

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**L. (No. 2)**

**v.**

**WHO**

(Application for review)

**125th Session**

**Judgment No. 3898**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3873 filed by Mr S. L. on 21 September 2017;

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 seeks a review of Judgment 3873, in which the Tribunal dismissed his first complaint against the World Health Organization (WHO) as irreceivable on the grounds that he had not exhausted the internal means of redress. He contends that the Tribunal failed to take account of material facts by “completely disregarding the basic principles of staff management” of an agency in the United Nations system. He further alleges that the Tribunal misconstrued Staff Rule 1230.8.3 and submits that in his first complaint he showed that there had been a failure to observe, in substance and in form, his terms of appointment or the provisions of the Staff Regulations; he had been unable to comply with Article VII, paragraph 1, of the Statute of the Tribunal precisely because WHO had disregarded his terms of appointment and its own rules. He contends that his transfer to Matadi

was not based on any document issued by the WHO Representative in the Democratic Republic of the Congo, who was the only official authorised to make such a decision. According to the complainant, the administrative officer of the Office of the WHO Representative arrogated the latter's prerogatives and, by failing to provide the complainant with an official decision of the Representative, ensured that the complainant was not able to appeal within the time limits prescribed by the Staff Rules. He hence submits that, having never received "notification documents" concerning his transfer to Matadi, he is "still within the time limit" for filing a complaint with the Tribunal.

2. Article VI of the Statute of the Tribunal provides that judgments are "final and without appeal". Consistent precedent has it that they "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, 3634, under 4, and 3721, under 2.)

The recent amendment of Article VI of the Statute of the Tribunal recognising the right of the parties to file an application for review has no bearing on the grounds on which such applications may be admitted according to the case law cited above.

3. In the present case, the complainant calls into question Judgment 3873 merely on the basis of evidence produced during the original proceedings which has therefore already been considered by the Tribunal. He does not adduce any new facts on which he was unable to rely in the original proceedings through no fault of his own, but simply disagrees with the Tribunal's appraisal of the evidence and its interpretation of the law.

4. The complainant further maintains that in considerations 5 and 6 of Judgment 3873 the Tribunal ruled on the merits, despite the President's decision to confine the proceedings to an examination of the complaint's receivability. However, contrary to the complainant's contention, the Tribunal ruled on receivability alone in these considerations.

5. It ensues from the foregoing that the complainant's application for review does not raise any of the admissible grounds for review cited above. It is merely an attempt to re-litigate matters that were conclusively decided in Judgment 3873. 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 16 November 2017, Mr Patrick Frydman, Vice-President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 24 January 2018.

*(Signed)*

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