

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

B.

v.

ICC

(Application for review)

128th Session

Judgment No. 4198

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4004 filed by Mr C. E. E. B. on 6 December 2018;

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. The complainant applies for the review of Judgment 4004 delivered in public on 26 June 2018. In that judgment, the Tribunal determined that the decisions of the International Criminal Court (ICC) to abolish the complainant's post and to terminate his appointment were unlawful since the Principles and Procedures upon which they were made were promulgated in breach of the process stipulated in the Presidential Directive. As a Separation Agreement into which the complainant had entered with the ICC arose from the implementation of the unlawful Principles and Procedures, it was unenforceable. On these grounds, the Tribunal decided to set aside the impugned decision of 12 February 2016, as well as the initial decision made on 22 June 2015 to abolish the complainant's post and to terminate his appointment. However, the Tribunal determined that the complainant had not

presented cogent evidence that the decisions were taken in breach of his right to equal treatment or in bad faith, as he had contended. The Tribunal awarded the complainant material damages in the amount of 180,000 euros, deducting therefrom the 139,113.62 euros which the ICC had already paid him under the Separation Agreement, and 5 per cent interest on the resulting balance from 9 September 2015 until the date of payment. He was also awarded moral damages in the amount of 3,000 euros and 1,000 euros in costs.

2. Consistent precedent has it that a judgment of the Tribunal may be reviewed only in exceptional circumstances and on strictly limited grounds. The rationale for this was stated, for example, in Judgment 3899, consideration 3, as follows:

“[P]ursuant to Article VI of its Statute, the Tribunal’s judgments are ‘final and without appeal’ and have *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 which the complainant was unable to rely on 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. The complainant proffers two grounds of review contending that “(1) there were material error(s)/mistaken findings of fact involving no exercise of judgement” in the Tribunal’s decision and “(2) the Tribunal omitted to rule on claims” that he made. Although the complainant refers to the omission to rule on his claims, what he in fact argues is the failure to rule on a series of pleas made in his first complaint. The various pleas which the complainant proffers in the second ground of review are inadmissible given the statement in the case law that an omission to rule on a plea affords no ground for review.

4. Pursuant to the first ground of review, the complainant argues that the Tribunal committed a material error when it mistakenly found, in consideration 1 of Judgment 4004, that the ICC had already issued

him a letter in the form required by the ICC's Rules as no such letter was ever issued to him. He states that there is no evidence that the letter which he requested in his complaint was issued to him on his separation from service in September 2015 and that in concluding that it was issued, the Tribunal mistook a Letter of commendation/Acknowledgement, dated 17 November 2011, from the former Registrar of the ICC for the letter which he requested. He points out that this letter was not an appraisal of his performance from August 2013 to September 2015 and it was not a certification of his service upon separation from service. The complainant is mistaken. In the claims for relief which he sought in his complaint, the complainant had requested the Tribunal to order the ICC to issue him with a letter of recommendation reflecting exactly his last performance appraisal. However, the Tribunal noted the Declaration dated 12 August 2015, which the then Head of the Staff Administration Unit had issued detailing the complainant's duties and responsibilities and testifying that the complainant performed his duties with "utmost diligence and professionalism". It was on the basis of this Declaration that the Tribunal declined to mandate the ICC to issue a letter in the terms which the complainant requested. There was no material error in this decision. This plea therefore fails as a ground of review.

5. The complainant also argues that the Tribunal committed a material error when it concluded, in consideration 7 of Judgment 4004, that he had not provided cogent evidence that the decisions to abolish his post and terminate his service were taken in breach of his right to equal treatment. This, however, is an inadmissible ground for review as the arguments and the evidence which the complainant presents to support it merely invite the Tribunal to reconsider its finding on this issue on the ground that it has, in effect, misinterpreted the facts.

6. It follows that the application for review is clearly irreceivable and must be summarily dismissed in accordance with the procedure set out in Article 7 of the Tribunal's Rules.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 13 May 2019, Mr Giuseppe Barbagallo, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

YVES KREINS

DRAŽEN PETROVIĆ