

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

O.-W.

v.

Global Fund to Fight AIDS, Tuberculosis and Malaria

(Application for review filed by the Global Fund)

122nd Session

Judgment No. 3633

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgments 3506 and 3507 filed by the Global Fund to Fight AIDS, Tuberculosis and Malaria (hereinafter “the Global Fund”) on 30 September 2015 and corrected on 5 October 2015;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. In Judgments 3506 and 3507 delivered in public on 30 June 2015, the Tribunal partly allowed the complaints filed by Ms O.-W. and consequently ordered the Global Fund to pay various sums. In an application for review, the Global Fund requests the Tribunal to review several of its findings in these judgments, to amend its decisions therein and to award such other relief to the Global Fund as may be appropriate.

2. Consistent precedent has it that under Article VI of its Statute the Tribunal's judgments are "final and without appeal" and carry *res judicata* authority. They may therefore be reviewed only in exceptional circumstances and on strictly limited grounds. As stated in Judgments 1178, 1507, 2059, 2158 and 2736, for example, the only admissible grounds for review are failure to take account of material facts, a material error involving no exercise of judgement, an omission to rule on a claim, or the discovery of new facts on which the complainant was unable to rely in the original proceedings. Moreover, these pleas must be likely to have a bearing on the outcome of the case. Pleas of a mistake of law, failure to admit evidence, misinterpretation of the facts or omission to rule on a plea, on the other hand, afford no grounds for review. (See, for example, Judgments 3001, under 2, 3452, under 2, and 3473, under 3.)

3. In respect of Judgment 3506, the Global Fund firstly contends that the Tribunal incorrectly dismissed the objection to receivability raised by the Global Fund in its written submissions, that the Tribunal was not competent to hear the dispute. According to the organisation, this finding did not take account of the fact that it has entrusted staff social protection to a private insurance company. However, consideration 9 of the judgment makes it plain that, far from overlooking this fact, the Tribunal explicitly stated that the Global Fund, which is responsible for the social protection of its staff like any international organisation, would nevertheless be liable before the Tribunal for the insurance company's mismanagement of claims submitted by insured persons. In so doing, the Tribunal made a fully informed legal assessment that cannot be challenged in an application for review.

On this matter, the arguments advanced in the application merely lead the Tribunal to observe, and deplore, the Global Fund's continuing desire to disregard its responsibilities as an international organisation. If, as the Global Fund contends, its contract with the insurance company deprived it of any means of oversight over the company's claims administration, it could only be concluded that the Global Fund had seriously neglected its duties towards its staff by entering into the contract, and it therefore cannot legitimately rely on this argument.

4. The Global Fund next submits that the awards made against it in Judgment 3506 do not take into account, firstly, the fact that the contract contained no provision expressly requiring the insurer to cover medical expenses as a precautionary measure and, secondly, the fact that in February 2012 the complainant had refused to undergo a medical re-evaluation which the insurer considered necessary. However, the Tribunal did in fact bear these facts in mind and, in consideration 15, set out the reasons which led it to consider that, in the circumstances of the case, the organisation had a duty to instruct the insurer to cover the complainant's hospitalisation expenses as a precautionary measure, even prior to this re-evaluation, which was eventually carried out in February 2013. This finding was hence based on the Tribunal's assessment of points of fact and law, which cannot be challenged in an application for review.

5. The Global Fund also contends that the Tribunal made a material error and failed to take account of a material fact in considering that the complainant had requested the insurer to reimburse the sum of 8,647 Swiss francs, representing hospital expenses for the period between 1 January and 31 March 2012, whereas, according to the organisation, the complainant had never made such a request. However, at the outset the complainant had asked for coverage of all her hospitalisation expenses, and even if, as the Global Fund alleges, she had failed to submit the invoices for this specific period (which has not been proved), the organisation would in any case have had a duty to ensure that the insurer defrayed the amount at issue. Given that the insurer later agreed in principle to pay all the hospitalisation expenses incurred by the complainant up to 30 June 2013, it would evidently have been possible to remedy any omissions in the claim and obtain reimbursement. The Global Fund's pleas in this regard are therefore irrelevant.

Indeed, this line of argument is particularly inappropriate given that the invoices in question were included among the submissions in the proceedings that led to Judgment 3506. As the Tribunal noted

in consideration 14 of that judgment, it is rather odd, to say the least, that the Global Fund did not bother to resolve the dispute at that stage.

6. With regard to Judgment 3507, the Global Fund disputes the Tribunal's findings that, firstly, the organisation had subjected the complainant to harsh and humiliating treatment after a new Executive Director took office in April 2007 and, secondly, this conduct was the decisive factor in the deterioration of the complainant's health. According to the Global Fund, to have made these findings the Tribunal must have disregarded various facts, which the organisation lists in detail. However, as the Global Fund itself remarks in its application for review, these facts had already been referred to extensively in its submissions in the proceedings leading to that judgment. Indeed, the Tribunal considers that they were actually the main foundation of the organisation's arguments. It cannot therefore seriously be argued that the Tribunal did not take these facts into consideration. In reality, the Global Fund is attempting, by these pleas, to contest the assessment that the Tribunal made of these facts when coming to its decision.

Likewise, the Global Fund's allegation that the Tribunal drew incorrect conclusions from the medical reports on which it relied cannot be construed as a plea of material error, despite the misleading way in which it is presented. Once again, the Global Fund is in fact seeking to dispute the Tribunal's assessment of the evidence.

However, as has previously been stated, such assessments cannot be challenged in an application for review.

7. It ensues from the foregoing that the Global Fund's pleas plainly do not warrant a review of Judgments 3506 and 3507. In fact, it is clear that the present application for review is quite simply an attempt to re-open discussion of questions that have already been settled in these judgments. The application will therefore be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The application for review is dismissed.

In witness of this judgment, adopted on 5 May 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 July 2016.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