

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

R. (No. 6)

v.

UNESCO

140th Session

Judgment No. 5056

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr B. R. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 15 November 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 the information provided by UNESCO on 27 May 2025 in response to a request for further submissions from the President of the Tribunal;

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, firstly, the decision to reject his requests for reinstatement in his post at the Organization's Headquarters and for suspension of the recruitment procedure for that post, and, secondly, the rejection of his internal complaint of institutional harassment.

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 the 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 that he had been included in the 2019 geographical mobility exercise and 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".

* Registry's translation.

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 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, in 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”. That decision is the subject of the complainant’s second complaint to the Tribunal, 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 and on 8 October he was informed that he would shortly be reassigned temporarily to another post, pending clearance from the Congolese Government. On 9 October 2019 the complainant’s former post at Headquarters was assigned on an *ad interim* basis to someone else, while on 22 October ADG/ADM notified the complainant of his temporary reassignment under the Assistant Director-General for Priority Africa and External Relations (ADG/PAX, for short) to carry out a temporary mission at the Kingston Regional Office, Jamaica, from 28 October 2019 to 31 January 2020. On 23 October 2019 the complainant was also informed by ADG/PAX that the Congolese Government had refused to grant him clearance.

On 24 October 2019 the complainant therefore asked ADG/ADM to be reinstated in his former post at Headquarters, arguing that his temporary assignment to Kingston had become pointless because it had

* Registry’s translation.

only been put in place pending clearance by the Congolese Government. ADG/ADM replied on 25 October 2019 that his short-term mission would proceed as planned and invited him to contact the PAX administrative unit and to make the necessary arrangements to take up his duties as soon as possible. On 31 October 2019 the complainant reiterated his request for reinstatement in his former post at Headquarters and requested that the ongoing recruitment procedure for that post be suspended.

On 5 November 2019 the complainant wrote to DIR/HRM to review his administrative situation, reminding her of his requests to ADG/ADM, which in particular concerned his reinstatement in his former post before a short-term mission was assigned, and asking for an end to be put to the “institutional harassment”^{*} to which he considered he was subjected.

By a decision of 13 November 2019, the new DIR/HRM once again asked the complainant to take up his duties immediately in Kingston, failing which he would be placed on special leave with pay and action would be taken accordingly. She also informed him that the Director-General had not acceded to his requests of 31 October 2019 to reinstate him in his former post and to cancel the recruitment procedure for that post, but that he would be informed shortly of his next posting.

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 abovementioned temporary mission in Kingston on 2 December 2019. However, the complainant was on sick leave from 6 to 13 December 2019, then on annual leave from 16 to 20 December 2019, with the result that, at that date, he had not yet begun his temporary mission.

On 11 December 2019 the complainant submitted a protest to the Director-General expressly directed against the decision of 13 November 2019 rejecting his requests for reinstatement in his post at Headquarters and for suspension of recruitment to that post. In this protest, he

^{*} Registry’s translation.

intended to challenge, generally, “all of the administrative decisions taken with regard to [him]”^{*} which were, in his view, tainted with flaws and abuse of authority, namely the aborted procedure to transfer him to a field post in 2018, the refusal to defer his reassignment in the 2019 mobility exercise, the confiscation of his established post at Headquarters, his temporary reassignment to Kingston, the refusal to reinstate him in his former post at Headquarters and the “threats of sanctions”^{*} if he did not leave to take up his temporary mission. In his view, the unlawfulness of these decisions was also proof of the institutional harassment to which he had been subjected since 2018.

On 6 January 2020 the complainant was notified of the Director-General’s decision to reassign him to the newly created post of Senior Programme Coordinator in the UNESCO Office in Kingston, to take up his duties by 20 January 2020. That decision is the subject of the complainant’s fifth complaint to the Tribunal, ruled on in Judgment 5054, also delivered this day. However, the complainant failed to report to his duty station and therefore did not take up his new duties there.

