

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

G. (No. 2)

v.

UNWTO

(Application for review filed by UNWTO)

138th Session

Judgment No. 4868

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4456 filed by the World Tourism Organization (UNWTO) on 22 March 2023, Ms A. G.'s reply of 27 April 2023, UNWTO's rejoinder of 30 May 2023 and the complainant's surrejoinder of 27 July 2023;

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

Having examined the written submissions;

CONSIDERATIONS

1. UNWTO has applied for the review of Judgment 4456, delivered in public on 27 January 2022. This application is one of two concerning this judgment, the other being an application for interpretation by the Organization. Several other applications have also been made in relation to another judgment, Judgment 4577, linked to Judgment 4456, namely an application for review of Judgment 4577 by the Organization, an application for interpretation by the Organization of that judgment and an application for execution of that judgment by Ms G., the complainant in the various proceedings. While these applications are interconnected, it is convenient to deal with them separately in order to ensure there is no uncertainty or ambiguity

concerning the consideration of the pleas and the implementation of the relevant principles in each application. No order of joinder should be made.

2. It is unnecessary to summarise the facts on which Judgment 4456 is based nor is it necessary to summarise generally the reasoning and conclusions of the Tribunal in that judgment. Both emerge clearly from the published reasons though the Organization challenges aspects of that reasoning as discussed in the following considerations.

3. It is convenient to identify the applicable principles at the outset. As the Tribunal most recently observed in Judgment 4783, consideration 4:

“The principles applicable in an application for review are well settled (see, for example, Judgment 4736, consideration 4, and the case law cited therein):

‘[T]he 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.’”

4. While UNWTO accepts these principles govern this application for review and relies on elements in them, the substance of its argument is beyond the scope of a review.

5. The Organization argues that the Tribunal failed to take account of material facts and committed a material error. Firstly, it characterises its failure to investigate the former Secretary-General’s evidence as simply a due process flaw. This failure was more fundamental. The complainant had been a staff member of the Organization for 27 years and most of her conduct founding the decision to dismiss her occurred during the period the former Secretary-General was the executive head. The import of the scant evidence from

him that was considered, explained and excused the conduct of the complainant. It is simply wrong for the Organization to say, as it does in its pleas:

“In other words, while the Tribunal considers that a due process flaw was committed when adopting the contested decision, it recognised that, should such a flaw had not been committed, the decision would have been considered not only as properly substantiated, but also warranted and proportionate to the proven misconducts.”

Nothing was said by the Tribunal which would warrant this observation, particularly the latter part of it.

6. The complainant makes the point in her response to the initial pleas by the Organization in its application for review, correctly, that the Organization never clearly illustrates what were the material facts the Tribunal failed to take into account and what was the alleged material error made by the Tribunal. In its response to this plea by the complainant, the closest the Organization comes to identifying a second flaw in the Tribunal’s reasoning is that the “Tribunal failed to take into account the fact that the UNWTO did attempt to ascertain from the [c]omplainant details of the former Secretary-General’s knowledge, approval and instructions, while to no avail”. This assertion was challenged by the complainant in her surrejoinder in this application.

7. She firstly notes, correctly, that this involves a distortion of what the Tribunal said, namely that UNWTO failed to ascertain from the former Secretary-General details of his knowledge, approval and instructions. She secondly asserts that “UNWTO cannot provide examples of any attempt to ascertain anything from the former Secretary General, because such an attempt does not exist”. What is important is that UNWTO has not pointed to any evidence adduced during the proceedings leading to Judgment 4456 nor during the present proceedings, which would sustain a finding of fact that attempts were made.

8. UNWTO has failed to make out a ground of review. Accordingly, this application should be dismissed.

9. The complainant seeks an order for costs in the sum of 1,500 euros to which she is entitled in the circumstances of this case given that she has been put to the trouble and expenses of, legitimately, answering the Organization's pleas in this application to protect her interests.

DECISION

For the above reasons,

1. The application for review is dismissed.
2. UNWTO shall pay the complainant costs in the sum of 1,500 euros.

In witness of this judgment, adopted on 6 May 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 8 July 2024 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

MIRKA DREGER