

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

D.

v.

EPO

(Application for review)

136th Session

Judgment No. 4729

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4415 filed by Mr A. D. on 21 October 2021, the reply of the European Patent Organisation (EPO) dated 17 February 2022, the complainant's rejoinder of 7 March 2022 and the EPO's surrejoinder of 7 June 2022;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS

1. The complainant is a former staff member of the EPO who was dismissed in August 2017. Ultimately, after an internal appeal process, the complainant filed a complaint with the Tribunal in March 2018. This led to Judgment 4415, delivered in public in July 2021. He was successful in establishing that the decision to dismiss him was unlawful. He was awarded 80,000 euros material damages and 40,000 euros moral damages. However, no order of reinstatement, as sought by him, was made.

2. The complainant has filed with the Tribunal an application for review of Judgment 4415. Until recently, the process of review was not expressly recognised in the Tribunal's Statute, but it now is in Article VI, paragraph 1, of the Statute, by an amendment adopted by the International Labour Conference on 7 June 2016. However, the settled principles governing the process of review have been developed by the Tribunal over time, and before the amendment, and continue to apply. As the Tribunal most recently observed in consideration 2 of Judgment 4440:

“[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. A central grievance of the complainant in his application for review is the failure of the Tribunal to order his reinstatement, though he also challenges the quantum of material damages awarded, if not reinstated. The account, in Judgment 4415, of the background leading to the EPO's decision to dismiss the complaint will not be repeated in this judgment but informs specific observations made by the Tribunal in this judgment. The complainant acknowledges and accepts the principles discussed in the preceding consideration, and endeavours to frame his arguments accordingly.

4. The complainant's first argument focuses on what he says is a material factual error in Judgment 4415. It arises from what he characterises as a finding by the Tribunal in consideration 13 of the judgment that he had made false entries. He says this is not true and had a bearing on the Tribunal's assessment of whether reinstatement was an appropriate remedy, as stated in consideration 15 of Judgment 4415:

“To make an order reinstating the complainant would place both the complainant and the Organisation in a position where the material conduct founding the charges, or similar conduct, might be repeated”. His second argument is that “new facts” establish he had not engaged in alleged fraudulent behaviour, namely the submission of false entries with the purpose of inflating his production and/or hiding the backlog of work. His third argument is that the Tribunal failed to consider certain specified facts, said to be material facts, when making the orders for relief in Judgment 4415.

5. It is unnecessary to address the pleas summarised in the preceding consideration. That is because there is an overarching requirement referred to in consideration 2 above, that the complainant’s pleas (on their assumed success) must be likely to have had a bearing on the outcome of the case. The short answer, in this case, is that the alleged errors (if they be reviewable errors) on the Tribunal’s part are not likely to have had a bearing on the central outcome, namely the refusal to order reinstatement. Following the passage in consideration 15 of Judgment 4415, quoted above, the Tribunal said: “Additionally, the complainant himself admitted in his complaint brief that his illness has ‘dramatically impacted upon his ability to carry out his tasks as an employee of the EPO’”. That fact alone justified the refusal to order reinstatement.

6. On the question of the assessment of material damages, the following should be noted. In relation to the alleged failure to consider material facts, the complainant identifies several which, in his view, should have had a bearing both on whether to order reinstatement and on the assessment of material damages. They included his actual partial and impending total invalidity, that his dismissal resulted in a complete loss of income and, in that context, his medical condition created “the impossibility of finding an alternative source of income”, as did him having been branded a “crook”, he lost his medical insurance linked to his employment at the EPO, and he could not afford expensive private health insurance arrangements. Insofar as the assessment of material damages is concerned, mostly these matters were adverted to

compendiously (and considered) by the Tribunal when it said in consideration 16 of Judgment 4415 that “[b]ecause of his dismissal, [the complainant] lost the opportunity at a young age to continue in employment with the EPO or to end his employment more favourably to him, including by obtaining an invalidity pension”.

7. As to any matter not expressly adverted to (such as medical insurance), as the Tribunal observed in Judgment 3478, consideration 5:

“The Tribunal recalls that it will not allow review of a judgment on the ground that it has omitted to rule on all the pleas submitted in the original proceedings. As it has often observed about such argument, omission to rule on an argument does not afford grounds for review, because then it would have to pass express judgments on all such pleas, even if they were plainly immaterial to the issue at hand (see, for example, Judgments 1294, under 3, and 748, under 4).”

8. The complainant has not established a basis for any modification of the orders made in Judgment 4415 and, accordingly, the application for review should be dismissed.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 2 May 2023, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Mr Jacques Jaumotte, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

JACQUES JAUMOTTE

DRAŽEN PETROVIĆ