

111th Session

Judgment No. 3047

THE ADMINISTRATIVE TRIBUNAL,

Considering the tenth complaint filed by Ms M.d.R. C.e.S.d.V. against the World Meteorological Organization (WMO) on 23 July 2010, which comprises an application for interpretation of Judgment 2742 and an application for review of Judgment 2861;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. This case comprises an application for interpretation of Judgment 2742, delivered on 9 July 2008, and an application for review of Judgment 2861, delivered on 8 July 2009. It is convenient to refer to the applicant in these proceedings as “the complainant”. By Judgment 2742, the Tribunal set aside a decision of the Secretary-General insofar as it dismissed the complainant’s appeal with respect to a decision to reassign her from the post of Chief of the Internal Audit and Investigation Service (IAIS) to that of Chief of the Internal Audit Service (IAS) following the purported abolition of the IAIS and the creation of the Internal Oversight Office (IOO). So far as is presently relevant, the Tribunal awarded the complainant material

damages in the sum of 50,000 Swiss francs, moral damages in the sum of 20,000 francs and costs in the sum of 8,000 francs. By Judgment 2861, the Tribunal set aside decisions of the Secretary-General dismissing the complainant's claims of harassment and dismissing her appeal with respect to her summary dismissal on 3 November 2006, as well as the decision of 3 November 2006. Additionally, the Tribunal ordered WMO to pay the complainant the salary, benefits and other allowances that she would have received between 3 November 2006 and 31 May 2007 when her contract would otherwise have expired, and the sum of 190,000 Swiss francs by way of exemplary, material and moral damages and costs in the sum of 25,000 francs.

2. In Judgment 2742 the Tribunal held that the "restructuring involving the abolition of the IAIS was contrary to the WMO Financial Regulations, as they stood until January 2008, and was until then beyond the power of the Secretary-General". In consequence, it held that the complainant's reassignment was "an act done without lawful authority". The complainant does not seek interpretation of the orders made in that judgment. Rather, she seeks to have implications drawn from the findings made with respect to the abolition of the IAIS. In effect, the complainant seeks to have the Tribunal declare that she remained Chief of IAIS until 31 May 2007 or, perhaps, 3 November 2006, reporting directly to the Secretary-General and with no hierarchical relationship to the Director of IOO. In support of her claim in that regard, she asserts that the Tribunal has a responsibility to rule upon, and impliedly to enforce, the WMO Financial Regulations. Moreover, she seeks, amongst other relief, "exemplary material damages [...] as redress [for] the Secretary-General's overthrow of WMO fundamental government regime".

3. The complainant's assertion that the Tribunal should rule upon and, impliedly, enforce the Financial Regulations of WMO is misconceived. The Tribunal's function is to rule upon complaints with respect to the non-observance of an official's terms of appointment and the applicable Service Regulations. This was done in Judgment 2742 when the Tribunal set aside the Secretary-General's

decision to dismiss the complainant's internal appeal with respect to her reassignment and ordered WMO to pay her material and moral damages, as well as costs.

4. In seeking to have the Tribunal declare that the complainant continued to occupy the post of Chief of IAIS until 31 May 2007 or, perhaps, until 3 November 2006, the complainant seeks to lay a foundation for the review of Judgment 2861 and, also, for additional relief by way of an order that the Secretary-General "issue a work/service certificate [as to] [...] the position(s) [...] occupied [by the complainant] and which functions she had". Both purposes are extraneous to the power of the Tribunal to interpret its judgments. That power exists to remove ambiguity and/or doubt as to the terms of the Tribunal's orders so that a party may know exactly what it must do to give effect to them. In the present case, there is no ambiguity as to the Tribunal's orders. Indeed, there is no reason to think that they have not been carried into effect in accordance with their terms. Thus, the application for interpretation of Judgment 2742 is clearly devoid of merit and must be dismissed in accordance with the summary procedure provided for in Article 7 of the Tribunal's Rules.

5. It is well established that the Tribunal's judgments may only be reviewed in exceptional circumstances and on strictly limited grounds. As stated in Judgment 3001, "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 complainant was unable to rely in the original proceedings" (see also Judgments 1178, 1507, 2059, 2158 and 2736). Further, and as also pointed out in Judgment 3001, "[p]leas 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".

