(Application for review)

117th Session   **Judgment No. 3328**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 2965, filed by Mr Y. E. A. on 21 November 2011;

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 Judgment 2965, delivered on 2 February 2011, the Tribunal, ruling on the complaint filed against the decision of 19 November 2008 whereby the Director-General of UNIDO dismissed the complainant's internal appeal lodged against his "premeditated improper termination with abuse and misuse of authority", decided inter alia that:

– the impugned decision is set aside insofar as it concerns the refusal to renew the complainant's contract; and

– the case is referred back to UNIDO in order that the Joint Appeals Board express an opinion on the merits of the complainant's internal appeal, which will be reclassified as being directed against the decision of 23 November 2007,

rejecting his request to review the decision not to renew his contract.

2.   When examining the complainant's internal appeal, the Joint Appeals Board had considered that the complainant had not followed the correct procedure and declared that the appeal was irreceivable because it was premature. The Board had nevertheless recommended that the complainant should be given a further 60 days to enable him to explore the possibility of settling the dispute with the Organization or, failing that, to provide him with an opportunity to lodge another internal appeal.

3.   The Tribunal, however, whilst noting that the complainant had failed to comply with the rules of procedure when lodging his internal appeal, considered that the Director-General could not, in the circumstances of the case, reject the complainant's appeal as being premature without adopting an excessively formalistic approach.

The Tribunal held that, in order not to deprive the complainant of his right of appeal for a trivial reason, the Director-General ought to have treated his internal appeal as being directed against the decision of 23 November 2007.

The complainant has filed an application for review of the above-mentioned Judgment 2965.

4.   In support of his application, the complainant puts forward the following pleas:

–   failure to take account of specific facts,

–   material error,

–   a mistaken finding of fact,

–   omission to rule on a claim.

He merely states that it is incumbent upon the Tribunal to exercise its authority to determine itself the grounds for review put forward, whatever the terms in which the application for review was made.

5.   The Tribunal observes that its role is not to substitute itself for the complainant in identifying, amongst his arguments, those grounds which, in his view, justify a review of Judgment 2965, especially given that his arguments are so confused that this would be an impossible task.

6.   In this case, the impugned decision was set aside, as requested by the complainant, and the case was referred back to the Organization so that the Joint Appeals Board might express an opinion on the merits of the complainant's internal appeal.

Thus, Judgment 2965 does not, in any event, contain any error likely to harm the complainant's interests.

7.   In the light of the above, the Tribunal is bound to dismiss the application for review by applying the summary procedure provided for under Article 7 of its Rules.

DECISION

For the above reasons,
The application is dismissed.

In witness of this judgment, adopted on 20 February 2014, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 April 2014.

CLAUDE ROUILLER
SEYDOU BA
PATRICK FRYDMAN

DRAŽEN PETROVIĆ