As he did not receive a reply to his aforementioned protest of 11 December 2019, the complainant lodged a notice of appeal with the Appeals Board on 13 January 2020 and submitted his detailed appeal on 9 March, to challenge “the decision of 13 November 2019 rejecting [his] requests of 24 and 31 October and 5 November 2019 for reinstatement in [his] post CI-063 and for suspension of the recruitment procedure for that post, and [...] all the administrative decisions constituting institutional harassment against [him] from 2018 to 2020”^{*}. In his view, the principle of equal treatment had been breached during the 2019 geographical mobility exercise because, although he had been in the same situation as other colleagues and met the required conditions, he had been refused a deferment of his reassignment. Moreover, the Administration had not complied with the principle of good faith when it went ahead with his temporary mission in Kingston after his posting to the Republic of Congo had failed. Thus, from 2018

^{*} Registry’s translation.

to 2020, he allegedly suffered institutional harassment, within the meaning of Item 16.2 of the HR Manual and the Tribunal's case law, as a result of the decisions to: transfer him to a field post in 2018, reject his request for a deferment of reassignment in the 2019 mobility exercise, reassign him to Brazzaville, reassign him temporarily to Kingston, refuse his request for reinstatement in his post at Headquarters, and reassign him in 2020 to a newly created post in Kingston. He therefore sought the cancellation of the aforementioned decision of 13 November 2019, as well as of the decisions challenged in previous complaints to the Tribunal, and compensation for the professional and moral injury suffered as a result of these decisions in the amount of 600,000 United States dollars.

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 and to take up his duties there, during his temporary 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.

On 9 June 2023 the Appeals Board issued its opinion (CAP/492) in respect of the appeal lodged on 13 January 2020. It found that it had been "an exaggeration that the [c]omplainant was required to leave his post well before the end of the assignment process but [that] this question [had] already been decided previously [and] could not be reexamined [by it]"*. Regarding the alleged institutional harassment, the Appeals Board considered that it was not proven, due to insufficient evidence, and that the series of reassignment decisions alone did not constitute harassment if they were justified by objective constraints. However, it noted that the Administration had failed in its duty of care by imposing time limits that were too short, thereby making it difficult

* Registry's translation.

to carry out its instructions. Lastly, it concluded that the complainant's request for reinstatement in the post he had occupied at the Organization's Headquarters had become moot owing to his subsequent dismissal, and that the same applied to his request for suspension of the recruitment procedure for that post.

On 23 August 2023 the Director-General's decision was notified to the complainant. The Director-General agreed with the Appeals Board's opinion "that the requests for reinstatement to post CI-063 and for suspension of the recruitment process for that post [had] become moot owing to [the complainant's] dismissal"* and therefore dismissed his appeal. That is the impugned decision.

The complainant asks the Tribunal to set aside the decisions of 13 November 2019 and 23 August 2023, as well as the decisions impugned in four other complaints already filed with the Tribunal. He also seeks compensation for his professional and moral injury in the amount of 600,000 United States dollars. He further requests the Tribunal to find that the delay in dealing with his internal appeal was not reasonable and was such as to cause him injury, to order fair compensation for the injury suffered and to order the award of costs. Moreover, he asks it: to recognise that management errors, omissions and breaches damaged his dignity and career by constituting institutional harassment; to affirm the Appeals Board's opinion that his dignity was violated by the insufficient time allowed for his reassignment to Kingston; to acknowledge the Organization's failure to comply with its rules by not ordering an investigation into the alleged institutional harassment; to find that the Organization's anti-harassment principles were breached and that these commitments are binding under the Tribunal's case law; and to require the Organization to prove the existence of the 2018 mobility exercise and the decision to defer his reassignment in that exercise.

UNESCO asks the Tribunal to dismiss the complaint as unfounded.

* Registry's translation.

CONSIDERATIONS

1. In paragraph 26 of his complaint, the complainant states that, “[i]n addition to the other acts constituting institutional harassment, the present complaint is filed against [the] decision [of the Director-General] of 13 November 2019 [refusing to reinstate him in his former post at the Organization’s Headquarters and to suspend the recruitment procedure under way to fill that post]”*. In paragraph 43 of the complaint, he adds that “[t]his complaint is a complaint of institutional harassment”*.

In view of this wording, the Tribunal considers that the complaint has two subject matters: firstly, to request the setting aside of the Director-General’s decision of 23 August 2023 confirming the decision of 13 November 2019; secondly, to request recognition that UNESCO engaged in institutional harassment. These two aspects will be examined in turn below.

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 Brazzaville, to reassign him to Kingston and to dismiss him summarily.