6. As already indicated in relation to the application for interpretation of Judgment 2742, the complainant contends that, as a matter of law, she is to be treated as having continued to occupy the position of Chief of IAIS at all relevant times. She contends that in

Judgment 2861 the Tribunal erred in finding, in consideration 44, that as from 10 June 2006 she “[could] not properly be regarded as occupying the post of Chief of IAIS” and, thus, the WMO Financial Regulations were not relevant to the decision of 25 October 2006 not to renew her contract on its expiry in May 2007 and the subsequent decision of 3 November 2006 with respect to her instant dismissal. She also contends that the related finding that she was “properly to be treated as occupying the [...] post [of Chief of IAS] from 10 June 2006 at least until 25 October 2006, when she was informed that she would remain as Special Adviser REM until her contract expired” involves a material error. Further, she claims in relation to these findings that the Tribunal overlooked a material fact, namely that the position in which she found herself was forced upon her by the unlawful actions of the Secretary-General, as clearly recognised in Judgment 2742, consideration 45. These arguments must be rejected. The conclusion with respect to the position occupied by the complainant from 10 June 2006 was based on findings that the complainant did not exercise any of the functions of Chief of IAIS after 10 June 2006, on her statement in an e-mail of that date that, pending her internal appeal, she would not thereafter exercise those functions but would act as Chief of IAS only and on the consideration that, although the Secretary-General had no authority to abolish the IAIS, he had the power to create the post of Chief of IAS. These findings and the conclusion as to the position occupied by the complainant were independent of and were not capable of being affected by the consideration that the situation in which the complainant found herself came about as a result of the unlawful actions of the Secretary-General. Moreover, the conclusion as to the position occupied by the complainant involved an exercise of judgement. It cannot now be reviewed.

7. The complainant argues that there was a material error in the finding that “between 25 October 2006 and 3 November 2006 [she] was occupying the position [of] Special Adviser REM”. There was no express finding to that effect, only the finding that she was “properly to be treated as occupying the [...] post [of Chief of IAS] from 10 June

2006 at least until 25 October 2006, when she was informed that she would remain as Special Adviser REM until her contract expired". The complainant also argues that the finding regarding her position from 25 October involved a failure to rule on a previous claim. There is no doubt that in the earlier proceedings she claimed that, at all relevant times, she occupied the post of Chief of IAIS. That claim was ruled upon and rejected when the Tribunal held that she could not properly be regarded as occupying that post after 10 June 2006. And as already indicated, that conclusion cannot now be reviewed.

8. As is apparent, the complainant continues to claim that at all relevant times she occupied the post of Chief of IAIS. She submits that, in finding to the contrary, the Tribunal failed to take account of matters that would have led to a different conclusion, including the unlawfulness of the decision of the Secretary-General to abolish the IAIS and the absence of lawful authority for the Director of IOO to carry out the functions of Chief of IAIS mandated by the WMO Financial Regulations until 1 January 2008. Additionally, she claims that her position could not be altered by her own unilateral act in informing the Director of IOO that, pending her internal appeal, she would only carry out the functions of Chief of IAS, particularly as she was forced into the situation in which she found herself by the unlawful actions of the Secretary-General. She also submits what she says are "new facts" which, as well as replicating the matters that are said to have been overlooked by the Tribunal, include the statement that there was "only one formal legal valid document" and that appointed her to the post of Chief of IAIS, as well as the fact that the Secretary-General later stated that she had been dismissed from her post of Chief of IAIS on 3 November 2006. These matters are extraneous to the Tribunal's conclusion which, as already indicated, was based on the fact that she did not exercise the functions of the Chief of IAIS after 10 June 2006, on her statement that, pending her internal appeal, she would only exercise the functions of Chief of IAS and the consideration that that post had been lawfully created. The

matters on which the complainant relies cannot lead to a different conclusion and, thus, do not warrant review of Judgment 2861.

9. The complainant also seeks review of two findings made by the Tribunal and taken into account in the assessment of damages. The first concerns her unwillingness to cooperate fully within the new IOO structure. In this regard, she submits what she claims is new evidence which consists of three documents and which, according to the argument, shows that she “had no intention at all to misbehave and [...] was very concerned to fulfill her duties [...] but always in compliance with the WMO Financial and [S]taff Regulations as well as the Standards of Conduct for International Civil Servants”. The complainant provides nothing to indicate that this material could not have been produced in the earlier proceedings. This notwithstanding, it is convenient to refer to those documents. In the first, an e-mail dated 21 June 2006 addressed to the Director of IOO, she stated amongst other things that she would carry out the activities that the Director had requested of her. In the second, a memorandum dated 5 July 2006 addressed to the Secretary-General, she denied that she had failed to perform requested activities and mentioned, amongst other things, that she had provided the Director of IOO “with the boxes containing [the] belongings [of the main perpetrator of the fraud] on the deadline requested”. In the third, an e-mail dated 10 July 2006 addressed to the Director of IOO, she made various complaints about his actions and asserted that “the Brazil audit process was discontinued by a decision of the Secretary-General to discharge [her] of the responsibilities and duties of [Chief of] IAIS”.

