S.

v.

ESO

141st Session **Judgment No. 5098**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms H. S. against the European Southern Observatory (ESO) on 10 May 2023, ESO's reply of 14 July 2023, the complainant's rejoinder of 11 September 2023 and ESO's surrejoinder of 16 October 2023;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case may be summed up as follows:

The complainant contests the non-recognition of her illness as occupational.

The complainant joined ESO in 2008 and was later promoted to the position of Head of Human Resources. On 2 April 2019, the complainant was informed that the Director General had decided to reassign her to the position of Senior Human Resources Manager. On the same day, the complainant went on sick leave.

By letter dated 15 May 2019, the Director General explained to her that his 2 April 2019 decision was based on "the requirement to modernize the employment conditions for ESO members of personnel" and "[t]o successfully cope with this challenge, the person leading this effort need[ed] to have profound experience in the area of strategic [Human Resources] development which [...] [was] [...] missing within

the Organisation". On 24 May 2019, the complainant wrote to the Director General that his decision "ha[d] considerably affected [her]" and that she was "still recovering slowly from the shock [she] received".

On 13 April 2021, the Rehabilitation Board was appointed to review the situation of the complainant, who remained on sick leave. The Board was requested to provide comments on the nature of the complainant's medical condition, assess the feasibility of her continued employment at ESO, suggest potential rehabilitation measures, and consider the eventual recognition of her disability. A Medical Review Panel was established, which concluded, in a report dated 24 November 2021, that the complainant presented a mental health condition that "[had] to be classified as reactive disorder as [a] consequence of the considerable professional change" produced by her reassignment in April 2019.

On 24 February 2022, the Rehabilitation Board issued its report to the Director General, in which it concluded that the complainant was suffering from a total disability of a non-occupational nature. The Board noted that, based on the findings from the Medical Review Panel, "it [was] clear that the [complainant's] illness [was] related to (if not triggered by) the decision to reassign [her] [...] to another professional position". However, it observed, pursuant to the criteria set forth in section 3.1.1 of Administrative Circular No. 16 entitled "Protection of the Members of Personnel against the financial consequences of illness, accident and disability", that the complainant's illness could not be classified as occupational because it was not listed in the applicable French legislation tables referred to in such provision and that "no proof of the specific stress during the occupational activity was provided, nor was any evidence provided of a persecutory attitude by the Administration towards [the complainant]". As a result, the Rehabilitation Board recommended that the complainant be recognized as having a total disability caused by a non-occupational illness, that a disability pension be awarded to her and that her contract be terminated.

On 29 March 2022, the Director General informed the complainant that he had decided to follow the Rehabilitation Board's recommendations.

On 20 May 2022, the complainant lodged an appeal to the Joint Appeals Advisory Board (JAAB) against the "decision to classify [her] disability as non-occupational". She completed her appeal on 26 May 2022. During the course of the proceedings, the complainant clarified that she was not challenging the termination of her employment but "the classification of the illness as non-occupational".

On 21 December 2022, the JAAB issued its report, in which it recommended that the complainant's disability be classified as occupational. As a preliminary matter, the JAAB noted that the complainant's mental health condition was not included in the applicable French legislation tables referred to in section 3.1.1 of Administrative Circular No. 16, which covered only "physical illnesses and disabilities". The JAAB then stated the following:

> **"[The Rehabilitation Board's] interpretation of [Administrative Circular No. 16] [was] rather restrictive and not in line with the spirit of [the circular]. The Medical Review Panel statement is clear: the [complainant] has been rendered disabled by something that happened in the workplace. The sudden onset of the illness does not in the opinion of the JAAB, negate the fact that it occurred as part of the occupational activity of the [complainant].**
>
> The JAAB further considered that the action that triggered the disability of the [complainant] is something that is a normal part of working life within an organisation, namely the reassignment of a staff member from one role to another. The JAAB recognises the right of ESO to reassign staff according to the changing needs of the organisation. More generally, Circular 16 does not appear to the JAAB to require or otherwise imply a malpractice or negligence on the part of the Organisation for a disability to be classified as occupational. Therefore, the JAAB believes that there should be no inhibition to reassigning staff, arising from a fear of triggering a claim for an occupational illness pension. **Nevertheless, the medical fact in this Appeal is clear and not disputed: in this case, a permanent disability was the result of a reassignment.**" (Emphasis added.)

By letter dated 9 February 2023, the Director General notified the complainant of his decision to reject the JAAB's recommendations and to dismiss her appeal. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, with all legal consequences. She seeks payment of moral damages, in the amount of 20,000 euros. She also claims costs. Additionally, she requests to be granted the benefits provided for in the Staff Regulations and Staff Rules in cases of occupational illness.

ESO asks the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS

1. The instant complaint raises in essence one discrete issue: whether the Rehabilitation Board, in its report of 24 February 2022, and the Director General, in his decisions of 29 March 2022 and 9 February 2023, wrongly interpreted the findings of the Medical Review Panel contained in the latter's report of 24 November 2021 in determining that the illness of the complainant, the former Head of Human Resources, was non-occupational pursuant to the applicable terms of section 3.1.3 of Administrative Circular No. 16.

2. The complainant seeks oral proceedings. But given the comprehensive written submissions made by the parties in their pleadings and through the filing of their supporting documents, the Tribunal considers that oral proceedings are unnecessary, and the request is therefore rejected.

3. The provisions of the organization that are central to the resolution of the present dispute are found in Administrative Circular No. 16, more particularly at sections 3.1.1 and 3.1.3 which state as follows:

> "***3.1.1 Illness***
>
> Illnesses contracted by a member of the personnel shall be deemed to be occupational if:
>
> - they are included in the tables applicable under French Legislation and meet the conditions laid down in those tables;
>
> (These tables are applied by ESO's Health Insurance provider. The authentic version shall be that of the electronic guide published on the website of the Institut National de Recherche et de Sécurité (INRS).

> Unless otherwise stated, the list of the types of work likely to cause illness given in each table is exhaustive.)
>
> - they manifest themselves during the latent period indicated in the corresponding table **and provided that the person concerned has been regularly and habitually exposed in the course of her/his professional activities to one or more occupational hazards likely to result in the illness defined in the corresponding table.**
>
> [...]
>
> ***3.1.3 General***
>
> An illness or an accident deemed to be occupational within the meaning of the paragraphs above may be classified as non-occupational if the Organisation supplies proof that there is **no causal link between the professional activity conducted within the Organisation and the illness or accident suffered by the member of personnel concerned**.
>
> Conversely, an illness or an accident deemed to be non-occupational may be classified as occupational **if the member of the personnel concerned supplies proof of a causal link between the occupational activity conducted within the Organisation and her/his illness** or accident." (Emphasis added.)

It is worth mentioning as well that in the General Provisions of this Administrative Circular No. 16, the term "occupational illness" is defined as "any illness contracted by a member of personnel in the course of duty **and** classified as being of occupational origin" (emphasis added).

4. The Tribunal observes that pursuant to section 4.01 of Annex R B 4 of the ESO Staff Regulations, the Rehabilitation Board has the responsibility of "[...] examin[ing] cases submitted to it and [of] mak[ing] substantiated recommendations to the Director General, based on the report of the Medical Review Panel as well as on its knowledge about ESO internal structures, working conditions and responsibilities [...] concerning [...] the nature (occupational or non-occupational) of an [...] illness [...]".

In this regard, this provision states that "[t]he Rehabilitation Board shall act as an interface between the Medical Review Panel and the Director General [...]" and that "[the] Medical Review Panel advises the Rehabilitation Board by providing a written medical opinion regarding [...] the nature of the [...] illness (occupational or non-occupational) [...]".

5. Established precedent has it that where, like in the present case, a complaint involves a medical matter, the Tribunal "may not replace the findings of medical experts with its own assessment. However, it does have full competence to say whether there was due process and to examine whether the medical reports on which administrative decisions are based show any material mistake or inconsistency, overlook some essential fact or plainly misread the evidence" (see, in particular, Judgments 4761, consideration 2, 4699, consideration 6, 4694, consideration 11, 4464, consideration 7, 3994, consideration 5, and 3361, consideration 8).

6. It is also convenient to recall the Tribunal's well-settled case law on interpretation of rules. In this regard, in Judgment 4818, consideration 18, the Tribunal emphasized the following:

> "According to the Tribunal's case law, the primary rule of interpretation is that words are to be given their obvious and ordinary meaning (see Judgments 4321, consideration 4, 3310, consideration 7, and 2276, consideration 4). Where the text is clear and unambiguous, the Tribunal will apply it without reference to the preparatory work or the supposed intent of the lawmaker. Strict textual interpretation is an essential safeguard of the stability of the position in law and so of the organisation's efficiency (see Judgments 4506, consideration 5, 3701, consideration 4, and 691, consideration 9)."

In Judgment 4796, consideration 3, it furthermore recalled that "words are to be given their obvious and ordinary meaning and must be construed objectively in their context and in keeping with their purport and purpose (see, for example, Judgments 4639, consideration 3, 4506, consideration 5, 4066, consideration 7, 4031, consideration 5, and 3744, consideration 8)".

Lastly, in Judgment 4639, consideration 3, the Tribunal summarized the status of its case law on interpretation reminding that it is only in situations where an ambiguity remains after these rules of interpretation have been applied that it may be justified to interpret a provision in favour of the interests of the staff rather than those of the organisation itself:

> "Should an ambiguity remain in the relevant provision after this method of construction is applied, the regulations or rules of an international organisation must in principle be construed in favour of the interests of its staff and not those of the organisation itself (see, for example, Judgments 3539, consideration 8, 3355, consideration 16, 2396, consideration 3(a), 2276, consideration 4, or 1755, consideration 12)."

(See also Judgment 5071, consideration 7.)

7. In the present complaint, it is not disputed that on 2 April 2019, the Director of Administration held a meeting with the complainant where the latter was informed of the decision of the Director General to the effect that she would no longer hold her position as Head of Human Resources. The complainant affirms that this decision, presented to her as irrevocable, came as a shock to her. She explains that she took it as a mark of repudiation of her work and of loss of confidence in her ability to undertake responsibilities at her current level, and that this shock had a significant and long-lasting impact on her health. Pursuant to the prescription of her practitioner, the complainant was on sick leave from 2 April 2019.

8. The record further indicates that, in a report of 24 November 2021 addressed to the Rehabilitation Board which had been appointed to review the situation of the complainant, the Medical Review Panel found in particular that "[f]rom an expert's point of view, the present illness [of the complainant] with a chronic course [was] to be classified as a consequence of the considerable occupational change with internal transfer of the proband in April 2019".

9. Following the receipt of this report, the Rehabilitation Board recommended to the Director General that, in its view, the nature of the illness of the complainant was non-occupational, relying amongst others on the abovementioned extract from the Medical Review Panel report.

The Board noted that the stress or mental health disorders suffered by the complainant were not an illness included in the tables applicable under French legislation as indicated at section 3.1.1 of Administrative Circular No. 16. It added that, while it was clear that the illness was

"related to (if not triggered by)" the decision to reassign her from the role of Head of Human Resources to another professional position, and that her representative had mentioned before the Board that the Human Resources Department had experienced particularly stressful situations in recent years, "no proof of [a] specific stress during the occupational activity [of the complainant] was provided, nor was any evidence provided of a persecutory attitude by the Administration towards [her]".

The Director General accepted the Rehabilitation Board's recommendation.

10. Following the appeal filed by the complainant with the JAAB, the latter subsequently concluded, however, that contrary to the recommendation of the Rehabilitation Board, the complainant's disability should be classified as occupational. In its report, while agreeing that the complainant's illness was not included in the French legislation tables referred to in section 3.1.1 of Administrative Circular No. 16 which covered only "physical illnesses and disabilities", the JAAB considered that it could still be classified as occupational given that the staff member had supplied proof of a causal link between the occupational activity conducted within the organisation and the illness. According to the JAAB, it was a clear and not disputed medical fact that the permanent disability was the result of her reassignment, namely, something that happened in the workplace and thus occurred as part of the complainant's occupational activity.

11. In the impugned decision, the Director General decided not to follow the JAAB's recommendation on the basis that it went beyond its competency by making a medical assessment to overrule the Rehabilitation Board's and the Medical Review Panel's assessments.

12. In support of her complaint, the complainant argues that the Medical Review Panel relied on a psychiatrist expert who concluded that her depression was a reactive disorder caused by the considerable professional change due to her relocation, as decided by the organisation, which she considered to constitute a demotion. This, in her view, demonstrates a sufficient causal link between the illness and

her duty, as required by ESO's rules, for considering her illness as an occupational illness.

According to the complainant, this shows that her illness was a reactive disorder, which was caused directly by her working conditions at ESO. She maintains that had she not been employed by the organisation and relocated, she would not have suffered from depression.

13. For the following four reasons, the Tribunal cannot adopt the complainant's argument nor the JAAB's recommendation in this regard. The Tribunal rather considers that the Rehabilitation Board and the Director General correctly interpreted and applied the relevant provisions to the situation of the complainant and rightly found that her illness was non-occupational in nature.

14. First, the Tribunal observes that the Medical Review Panel attributed the depression of the complainant to a "reactive disorder as a consequence of the considerable professional change with company-internal relocation of the person concerned". While it is true that this focused on the concrete consequences of this relocation decision on the health of the complainant and that the Medical Review Panel did not say that the relocation should be considered as external to her duties this merely supports the fact that, according to the Panel, the complainant's depression was caused by her reaction to the important change in her professional situation because of the relocation operated by ESO, but nothing more.

In particular, this falls short of establishing, as required by section 3.1.3 of Administrative Circular No. 16, a causal link between the "occupational activity conducted" by the complainant within the organization and her illness.

In this regard, the Tribunal observes that the words used at section 3.1.3, in their obvious and ordinary meaning, must be understood as referring to the occupational activity conducted by the complainant, and not by someone else even if it occurs in the course of her duty. These words are indeed similar to the expression "in the course of her/his professional activities" found at the end of

section 3.1.1, as well as to the words used in the definition of "occupational illness" already cited. The words of these provisions all point to an occupational task which is that of the complainant and not to one that merely takes place or occurs in the context or in the course of her duty.

15. Second, the complainant does not establish that, when reaching the conclusion that her illness was not occupational, the Rehabilitation Board and the Director General wrongly interpreted the conclusions of the Medical Review Panel. The Tribunal considers that it is incorrect to suggest, as the complainant does, that this Panel established a causal link between her duties with the organisation and her illness. The extract of the Panel's report upon which the complainant relies does not support this assertion.

In Judgment 4709, consideration 9, the Tribunal observed that a causal link in the legal sense requires some fairly definite connection between the diagnosed condition and the alleged occupational origin for a condition to be accepted as service-incurred (see also Judgments 3111, consideration 6, and 641, consideration 8). Applied to the words used at section 3.1.3, the "fairly definite connection" that may exist between the illness of the complainant and her occupational activities as Head of Human Resources is not established nor supported by the Medical Review Panel report to which the JAAB referred to.

16. Third, both the complainant and the JAAB acknowledged that there was no written evidence of her illness having developed before the meeting of 2 April 2019. The JAAB indeed recognized expressly that no "additional proof of the causal link" between the complainant's previous activities and her illness "ha[d] been made available". The complainant has in fact held throughout that her illness was triggered by the event of her reassignment.

While this led the JAAB to conclude that the complainant "ha[d] been [...] disabled by something that happened in the workplace" and that "[t]he sudden onset of the illness [did] not, in the opinion of the JAAB, negate the fact that it occurred as part of the occupational

activity of the [complainant]", these conclusions were nevertheless insufficient for one to conclude that the requirements of section 3.1.3 had been met. The causal link to be established by supporting evidence must be between the occupational activity of the complainant and the illness, not that the illness merely occurred in the workplace. The interpretation put forward by the complainant would entail that any depression that may result from any reassignment, or from any other administrative decision, would amount to an occupational illness even if the activity conducted by the official concerned had no bearing to the illness. This is not what the words used at section 3.1.3 state or contemplate.

17. Fourth, the interpretation proposed by the complainant and the JAAB would ignore the context and the intent of, on the one hand, sections 3.1.1 and 3.1.3, which clearly put the emphasis on the activity of the employee in assessing the existence of a causal link with an illness, and of, on the other hand, the definition of occupational illness that makes a similar causal link essential to a finding of occupational illness.

The Tribunal disagrees with the JAAB's finding that ESO's interpretation of the relevant provisions is allegedly restrictive and not in line with the "spirit" of Administrative Circular No. 16. As the settled case law cited in consideration 6 above indicates, when the words used provide a clear indication of what is required for a provision to apply, the Tribunal should apply it without relying on or making reference to the alleged intent, or spirit, of the provision.

Furthermore, in the instant case, the context and purpose of the causal link requirement for an illness to be found occupational support the interpretation that the triggering factor is not that the illness merely occurred as part of the complainant's employment but rather that there be a definite connection between the illness and some occupational activity that is characteristic of the work carried out by the complainant.

In the present dispute, the essential words for deciding the quality of the complainant's illness are whether the complainant's illness occurred because of her occupational or professional activities. The

JAAB in fact answers the question in the negative stating that the complainant's illness was "the result of a reassignment", which was made and decided by the Director General, and indeed never contested or appealed. The complainant's shock may well have originated as a reaction to the Director General's decision, but it certainly did not arise from her work as Head of Human Resources. Quite the contrary, the critical activity of reassigning her was conducted by the Director General within his uncontestable powers. His decision to reassign the complainant was not a part of her occupational activities within the organisation.

18. The Tribunal adds that it is not disputed that the Director General's decision to substantially change and modernize ESO's employment conditions, and to seek for that purpose a person with profound experience in strategic Human Resources development, was part of his powers and competences.

Regarding the submission, underlined by the Rehabilitation Board, that the complainant could not provide any evidence of a "persecutory attitude" by the Administration towards her, the Tribunal considers that it is irrelevant and that the Rehabilitation Board was misguided in pointing to this alleged lack of evidence. The applicable rules do not require that a fault, a wrongful act, or negligence of the organisation be established to find that there is a causal link between the illness and the duty. But this incorrect statement contained in the Rehabilitation Board recommendation does not entail that its recommendation should be discarded. This notwithstanding, it remains that in this case, the required causal link between an occupational activity conducted by the complainant and the illness she suffered is not established.

19. All in all, as rightly pointed to by the organization, and contrary to the complainant's assertion, her illness was not caused by her working conditions or her occupational activities, but rather by the decision of another person, the Director General, to reassign her. The required causal link was thus not established as rightly indicated by the Director General in the impugned decision. That the medical condition of the complainant was the result of her reassignment is insufficient for

the illness suffered to be classified as occupational. The analogies drawn by the complainant to examples covered by the tables applicable under French legislation in situations where an illness is deemed to be occupational are of no bearing. These situations are not applicable to the situation of the complainant, and the proposed analogies are ill founded given the express words used at section 3.1.3 for an illness to be considered as occupational.

20. Since the complainant's main claim fails on its merits, all related ancillary claims for material and moral damages, as well as legal costs, are dismissed.

21. In view of the foregoing, the complaint must be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 4 November 2025, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Mr Clément Gascon, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

CLÉMENT GASCON

RENÉ M. VARGAS M.