Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

A.

v.

ACP Group

(Application for review and interpretation
filed by the ACP Group)

126th Session **Judgment No. 3984**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review and interpretation of Judgment 3845 filed by the African, Caribbean and Pacific Group of States (ACP Group) on 17 August 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. By Judgment 3845, delivered on 28 June 2017, the Tribunal set aside the decision of 31 July 2015 dismissing Mr A. from the duties which he was performing as a grade P4 Expert in the ACP Group at the end of the probationary period stipulated by his contract, in other words with effect on 31 August 2015, and the decision of 4 November 2015 taken on his internal appeal against the aforementioned decision. Having dismissed a challenge to its competence and an objection to receivability raised by the ACP Group, the Tribunal found that the complainant, whose dismissal was based on what was regarded as his unsatisfactory service, had not been informed in a timely and

satisfactory manner of the aspects of his performance that were deemed deficient, and that during his probationary period he had not received a performance assessment satisfying the requirements of Article 11 of the Staff Regulations.

Under point 2 of the decision in the judgment, the Tribunal ordered the defendant organisation to pay the complainant damages, calculated as indicated in consideration 10, in compensation for all the injury he had suffered. That consideration stated that the complainant should receive damages "equivalent to the salary and benefits that he would have received in the 24 months from 1 September 2015, the date on which he left the organisation, less his professional earnings from other sources over that period", and further specified that "[t]he ACP Group must also pay the complainant the equivalent of the employer's and employee's contributions that would have been due to the Provident Fund if his employment had continued during that same period".

2. In its application for review and interpretation, the ACP Group asks the Tribunal to review its findings in that judgment or, failing that, to clarify some of its orders which, it alleges, are ambiguous.

3. As a threshold issue, the organisation complains that the case was entered on the list of cases to be examined at the session held in April and May 2017, despite the fact that in a letter of 16 December 2016 its counsel had informed the Tribunal, in response to a letter from its President enquiring whether an amicable settlement might be reached in the dispute, that the ACP Group was willing to consider such a settlement. However, in a letter of 3 January 2017, Mr A.'s counsel had notified the Tribunal that "the attempt to bring the parties to an agreement [...] [had] proved fruitless" and that he would like the Tribunal to place the case on the list for the session, which clearly ruled out any possibility of a settlement. In these circumstances, the Tribunal had good reason to proceed with the examination of the complaint.

Moreover, since the judgment in question has been delivered, its execution cannot in any case be stayed, as the ACP Group requests, pending a reply from Mr A. or his counsel to the proposal contained in

the above-mentioned letter of 16 December 2016. Indeed, according to the Tribunal's case law, an application for the stay of execution of a judgment is not admissible (see Judgment 3003, under 30 *et seq*).

4. As the Tribunal has consistently held, pursuant to Article VI of its Statute, its judgments are "final and without appeal" and carry *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 on which the author of the application was unable to rely 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, and 3473, under 3).

The amendment of Article VI of the Statute of the Tribunal introduced in 2016 in order to recognise the parties' right 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.

5. In support of its request for a review of Judgment 3845, the ACP Group first alleges that it rests on various material errors.

It contests the Tribunal's determination that it was competent to rule on the dispute, was arguing that the organisation's intention was to recognise its jurisdiction only in respect of disputes of a disciplinary nature, and likewise its finding that the time limit for filing the complaint had been observed in this case, because an appeal had been submitted to the Chairperson of the Committee of Ambassadors. The ACP Group considers that, by so ruling, the Tribunal "violated the sovereign authority" of the organisation and its Member States by allowing itself "to amend the content of the Staff Regulations". The ACP Group adds, with reference to the Tribunal's competence, that

it "breached Belgian public policy" since, in its opinion, the case should have been heard by the Belgian courts.

However, in order to determine these questions of competence and receivability, the Tribunal made legal assessments which were duly explained in the reasoning of the judgment and which may not be challenged in an application for review. Thus, despite the misleading way in which they are presented, the pleas raised by the ACP Group cannot be construed as relating to material errors, but solely as an attempt to challenge the Tribunal's informed rulings on these issues.

6. The ACP Group then contends that in Judgment 3845 the Tribunal failed to take account of material facts.

Referring to the Tribunal's finding that, contrary to the applicable rules, no adversarial interim assessment had been made of Mr A.'s performance "at the end of either the sixth or the ninth month of the probationary period", the organisation submits that the complainant, who by then had been working for it for more than a year and a half, had already received several assessments that were not subject to any particular formalities under the Staff Regulations and that he therefore "knew what was expected of him". However, the Tribunal by no means ignored these facts and, in determining for the reasons set forth in considerations 8 and 9 of the contested judgment that the complainant's dismissal nonetheless did not comply with the requirements of its case law and the applicable rules, it weighed up all the pertinent facts of the dispute and this assessment likewise cannot be challenged in an application for review.

