Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

K. (No. 36)

v.

EPO

(Application for review)

127th Session **Judgment No. 4129**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3893 filed by Mr A. C. K. on 26 September 2017 and corrected on 5 December 2017;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. In Judgment 3893, delivered in public on 28 June 2017, the Tribunal examined the twenty-sixth complaint filed by the complainant against the European Patent Organisation (EPO). The Tribunal summarily dismissed that complaint in accordance with the procedure provided for in Article 7 of its Rules. The Tribunal found that

> "the decision to remit the case to a Medical Committee after the expert had renounced her mandate was merely a step in the procedure leading to a final decision on th[e] question [of whether the complainant's invalidity was attributable to an occupational illness]. As such, it did not in itself constitute a challengeable decision, though it could be challenged in the context of an appeal directed against the final decision on the cause of the complainant's invalidity [...]."

2. The complainant requests that his application for review of Judgment 3893 be joined with five complaints that he filed previously and which are pending before the Tribunal. This request is rejected as the application for review has no relevance for any of the pending cases.

3. As the Tribunal has consistently held, pursuant to Article VI of its Statute, its 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, for example, in Judgments 1178, 1507, 2059, 2158 and 2736, 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 author of the application was unable to rely in the original proceedings. Moreover, these pleas must be likely to have a bearing on the outcome of the case. On the other hand, pleas of a mistake of law, failure to admit evidence, misinterpretation of the facts or omission to rule on a plea afford no grounds for review (see, for example, Judgments 3001, under 2, 3452, under 2, and 3473, under 3).

The amendment of Article VI of the Statute of the Tribunal introduced in 2016 in order to recognise the parties' right to file an application for review has no bearing on the grounds on which such applications may be admitted according to the case law cited above.

4. As a basis for review, the complainant asserts that the Tribunal overlooked the fact that the above-mentioned expert committed a "criminal offence" – an allegation that he makes repeatedly in his submissions. However, apart from the fact that the existence of a criminal offence does not depend on the personal perception of the complainant, this issue has no bearing whatsoever on the outcome of the case, which was based on the Tribunal's finding that his twenty-sixth complaint was not directed against a challengeable decision. The complainant's contention that the Tribunal overlooked a material fact is therefore unfounded.

5. The complainant also contests other factual elements mentioned in Judgment 3893, such as when the expert issued the draft report. The complainant argues that this was out of time. However, Judgment 3893 simply refers to the date on which the report was issued without drawing any legal consequence from this fact. Not only was the date mentioned correct, as confirmed by the complainant in his application for review, but the entire discussion on the timing of the report again has no bearing on the outcome of the case as determined by Judgment 3893. Accordingly, no review of the judgment is warranted.

6. It is plain from the complainant's submissions that he simply disagrees with the conclusion that the Tribunal arrived at in Judgment 3893, which turned on an issue of law. However, as mentioned above, the plea of a mistake of law is not an admissible ground for review (see Judgment 1529, consideration 7). In the remaining part of his lengthy brief (92 pages), the complainant does not refer to Judgment 3893 itself, but rather seeks to re-litigate the underlying issues. He also refers extensively to other complaints he has filed with the Tribunal. However, inasmuch as those complaints were not the subject of Judgment 3893 and are not the subject of the present proceedings, these submissions are irrelevant.

7. It follows that the application for review must be summarily dismissed in accordance with the procedure set out 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 9 November 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