The complainant seeks the joinder of this 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. As regards the first subject matter of the complaint, the Tribunal notes that the complainant did not challenge, in either internal appeal procedures or before the Tribunal, the decision notified on 8 October 2019 to reassign him temporarily under ADG/PAX, the decision of 9 October 2019 to assign the post he held to someone else on an *ad interim* basis, or the decision notified on 22 October 2019

* Registry’s translation.

assigning him a temporary mission at the UNESCO Office in Kingston. The Tribunal will therefore consider only the request for the setting aside of the decision of 23 August 2023 and the decision of 13 November 2019.

4. In the first place, the complainant alleges a breach of the principle of equal treatment in the 2019 geographical mobility exercise.

Firstly, he asserts that, unlike other colleagues in the same factual and legal situation, he was refused a deferment of his reassignment even though he fully met the conditions required for such a deferment. However, an identical argument has already been examined by the Tribunal and dismissed in Judgment 5052, also delivered this day. This argument will therefore also be dismissed here on the same grounds.

Secondly, the complainant maintains that, unlike other colleagues who could not be reassigned and so were kept in their respective posts, he was denied that possibility by the decision of 13 November 2019.

However, the Tribunal recalls that a breach of the principle of equal treatment presupposes that the staff members to be compared are in an identical or similar position in law and in fact (see Judgments 4878, consideration 6, 4767, consideration 5, 4712, consideration 5, 4681, consideration 9, and 4498, consideration 27). In the present case and contrary to what he states in his written submissions, the complainant has failed to demonstrate in a tangible manner that colleagues in a similar situation to his were treated more favourably than him in that they remained in their posts at Headquarters during the reassignment procedure. Moreover, the Tribunal notes that it is clear from the file that the complainant's situation was highly specific, in particular in that he had been employed at Headquarters for almost 28 years at the material time.

The first plea is therefore unfounded.

5. In the second place, the complainant submits that the Appeals Board failed to comply with the prescribed period of 60 days within which it was required to deliver its opinion.

However, the Tribunal notes that such a time limit is not, in any event, intended to have a nullifying effect. According to its settled case law, unless there is an express provision to the contrary, failure to comply with a procedural time limit does not therefore render the contested decision unlawful (see, for example, Judgments 4947, consideration 17, 4666, consideration 11, 4664, consideration 9, and 4584, consideration 4), but is at most liable to give rise to compensation for the injury suffered by the staff member concerned, provided that she or he can establish that such injury occurred (see, for example, Judgments 4727, consideration 14, 4635, consideration 8, 4178, consideration 15, 4100, consideration 7, or 3160, consideration 17).

The second plea must therefore be dismissed.

6. In the third place, the complainant considers that the Appeals Board's report rests on various errors of fact and law which render it unlawful.

However, the Tribunal observes that the errors of fact alleged by the complainant have already been examined and dismissed in Judgments 5052, 5053 and 5054, also delivered this day. They will therefore be dismissed on the same grounds.

The argument that the Appeals Board erred in law by not finding that the refusal to reassign the complainant to the post he had held at Headquarters constituted a breach of the principle of equality must be rejected since, as stated in consideration 4 above, that breach has not been established.

Accordingly, the third plea also fails.

7. In the fourth place, the complainant considers that the Director-General's final decision of 23 August 2023 was insufficiently reasoned because it did not respond to the observation contained in the Appeals Board's opinion that UNESCO had "failed in its duty of care towards the complainant by not ensuring that the time limits granted to him allowed him to reasonably carry out the instructions that it [had] given to him"*.

* Registry's translation.

However, the Tribunal finds that, since the Director-General considered in the impugned decision, as recommended by the Appeals Board, that the challenge to the rejection of the complainant's requests for reinstatement in his post at Headquarters and for suspension of the recruitment procedure for that post had become moot as a result of his summary dismissal in the meantime, there was no need, in any event, for her to express a view on that observation.

This plea will therefore be dismissed.

8. It follows from the foregoing that the claims seeking the setting aside of the impugned decision of 23 August 2023 and the decision of 13 November 2019 must be set aside.

9. With regard to the second subject matter of the complaint, the complainant submits that his allegations of institutional harassment were not examined.

The Tribunal observes that the Director-General refrained from expressly commenting on these allegations, in particular in her decision of 23 August 2023 mentioned above.

