above, which fall within the Tribunal's limited power of review in such matters, are sufficient to justify the setting aside of the decision to reassign the complainant to the Kingston Regional Office.

As a result, the impugned decision of 7 August 2023 and the decision of 6 January 2020 must be set aside, without there being any need to rule on the complainant's other pleas or to rule on his request for the production of documents.

14. As a result of this setting aside, the complainant seeks fair compensation for all the moral injury suffered, which he estimates in his complaint at 100,000 euros.

However, the Tribunal notes that the complainant justifies this amount by reference to the unlawfulness of all the decisions taken in his regard by the Organization and which are challenged in his other complaints before the Tribunal.

It is only appropriate here to consider the moral injury liable to result from the setting aside of the decision to transfer him to Kingston.

In this regard, the Tribunal notes that the complainant fails to explain in his complaint what moral injury he alleges to have suffered solely as a result of the decision to reassign him to the Kingston Office. In the highly specific circumstances of the case, where the reassignment in question never actually took place and the complainant clearly behaved in an uncooperative manner towards the Organization, the Tribunal considers that the mere finding that the impugned decision was unlawful is sufficient to compensate him for any moral injury suffered as a result of that decision.

There is therefore no need to award the complainant damages under this head.

15. The complainant also requests that the Organization be ordered to pay him exemplary damages as well as punitive damages on account of its conduct towards him.

As regards the claim for exemplary damages, the Tribunal notes that the complainant does not in any event substantiate this claim in his written submissions.

As regards the claim for punitive damages, the rejection of the claim for ordinary damages for the reasons set out above precludes *a fortiori* such an award, which, according to the Tribunal's case law, is warranted only in cases of particularly serious misconduct by the Organization (see, for example, Judgments 4640, consideration 15, or 4391, consideration 14).

These claims will therefore be dismissed.

16. The complainant also seeks compensation for the injury caused to him by the excessive delay in the internal appeal procedure, which lasted more than three years and four 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"*.

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 not appropriate 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

* Registry's translation.

during the same period since he himself expressly declined that possibility in an email of 19 March 2021.

Although the complainant argues that he had 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.

17. The complainant also asks the Tribunal to order “[t]he full restoration of his rights and the regularisation of his administrative situation”*.

However, as the Tribunal has already stated on various occasions, it is not competent to issue declarations of law or orders of this kind (see, for example, Judgments 4885, consideration 12, 4700, consideration 2, 4637, consideration 6, 4492, consideration 8, 4246, consideration 11, and 3876, consideration 2).

This claim must therefore be dismissed.

18. The complainant also claims compensation of 10,000 euros “for the material injury caused in particular by the costs incurred in preparing his files for the five complaints before the [Tribunal], as well as for the time spent preparing them instead of performing paid work”*.

However, without prejudice to the complainant’s right to an award of costs, the injury alleged does not warrant the grant of such compensation.

This claim must therefore also be dismissed.

* Registry’s translation.

19. As he partly succeeds, the complainant is entitled to costs, which the Tribunal sets – in view of the fact that he did not engage counsel – at 500 euros.

DECISION

For the above reasons,

1. The Director-General's impugned decision of 7 August 2023 as well as the decision of 6 January 2020 are set aside.
2. The Organization shall pay the complainant 500 euros in costs.
3. All other claims are 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.