10. In Judgment 2861, consideration 79, the Tribunal noted that the Director of IOO had requested the complainant on 24 May 2006, when she was on sick leave, to provide information as to the location of the main perpetrator’s property and that, although she returned to work half time on 8 June 2006, she did not disclose its location until some weeks later. In consideration 80, the Tribunal also noted that, although the Director of IOO had directed the complainant on 20 June to carry out the Brazil audit, she informed the Secretary-General on 30 June that she would not perform any functions associated with the

post of Chief of IAIS until provided with a legal opinion as to what was comprised in her duty statement. The Tribunal concluded in consideration 81 that “the complainant’s conduct with regard to the property of the main perpetrator of the fraud and, also, the Brazil audit indicates, at the very least, that she was prepared to cooperate as little as possible within the framework of the Internal Oversight Office”. Notwithstanding the complainant’s statement in the e-mail of 21 June 2006 that she would carry out the activities requested by the Director, the documents attached to the complaint tend to corroborate the Tribunal’s findings and conclusion. Certainly, they provide no basis for their review.

11. The complainant also contends, in relation to the finding that she did not fully cooperate within the new IOO structure, that the Tribunal failed to take various matters into account. In the main, her contentions in this regard are founded on the proposition that she remained Chief of IAIS and that the IOO and its Director had no lawful authority. She also refers to the WMO Financial Regulations and the duties of an auditor. Given the unreviewable finding that the complainant was, at relevant times, properly to be regarded as occupying the post of Chief of IAS, those matters have no bearing on the finding that she did not fully cooperate within the structure of the IOO.

12. The remaining finding that the complainant challenges concerns an e-mail sent by her on 23 February 2006 to members of the WMO Audit Committee and copied to certain members of the State Department of the United States of America. She now produces certain documents and e-mails to establish that those people were regularly provided with copies of Audit Committee documents and that their names had been placed on the Audit Committee mailing list by persons other than herself. The materials also show that the persons concerned attended Audit Committee meetings as assistants to a member of that Committee. The materials do not show and the complainant does not contend that the persons in question were members of that Committee. Rather, she says that the e-mail was not copied to them in their capacity as representatives of the

State Department but in their capacity as persons who had participated in Audit Committee meetings. That material cannot alter the Tribunal's finding. As stated in Judgment 2861, consideration 74, the complainant's actions in communicating with the members of the Audit Committee were contrary to the specific instructions of the Secretary-General and constituted misconduct. However, in consideration 75, the Tribunal rejected the argument of WMO that her communication with the members of the Audit Committee constituted an abuse of her position. The Tribunal did not go on to find that the copying of the e-mail to the persons who were not members of the Committee constituted an abuse of her position, only that it "constitute[d] misconduct – perhaps, even, serious misconduct". As the sending of the e-mail to members of the Audit Committee constituted misconduct, it follows that copying it to persons who were not members must also constitute misconduct, no matter the capacity in which those persons were provided with copies of it.

13. The application for review of Judgment 2861 is, in essence, an attempt to reargue issues that were determined in that case and to obtain further relief by way of reinstatement and additional damages. The "new" facts relied upon by the complainant are not material facts as they are not facts that could alter any of the Tribunal's findings or conclusions. The arguments do not establish that the Tribunal failed to take account of material facts, i.e. facts that could alter the Tribunal's findings or conclusions, or omitted to rule on claims made in the original proceedings. The finding as to the position occupied by the complainant after 10 June 2006 involved the exercise of judgement and is now beyond challenge. The application for review of Judgment 2861 is clearly without merit. It, too, must be dismissed in accordance with Article 7 of the Tribunal's Rules.

DECISION

For the above reasons,
The applications are dismissed.

In witness of this judgment, adopted on 20 May 2011, Ms Mary G. Gaudron, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2011.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet