

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**K. (No. 2)**

**v.**

**ITU**

**141st Session**

**Judgment No. 5118**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms E.-J. K. against the International Telecommunication Union (ITU) on 29 October 2022 and corrected on 22 November 2022, ITU's reply of 22 February 2023, the complainant's rejoinder of 18 April 2023 and ITU's surrejoinder of 12 May 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 decision to close her harassment complaint without carrying out an investigation following a preliminary review.

The complainant joined ITU in April 2000 as Senior Advisor, Regional Office for Asia and the Pacific, at grade P.5, in Bangkok, Thailand. In October 2005, she was promoted to the position of Head/Regional Director, Regional Office for Asia and the Pacific, at grade D.1. In August 2009, she was granted a continuing appointment. In February 2014, she was transferred to the position of Chief, Innovation and Partnership Department, Telecommunication Development Bureau (BDT), in Geneva, Switzerland, at grade D.1. In July 2019, she was appointed as Chief ad interim, Digital Knowledge Hub Department,

BDT, at grade D.1. On 7 December 2020, the Secretary-General imposed on her the disciplinary measure of demotion by two grades further to which she was transferred to a P.4 grade position in the Human Resources Management Department (HRMD). In September 2021, she was transferred to the position of Program Coordinator, Telecommunication Standardization Bureau, at grade P.4.

On 3 November 2021, the complainant filed her first complaint with the Tribunal impugning the decision to impose on her the disciplinary measure of demotion by two grades. In Judgment 4832, delivered on 8 July 2024, the Tribunal set aside the impugned decision, remitted the matter to the ITU Disciplinary Chamber of the Joint Advisory Committee (JAC) for reconsideration of the disciplinary sanction and re-evaluation of the case in light of the elements provided in the legal analysis of the Legal Advisor of 23 November 2020 and the conclusions contained in the Appeal Board's report of 20 August 2021, reinstated the complainant in her former D.1 level position with retroactive effect, and awarded her material and moral damages, and costs.

On 15 November 2021, soon after filing her first complaint to the Tribunal, the complainant lodged with the Secretary-General a complaint against Ms B.-M., her former supervisor and former Director, BDT, pursuant to Service Order No. 19/08, "ITU Policy on Harassment and Abuse of Authority" and Service Order No. 20/06, "Policy and Protection for Reporting Misconduct (Whistleblowing)". The complainant alleged that Ms B.-M. had carried out "accumulated consecutive, deliberate, repeated and persistent improper conducts" against her since May 2019 and requested the Administration to order an investigation into Ms B.-M.'s alleged misconduct; to order that her performance appraisals for 2019 and 2020 be conducted and placed on relevant records; and to award her material and moral damages, including the step increment due in October 2020 and withheld due to harassment and abuse of authority.

The complaint was referred to the Ethics Office which, further to a preliminary review, found that the complainant's allegations of harassment were unsupported by evidence and largely based on

subjective perception. It thus concluded that there was no indication of harassment or abuse of authority and recommended to the Secretary-General not to investigate the matter. By an email of 6 December 2021, the Ethics Officer informed the complainant that the Secretary-General had decided not to order an investigation into her complaint and to close the matter, noting nonetheless that HRMD would revert to her on her request in connection with her performance appraisals. In April 2022, HRMD informed the complainant that her step increase due in October 2020 had been granted.

On 16 December 2021, the complainant addressed to the Secretary-General a request for reconsideration asking him to quash the 6 December 2021 decision with all legal effects flowing therefrom; to launch a full and independent investigation into her allegations pursuant to Service Order No. 19/08 of 2 May 2019; to award her financial, material, moral and professional damages, including the step increment that was due but withheld in October 2020; and to also award her legal costs. By a memorandum of 31 January 2022 from the Chief, HRMD, she was informed that the Secretary-General had rejected her request for reconsideration on the basis that the decision not to launch an investigation into her 15 November 2021 complaint was well-founded.

In the meantime, on 28 January 2022, ITU promulgated Service Order No. 22/03, entitled “ITU Policy Addressing Harassment, including sexual harassment, Abuse of Authority, and Discrimination”, which abrogated and replaced Service Order No. 19/08 of 2 May 2019.

On 5 February 2022, the complainant filed an appeal with the Appeal Board against (i) the Secretary-General’s decision of 6 December 2021 not to order an investigation into her 15 November 2021 complaint and to close the matter; and (ii) the Secretary-General’s decision of 31 January 2022 to reject her request for reconsideration of the earlier 6 December 2021 decision. Relying on Service Order No. 19/08, the complainant argued, *inter alia*, that the Secretary-General was under an obligation to launch a formal investigation within three weeks of receiving her complaint and the failure to do so was in breach of the ITU rules, policies and the Tribunal’s case law. She requested the quashing of the contested decision with all legal effects flowing

therefrom; compensation for the damages and injuries caused to her in an amount of not less than 200,000 Swiss francs; legal costs in an amount of 10,000 Swiss francs; interest on all amounts awarded; and the effective implementation of ethics, justice, and transparency for ITU, its membership and its staff members.

In its report of 13 July 2022, the Appeal Board found that the complainant had the right to request that Service Order No. 19/08 be applied to her complaint submitted on 15 November 2021, when such Service Order was in force, that, in view of the Tribunal's ruling in Judgment 4516, ITU had a legal obligation to launch a formal investigation within three weeks of receiving the complaint as per paragraph 15 of Service Order No. 19/08, and that ITU's decision not to do so had led the complainant to incur costs related to the appeal for which a compensation should be considered. The Appeal Board also found that the complainant's 2019 and 2020 performance appraisals were neither conducted on time nor entered into the centralised ITU performance appraisal system, as a result of which the complainant's step increase was considerably delayed. The Appeal Board recommended to the Secretary-General to reconsider his 6 December 2021 decision; to consider reaching an amicable settlement with the complainant; to award her the amount requested in legal fees, i.e. 10,000 Swiss francs, for ITU's decision not to investigate her complaint pursuant to Service Order No. 19/08; and to instruct HRMD to ensure all performance appraisals be conducted in a timely manner in order to avoid appraisals not being recorded and step increases not granted.

By a letter of 29 August 2022, the complainant was informed that the Secretary-General did not agree with the Appeal Board's view that Service Order No. 19/08 was applicable in her case. Rather, he was of the view that her complaint ought to be dealt with according to Service Order No. 22/03, i.e. the Service Order then in effect, and had therefore decided to reconsider the contested decision and to instruct the Ethics Officer to undertake a preliminary review of her complaint in accordance with Service Order No. 22/03. The Secretary-General decided that there were no exceptional circumstances in the complainant's case warranting the reimbursement of legal costs, and he took note of the Appeal

Board's recommendation regarding the conduct of performance appraisals. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to find that her complaint of harassment submitted in November 2021 falls under Service Order No. 19/08, in force at that time, and not under Service Order No. 22/03, issued in January 2022, and that it should have been the object of a formal investigation within three weeks of receipt. She also asks the Tribunal not to send the matter back to ITU for investigation but to find that she was the target of harassment and abuse of authority by her former supervisor, Ms B.-M., from January 2019 onwards. She seeks an order that the Tribunal's judgment on this complaint be shared with all ITU membership, Councillors, and staff members as well as an order that Ms B.-M. reimburse ITU any amounts the Tribunal may award her in its judgment on this complaint. She also seeks an order that her personnel records at the centralized HRMD system be corrected and updated. She claims an amount of not less than 200,000 Swiss francs in moral damages for harassment, abuse of authority and the inexplicable delay in initiating an investigation, and she also claims legal costs, 10,000 Swiss francs for the internal appeal process, as per the Appeal Board's recommendation, and not less than 15,000 Swiss francs for the proceedings before the Tribunal. She further claims interest on all amounts awarded, at the rate of 5 per cent per annum, from 15 November 2021 through the date such amounts are paid in full.

ITU asks the Tribunal to dismiss the complaint as manifestly irreceivable for failure to impugn a final decision. In the event that the Tribunal decides to consider the complainant's claims for relief, it argues that it would not be appropriate for the Tribunal to draw its own conclusions on the substance of the complainant's allegations but the correct course of action would be to remit the matter to ITU instead. It asserts that the complainant has not been the victim of any "legal wrong" and there is therefore no basis for the payment of moral damages. It also asserts that there are no grounds justifying her claim for the payment of legal costs for the internal appeal; ITU's internal regulatory framework contains no provision allowing for such an award

and under the Tribunal's case law, such awards are made only in exceptional circumstances, which are not present in this case. As for her claim for legal costs for the proceedings before the Tribunal, ITU considers the amount claimed unreasonable and well in excess of the amounts usually ordered by the Tribunal in comparable cases. Lastly, ITU submits it is not within the Tribunal's competence to issue injunctions against organizations or to make declarations of law. Accordingly, with the exception of the claim relating to personnel records, ITU argues that the subsidiary orders sought by the complainant lie beyond the scope of the Tribunal's competence.

Following the 29 August 2022 impugned decision and the filing of the present complaint on 29 October 2022, the Ethics Officer, in coordination with the Head, Investigation Unit, conducted another preliminary review of the same 15 November 2021 complaint of the complainant (second preliminary review), in accordance this time with Service Order No. 22/03. In a report of November 2022 to the Secretary-General, the Ethics Officer again concluded that the complainant's allegations were not substantiated, and recommended against a formal investigation. By a letter of 12 January 2023, the complainant was informed of the outcome of the second preliminary review and of the decision to accept the Ethics Officer's recommendation.

Following another internal appeal process (second internal appeal), a decision, characterised by ITU as a final decision, was taken on 14 November 2023 by the Chair of the ITU Administrative Council. That decision emphasized in particular that the Appeal Board had found that the second internal appeal did not include consideration of the impugned decision in the present complaint, "which represented a final decision on a different internal appeal", that the Chair of the Administrative Council had decided to uphold the Appeal Board's recommendation as detailed in the latter's report, and that regarding the reimbursement of legal fees, the impugned decision of 29 August 2022 in the present case fell beyond the scope of that subsequent final decision of 14 November 2023 and was the subject of another proceeding before the Tribunal, namely the current one.

On 2 February 2024, the complainant filed her third complaint with the Tribunal impugning that decision of 14 November 2023.

### CONSIDERATIONS

1. In the present (her second) complaint, the complainant impugns the decision of 29 August 2022, whereby she was notified of the Secretary-General's disagreement with the Appeal Board's recommendation of 13 July 2022 regarding the appeal that she had filed against (i) his decision of 6 December 2021 not to order an investigation into her 15 November 2021 complaint of harassment and abuse of authority and to close the matter, and (ii) his decision of 31 January 2022 to reject her request for reconsideration of this earlier decision.

In the main, the complainant contends that by the impugned decision, the Secretary-General refused (i) to follow ITU's internal rules found in Service Order No. 19/08, which was applicable to her 15 November 2021 complaint, and (ii) to pay her the amount of 10,000 Swiss francs for the legal fees related to the internal appeal process that she considers is owed to her given the executive head's refusal to order a formal investigation into her allegations, as required by paragraph 15 of this Service Order.

2. The complainant seeks oral proceedings. Given the completeness of the 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 this request is therefore rejected.

3. In her complaint, the complainant makes no less than 11 separate claims for relief that it is desirable to cite at length for a proper understanding of the issues that the Tribunal must address:

"1) Find that the Complainant's complaint of harassment and abuse of authority submitted in November 2021 falls under the ITU Service Order 19/08, in force at that time, and not under the ITU Service Order 22/03 issued in January 2022;

- 2) Find, as a consequence thereof, that the Complainant's complaint should have been the object of a proper independent investigation within three weeks, considering that [Ms B.-M.] was an elected official;
- 3) Find, as a consequence of 1) and 2) above, that the impugned decision is unlawful and set it aside;
- 4) Find, as a consequence of 3) above and without sending the matter back to ITU for an investigation, that the Complainant was the target of acts of harassment and abuse of authority by her former supervisor [Ms B.-M.] from January 2019 onwards;
- 5) Given that she has been subjected to reprehensible harassment and serious abuse of authority, and given the inexplicable delay in the initiation of independent investigation, order that she be awarded moral damages for such irregular and offensive treatment, in an amount of not less than [...] 200,000 [Swiss francs];
- 6) Order that the Judgment to be issued in this case be shared with all ITU Membership, Councillors inter alia, the [External Auditor] and the [Independent Management Advisory Committee] through the ITU Council, and its staff members, so as to raise awareness as well as prevent any further similar abusive acts and any further damages for the ITU, Membership, and staff members at large;
- 7) Order that the individuals concerned – i.e., [Ms B.-M.] – reimburse the ITU any amounts that the Tribunal will grant to the Complainant in the final judgement;
- 8) Order that the Complainant's personnel records at the centralized [HRMD] system [...] be corrected and updated;
- 9) Order that the Complainant be paid [...] 10'000 [Swiss francs] for the legal fees incurred during the internal appeal process, as recommended by the ITU Appeal Board [...];
- 10) Order that she be reimbursed all legal fees incurred in bringing this appeal, in an amount of not less than [...] 15'000 [Swiss francs] [...]; and
- 11) Order that ITU pay interest on all amounts awarded [...] at the rate of 5 [per cent] per annum, from 15 November 2021 through the date the remedies awarded [...] are implemented in full."

The Tribunal notes at the outset that regarding claims numbers 6 and 7, the complainant misunderstands and misconceives its role. Firstly, it is settled case law that it is not for the Tribunal to issue declarations of the nature sought in claim number 6 (see, for example, Judgments 4885, consideration 12, 4700, consideration 2, 4637, consideration 6, 4492, consideration 8, 4246, consideration 11, and

3876, consideration 2). Secondly, in Judgment 4832, consideration 2, regarding a claim similar to claim number 7, the Tribunal held that it cannot issue orders of the nature sought against individuals who are not parties to the pending dispute.

These two claims must therefore be dismissed for lack of competence of the Tribunal.

4. ITU raises receivability as a threshold issue. It submits that the present complaint has been filed prematurely.

In this regard, ITU contends that the complaint is directed towards an internal step in the process for the consideration of the complainant's allegations of harassment and abusive conduct, and not towards a final decision on her claim. It maintains that in the impugned decision, the Secretary-General indeed decided to reconsider his prior decision of 6 December 2021 and to instruct the Ethics Officer to undertake a preliminary review of the complainant's complaint of 15 November 2021 in accordance with Service Order No. 22/03, promulgated on 28 January 2022, rather than pursuant to Service Order No. 19/08. ITU argues that the final decision was therefore not the impugned decision, but rather, the decision communicated to her on 12 January 2023 informing her of the outcome of the new preliminary review conducted under Service Order No. 22/03 and of the related conclusion that her complaint would not be further investigated.

5. The Tribunal disagrees with ITU's assertion and considers that the impugned decision is a final challengeable decision and that the instant complaint is not premature.

First, the Tribunal observes that the impugned decision was the culminating decision in the internal appeal process that the complainant pursued in accordance with the ITU rules following the decision of 6 December 2021 not to order an investigation into her 15 November 2021 complaint and to close the matter. The impugned decision indeed expressly indicated twice that it conveyed the "final decisions" of ITU on the complainant's appeal of 5 February 2022. It also referred specifically to Staff Rule 11.1.4 which stated, at paragraph 2, that "[t]he final

decision concludes the internal appeal procedure”. To suggest, as ITU pleads, that the impugned decision is merely a step in the process and not a final decision would stand in stark contradiction with this.

Second, the Tribunal finds that ITU cannot disregard the Appeal Board’s conclusion that ITU had failed to follow and apply Service Order No. 19/08 to the complaint of 15 November 2021 and, at the same time, pretend to still reconsider its decision of 6 December 2021 by undertaking yet another preliminary review (as opposed to an investigation) of the same complaint under the pretext that Service Order No. 22/03, which entered into force on 28 January 2022, was now applicable to the original complaint. This argument of ITU would, in essence, turn its own internal appeal process on its head by allowing the Administration to decide to reconsider a prior decision while applying the rule that it had been told did not apply and, as a result, impose upon a complainant to start again an internal appeal process raising the same issue a second time.

Nothing in the ITU rules contemplates a process of that sort that would have the unfortunate consequence of imposing upon a complainant to wait several additional months before being able to submit a complaint to the Tribunal. As the complainant correctly emphasized in her pleadings, this would force her to enter a “vicious circle of repeated or reopened internal processes”.

Third, the Tribunal notes that the impugned decision put an end to the complaint lodged on 15 November 2021 regarding the recommendation to pay the complainant legal fees of 10,000 Swiss francs that was found by the executive head not to be warranted in the circumstances. At the very least, be it regarding these legal fees or regarding the applicable service order at the time the complaint was filed, the impugned decision was not a mere step in a process that remained unforeseen in the applicable ITU rules, but rather a final administrative decision taken at the end of the internal appeal process and after the complainant had exhausted the internal means of redress.

The Tribunal finds that the impugned decision thus immediately and adversely affected the complainant and that as a result, the present complaint is receivable and must be assessed on the merits. In

Judgment 3860, consideration 5, the Tribunal recalled that its case law “establishes two principles. The first is that for a decision to be final it cannot, at least in the ordinary course, be amenable to internal appeal or review or further internal appeal or review. [...] The second principle is that a decision, to be a final decision for the purposes of Article VII, paragraph 1, must of itself have legal effect (see, for example, Judgments 2201, consideration 4, and 3141, consideration 21)” (see also Judgment 1203, consideration 2). These conditions are met in the instant case. The decision of ITU to somehow try to bifurcate the process and allegedly submit the initial complaint of 15 November 2021 a second time to another preliminary review under the newly promulgated Service Order No. 22/03 cannot deny to the complainant her right to bring the instant complaint before the Tribunal.

This submission is unfounded and is rejected.

6. At this juncture, before addressing the merits of the complaint, one observation is necessary. In her pleadings on the receivability issue, the complainant chose to criticize the reference by ITU to numerous judgments of the Tribunal in a separate 14 pages analysis that she attached to her rejoinder as one of her annexes. While this did not in the end prejudice the complainant, this way of proceeding was still inappropriate and improper. In Judgment 4995, consideration 4, the Tribunal recalled that “[i]t should be borne in mind that this practice of referring to the arguments that appear in a document annexed to the complaint, rather than setting them out in the complaint itself as required by Article 6(1)(b) of the Rules of the Tribunal, is not admissible (see, for example, Judgments 4051, consideration 3, 3692, consideration 4, or 3434, consideration 5)”.

7. The main plea of the complainant can be summarized as follows: Service Order No. 19/08 was applicable on 15 November 2021 when she filed her complaint; in Judgment 4516, considerations 7 and 8, the Tribunal held that pursuant to this Service Order, it was then mandatory for the Secretary-General to order the conduct of an investigation within three weeks of receiving a complaint in writing; the latter contravened this requirement by closing the matter before the

conduct of an investigation; this was unlawful and entails that the impugned decision must hence be set aside.

For the reasons below, the Tribunal agrees.

8. First, it is not disputed that Service Order No. 19/08 was in force when the complaint of 15 November 2021 was lodged. On the face of its clear wording, this Service Order applied to the present case. At that time, and for all operative times relative to the complaint, Service Order No. 19/08 relevantly provided at paragraph 15: “Within three weeks of receiving a complaint in writing, the Secretary-General must launch a formal investigation. He may appoint one or several external investigators, entrust the inquiry to in-house officials with investigation functions or set up a commission of inquiry convened for the specific case in question”. Yet, on 6 December 2021, the complainant was informed that since the Ethics Office considered that the allegations included in her complaint appeared to be unfounded, the Secretary-General had decided that the matter would not be investigated.

9. Second, in Judgment 4516, the Tribunal held that in a situation like the instant one, there was a clear obligation on the part of ITU to open an investigation pursuant to the terms of Service Order No. 19/08. In considerations 7 and 8 of that judgment, the Tribunal found that paragraph 15 of Service Order No. 19/08, mandated the Secretary-General to order the conduct of an investigation by an investigator or investigators specified in the paragraph, within three weeks of receiving a complaint in writing. The Tribunal added that ITU could not ignore its own clear rule, and it remitted the case to the organization in order that the complainant’s harassment complaint be so investigated. These conclusions were reaffirmed in Judgment 4578 (see consideration 5 of that judgment).

10. Third, in its report of 13 July 2022, the Appeal Board emphasized that the 15 November 2021 complaint “[fell] under the application of [Service Order] No. 19/08 on ITU Policy on Harassment and Abuse of Authority”. The Appeal Board correctly observed that staff should not be penalized for the fact that ITU could not apply a

Service Order due to the alleged unreasonable or impractical procedures prescribed therein.

11. Fourth, it is desirable to recall that while it is true that Service Order No. 22/03, promulgated on 28 January 2022, abrogated and replaced Service Order No. 19/08, by its own wording at paragraph 66, the procedure described therein was meant to apply “from the date of [its] promulgation” and, in particular, to all “formal reports [of Abusive Conduct]” (that is, amongst others, the reporting by a person relating to harassment or abuse of authority, such as the 15 November 2021 complaint of the complainant) received “after said date of promulgation”. The Tribunal considers that, contrary to the assertion put forward by ITU, paragraph 66 indicated that Service Order No. 22/03 was not meant to have retroactive effect and to supersede the application of Service Order No. 19/08 that was in place when the complainant lodged her complaint on 15 November 2021 (see, for example, Judgments 5006, consideration 9, 4397, consideration 10, and the case law referred to therein).

12. In this regard, the Tribunal considers that there are fundamental difficulties in much of the substance of the approach put forward by ITU in its pleadings on this issue. To justify its argument that Service Order No. 19/08 was not applicable in the complainant’s situation but that it was rather Service Order No. 22/03 which replaced it on 28 January 2022, ITU maintains that in dealing with a claim, an administrative authority must base itself on the provisions in force at the time it takes its decision, and not on those applicable at the time the claim was submitted. It relies to that end on judgments of the Tribunal that confirmed the validity of this assertion.

All the judgments that ITU refers to concern situations where the Tribunal had ordered that the competent authority take a new decision on a claim as a result of the original administrative decision having been set aside. In such a context, the Tribunal has indeed held, in some circumstances, that where an organization is required to take a new decision after a case has been referred back to it by a judgment, “if the applicable provisions have been amended in the meantime, the

organisation must take that decision in compliance with the procedure now in force” (see, for example, Judgments 4388, consideration 6, 4324, consideration 5, and 3896, consideration 4). These were particular cases of application of a broader principle according to which “an administrative authority, when dealing with a claim, must generally base itself on the provisions in force at the time it takes its decision and not on those in force at the time the claim was submitted” (see Judgment 3034, consideration 33; see also Judgments 4020, consideration 8, and 2459, consideration 9). However, the Tribunal has added that the above principle will not apply “where this approach is clearly excluded by the new provisions, or where it would result in a breach of the requirements of the principles of good faith, the non-retroactivity of administrative decisions and the protection of acquired rights” (see Judgment 3034, consideration 33). The present case falls under at least one of these exceptions.

As already explained, the relevant applicable provisions of the ITU’s own internal rules suggest that the provisions of Service Order No. 22/03 were expected to apply to reports of abusive conduct received after the date of its promulgation, not to those received before.

The present complaint does not relate to a new decision taken pursuant to and after the issuance of Service Order No. 22/03, but rather to an initial decision finding no need to investigate the allegations of harassment and abuse of authority that was taken pursuant to Service Order No. 19/08. The argument of ITU would actually invite the Tribunal to allow the executive head of an international organization who is confronted with a clear violation of the terms of its own applicable procedure, to amend the internal rules during the internal appeal process to ensure a favorable outcome for her or his Administration in that appeal process. That would go against common sense and the basic principles of good faith that must govern the relationship between an international organization and its officials.

13. It follows from these considerations that the claims for relief numbers 1, 2 and 3 listed in consideration 3 above are well-founded and that the impugned decision must be set aside, without the necessity of

considering the other pleas of the complainant pertaining to the lack of independence and the conflict of interest of the Ethics Officer.

14. In such circumstances, it would ordinarily be appropriate to refer the matter back to ITU for the required investigation to be conducted, as the Tribunal ordered in Judgments 4578 and 4516. However, the complainant herself insists that this not be done in her situation. She rather maintains that the Tribunal should determine itself that the alleged harassment and abuse of authority are indeed established on the record. In her claim for relief number 4, she asks that the Tribunal finds that she had been the target of acts of harassment and abuse of authority by her former supervisor from January 2019 onwards. She has in fact devoted the gist of her pleadings to demonstrate the merit of her allegations in this regard.

15. The complainant is however mistaken in this respect. It is not ordinarily the role of the Tribunal to make this kind of determination, even less so in a situation where the required investigation was not carried out, as the complainant herself largely criticized. The Tribunal is clearly not an investigative body and the recognition that the required investigation was not conducted suffices to establish that the file is incomplete without it.

As ITU correctly points to in its pleadings, there has not been an investigation and there is no report upon which the Tribunal could base an assessment of the merits of the complainant's claims. The complaint and its supporting material represent a limited perspective that is insufficient for the Tribunal to reach an informed and objective decision in this regard.

The Tribunal recalls that firm and constant precedent has it that its role is not to assess the evidence itself. Indeed, with respect to harassment matters, such as the instant case, established precedent of the Tribunal states that the question as to whether harassment occurred must precisely be determined in the light of a careful examination of all the objective circumstances surrounding the denounced acts or events (see, for example, Judgments 5026, consideration 6, 4961, consideration 6,

4900, consideration 18, 4471, consideration 18, and 4241, consideration 9).

16. Nonetheless, given the express statement of the complainant that she does not want the matter to be remitted to ITU, and considering as well the length of time that has elapsed since the events that form the basis of her 15 November 2021 complaint and the fact that she is nearing the age of retirement, the Tribunal considers that a referral of the matter back to ITU would be inappropriate in this case. It is better to opt instead for the alternative solution of awarding the complainant financial compensation for the moral injury caused to her by the impugned decision (similar remedies were granted by the Tribunal, for example, in Judgments 4964, considerations 19 and 20, and 4922, considerations 17 and 18).

In the instant case, the complainant was denied the right to have her complaint of harassment and abuse of authority properly and thoroughly investigated because of the Secretary-General's wrongful decision to close the matter merely based on a preliminary assessment. As such, the complainant is entitled to compensation for ITU's failure to conduct an investigation and the subsequent decision-making based on it. The fact that she was deprived of the opportunity to have her complaint of harassment properly investigated caused her moral injury, which may be fairly redressed by awarding her compensation in the amount of 20,000 Swiss francs.

17. In her claim for relief number 9, the complainant asks that she be paid 10,000 Swiss francs for the legal fees she incurred during the internal appeal process, as the ITU Appeal Board recommended in its report of 13 July 2022.

According to the Tribunal's settled case law, costs for internal appeal proceedings may only be awarded under exceptional circumstances (see, for example, Judgments 4819, consideration 23, 4512, consideration 8, and 4217, consideration 12). In the present case, the Tribunal considers that in view of the findings of the Appeal Board in this respect and the continuous disregard by ITU, throughout the appeal process, of both its

internal rules found in the applicable Service Order No. 19/08 and Judgments 4578 and 4516, there are exceptional circumstances in the present case which warrant the award of the claimed legal fees. This claim of the complainant will therefore be granted.

18. In her pleadings, the complainant did not substantiate the basis upon which she claims an entitlement to, on the one hand, an order that her personnel records at the centralized HRMD system be corrected and updated or, on the other hand, interest on all amounts awarded at the rate of 5 per cent per annum from 15 November 2021. Her claims for relief numbers 8 and 11 must consequently be dismissed.

19. Lastly, regarding the costs of the present proceedings, the Tribunal finds that the entitlement of the complainant should be fixed at an amount of 10,000 Swiss francs.

#### DECISION

For the above reasons,

1. The impugned decision of 29 August 2022 is set aside.
2. ITU shall pay the complainant moral damages in the amount of 20,000 Swiss francs.
3. It shall also pay the complainant legal fees in the amount of 10,000 Swiss francs for the internal appeal proceedings.
4. ITU shall as well pay the complainant costs in the amount of 10,000 Swiss francs for the present proceedings.
5. All other claims are dismissed.

In witness of this judgment, adopted on 6 November 2025, Mr Michael F. Moore, President of the Tribunal, Mr Patrick Frydman, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, Mr Jacques Jaumotte, Judge, Mr Clément Gascon, Judge, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, 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

PATRICK FRYDMAN

HUGH A. RAWLINS

JACQUES JAUMOTTE

CLÉMENT GASCON

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.