

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

D. (No. 2)

v.

Global Fund to Fight AIDS, Tuberculosis and Malaria

(Application for review)

123rd Session

Judgment No. 3721

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3681 filed by Mr P. D. on 5 August 2016 and corrected on 8 September 2016;

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 3681, concerning the complainant's first complaint, the Tribunal considered that the e-mail of 30 August 2012, which the complainant impugned, merely confirmed the decision of 5 July 2012 notifying him of the breakdown of his termination entitlements and dismissed the complaint as irreceivable on the grounds that it had been filed more than 90 days after the complainant had been notified of that decision.

2. The complainant seeks the review of that judgment. Consistent precedent has it that, under Article VI of its Statute, the Tribunal's judgments are final and without appeal and carry *res judicata* authority. They may be reviewed only in exceptional circumstances and on strictly limited

grounds. The only admissible grounds therefor are failure to take account of material facts, a material error, in other words a mistaken finding of fact involving no exercise of judgement which thus differs from misinterpretation of the facts, 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. 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, 3473, under 3, and 3634, under 4).

3. The complainant submits that the Tribunal failed to take account of material facts and made a mistaken finding of fact. He endeavours to show that the letter of 5 July 2012 was not a final decision but a decision confirming decisions that formed the subject of his internal appeal. He states that the reason he had challenged them before the Appeal Board was that they alone constituted acts adversely affecting him. However, the Appeal Board, which refused to entertain his appeal, did not acknowledge that this was the case and the Tribunal did not “take notice of that mistake”, which “undoubtedly had an impact on receivability”. He contends that by giving him a “time limit of two months to obtain a written decision on the same basis as the initial appeal”, the Appeal Board misled him, but that “errors of the organisation [...] cannot form legal obstacles to the complainant’s right to appeal when he has complied with the internal procedure”. The complainant also emphasises that “new decisions” concerning him were taken in July and August 2012, but that the Tribunal failed to take account of them. Lastly, he takes the Tribunal to task for ignoring the fact that his request to bring the dispute directly before it had been rejected.

4. These pleas are tantamount to calling into question the contested judgment on the basis of evidence which was produced in the initial proceedings and therefore already examined by the Tribunal. As indicated in consideration 2, above, such pleas are irreceivable in an application for review.

The filing of this application for review is in fact merely an attempt to re-open issues already settled in Judgment 3681.

The Tribunal will therefore summarily dismiss this application in accordance with the procedure provided for in Article 7 of its Rules.

DECISION

For the above reasons,
The application for review is dismissed.

In witness of this judgment, adopted on 10 November 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