The organisation's criticism according to which the Tribunal did not "investigate the facts" which, in its opinion, proved the unsatisfactory nature of Mr A.'s performance, is beside the point. Having regard to the reason given for setting aside the disputed dismissal, in other words the unlawfulness of the procedure preceding this decision, the Tribunal had no need to rule on whether the allegations regarding the complainant's professional shortcomings were true, since in this case, this had no bearing on the outcome of the dispute, or indeed on the amount of

damages awarded in consequence of setting aside the dismissal decision.

7. As far as those damages are concerned, the ACP Group submits that the Tribunal's judgment contained an "inherent contradiction" in that the Tribunal set aside the disputed dismissal while at the same time awarding Mr A. compensation based on the existence of that dismissal. However, quite on the contrary, there is no contradiction between setting aside an unlawful decision and compensating the injury caused by it.

The organisation further alleges that the Tribunal omitted to deduct from the damages awarded to the complainant a sum of 34,397.82 euros which he received on his dismissal as an end-of-service allowance, payment for days of leave not taken and the defrayal of various costs. However, the Tribunal deliberately did not deduct this amount, as it considered that the complainant was entitled to retain the sum in question in addition to the damages awarded by the judgment, particularly because although his dismissal was set aside, he was not in fact reinstated in the organisation.

8. None of the grounds put forward to justify a review of Judgment 3845 will therefore be accepted.

9. In support of its request for interpretation of Judgment 3845, the ACP Group contends that the above-quoted phrase in consideration 10 thereof, regarding the determination of the damages awarded to Mr A., requires clarification in several respects.

10. According to the Tribunal's case law, ordinarily an application for interpretation can concern only the decision contained in a judgment and not to the grounds therefor. It is, however, accepted that such an application may additionally concern the grounds if the decision refers to them explicitly so that they are indirectly incorporated in the decision (see Judgments 2483, under 3, 3271, under 4, and 3564, under 1). Hence, in this instance, the organisation may request interpretation of

the above-mentioned consideration 10 of Judgment 3845 to which, as has been stated, the decision itself refers.

However, an application for interpretation is receivable only if the meaning of the judgment concerned is uncertain or ambiguous to such an extent that the judgment cannot be executed (see, for example, Judgments 1306, under 2, 3014, under 3, or the aforementioned Judgment 3271, under 4).

11. In the present case, the ACP Group first asks the Tribunal to specify the date on which the contractual relationship between the organisation and Mr A. ended. It is clear that this is the date on which the dismissal took effect, in other words 31 August 2015, because although that decision was set aside, the complainant was not reinstated in the organisation, which means by definition that the employment relationship between the parties ended on that date.

The Tribunal is also requested to say whether the above-mentioned sum of 34,397.82 euros paid to the complainant on his dismissal must be deducted from the amount of the damages awarded to him. For the reason stated in consideration 7, above, no such deduction should be made, and it should be emphasised that Judgment 3845 contained no ambiguity in this respect, since it made no provision for this deduction and the Tribunal's judgments must be executed as written.

12. As the ACP Group considers that some of the wording in the aforementioned consideration 10 of the judgment in question is unclear, it asks the Tribunal to explain whether the "salary and benefits" which Mr A. would have received for 24 months as from 1 September 2015, the equivalent of which must be paid to the complainant as damages, and "his professional earnings from other sources over that period" which, if they exist, should be deducted from the amount thus calculated, must be understood to mean respectively the "net monthly salary" and "any income which Mr A. might have received for professional reasons during the 24 months following 1 September 2015".

With regard to the first point, the reference to "salary and benefits" clearly means the net monthly salary and related benefits which the complainant would have received. In particular, it is obvious that the salary in question is net and not gross, because consideration 10 of the judgment also specifies that, in addition to these sums, the organisation must pay the complainant the "equivalent of the employer's and employee's contributions that would have been due to the Provident Fund if his employment had continued during that same [24-month] period".

As for the reference to "[Mr A.'s] professional earnings from other sources over that period", the Tribunal fails to see what those words could refer to other than "any income which Mr A. might have received for professional reasons during the 24 months following 1 September 2015". It will therefore confine itself to commenting in this connection that the ACP Group has no right whatsoever to claim, as it apparently seeks to do in its application, that in the event of that professional earnings amount to more than the salary and benefits due to the complainant, he should pay the organisation the difference, since such a claim plainly has no basis in law.

13. All in all, the Tribunal considers that none of the clarifications requested by the ACP Group is warranted by any genuine ambiguity or lack of clarity in the wording of Judgment 3845.

14. It follows from the foregoing that the application for review and interpretation filed by the ACP Group is manifestly inadmissible. It will therefore be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal, without there being any need to grant the organisation's request for oral proceedings.

DECISION

For the above reasons,

The application for review and interpretation is dismissed.

In witness of this judgment, adopted on 27 April 2018, 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 26 June 2018.

(Signed)

PATRICK FRYDMAN FATOUMATA DIAKITÉ YVES KREINS

DRAŽEN PETROVIĆ