The Tribunal notes that it appears from the file that the same allegations were made in an official complaint of institutional harassment submitted to the Internal Oversight Service (IOS). Although he had already referred to harassment against him in the protest he had submitted on 11 December 2019, the complainant had lodged on 16 January 2020 an internal complaint alleging institutional harassment resulting from "all the administrative decisions"* taken in his respect between 2018 and 2020. By a letter of 21 February 2020, the Director IOS informed the complainant that her service was unable to deal with his internal complaint because, in her view, IOS had a conflict of interest. She informed the complainant that, pursuant to paragraph 37 of Item 16.2 of the HR Manual, the Deputy Director-General would be tasked with assessing it.

* Registry's translation.

However, the complainant alleges that no action was taken on his internal complaint.

10. The Tribunal notes that, in its reply, the Organization argued that the internal complaint of institutional harassment submitted by the complainant on 16 January 2020 was the subject of separate proceedings and a separate decision.

However, in response to a request for further submissions from the President of the Tribunal, the Organization stated, in an email of 27 May 2025, that it had “considered that there was no longer any reason to act on the [internal] complaint of institutional harassment submitted by [the complainant]”^{*} because he had left the Organization.

Given that the complainant had lodged an internal complaint of harassment on 16 January 2020, the Organization was required to rule on this internal complaint of institutional harassment, regardless of the fact that he had in the meantime been summarily dismissed on 25 March 2020.

It follows that the Organization was at fault in not examining this complaint.

11. The complainant asks the Tribunal to recognise the institutional harassment he alleges.

However, in the present case, the Tribunal considers that the file submitted to it does not allow it to decide whether the alleged harassment took place.

This claim will therefore be dismissed.

12. In such a situation, it would ordinarily be appropriate to refer the case back to the Organization for the internal complaint to be duly examined.

^{*} Registry’s translation.

However, considering in particular the time that has elapsed and the complainant's departure from the Organization, the Tribunal considers that it would not be appropriate, in the circumstances of the case, to order such a referral, which the complainant does not request in his written submissions.

13. The Tribunal notes, however, that the complainant was denied the right to have his internal complaint of institutional harassment properly examined. This has resulted in moral injury, which, in view of the specific circumstances of the case, will be fairly redressed by awarding him compensation of 10,000 United States dollars.

14. The complainant requests the Tribunal to find "that the Organization's promises to take all allegations of harassment seriously and to settle all cases of harassment brought to its attention are binding promises and must be complied with under the Tribunal's case law"*.

However, it is not for the Tribunal to make declarations of law of this type.

Accordingly, this claim will be rejected.

15. The complainant also seeks compensation for the injury caused to him by the excessive delay in the internal appeal procedure that he had initiated in the present case, which lasted nearly three and a half years.

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

* Registry's translation.

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 organise 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 Council 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, on various occasions and the first time by an 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, 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.

16. The complainant also requests that the Organization be ordered to pay him “exemplary damages”* and “punitive damages”* on account of its conduct towards him.

As regards the claim for exemplary damages, the complainant does not, in any event, substantiate it in his written submissions.

The Tribunal further recalls that punitive damages may be awarded only in exceptional circumstances (see, in particular, Judgments 4659, consideration 14, 4658, consideration 10, 4506, consideration 10, and 4391, consideration 14), that is, if a complainant has provided persuasive evidence and analysis to demonstrate that there was bias, ill will,

* Registry’s translation.

animosity, malice, bad faith or other improper purpose attending the impugned decision, which does indeed justify the organisation's conduct being sanctioned by an order to pay such interest (see Judgments 4820, consideration 22, 4690, consideration 16, and 4633, consideration 16).

The Tribunal considers that there are no such exceptional circumstances in the present case.

These claims will therefore be dismissed.

17. The complainant also seeks the setting aside of the various decisions already challenged in four other complaints filed with the Tribunal.

However, there is no reason to grant this request, as these various complaints have already been examined in Judgments 5052, 5053, 5054 and 5055, also delivered this day and to which reference is therefore made.

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

19. All other claims must be dismissed, without it being necessary to order the production of documents sought by the complainant, which would not be useful in settling the dispute.

DECISION

For the above reasons,

1. UNESCO shall pay the complainant moral damages in the amount of 10,000 United States dollars.
2. The Organization shall also pay the complainant 500 euros in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 29 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.