Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

(Application for review)

117th Session **Judgment No. 3327**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 2966 filed by Mr Y. E. A. on 9 November 2011 and corrected on 18 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 2966, delivered on 2 February 2011, the Tribunal declared irreceivable the complaint filed against the decision of the Director-General of UNIDO of 19 November 2008 insofar as it dismissed the complainant's appeal against the decision to reassign him to Bangkok.

The Tribunal considered that the internal appeal, which was submitted more than sixty days after he had been notified of the challenged decision, was out of time and that, in accordance with the case law, the complaint should therefore be dismissed as irreceivable.

2. The Tribunal draws attention to the fact that, according to a consistent line of precedent, pursuant to Article VI of its Statute, its judgments are "final and without appeal" and carry the authority of *res judicata.* They may therefore be reviewed only in exceptional circumstances and on strictly limited grounds. As stated 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 complainant was unable to rely in the original proceedings. Moreover, these pleas must be likely to have a bearing on the outcome of the case. Pleas of a mistake of law, failure to admit evidence, misinterpretation of the facts or omission to rule on a plea, on the other hand, afford no grounds for review (see Judgment 3001, under 2).

3. In the instant case, the complainant requests the Tribunal:

"to note that there are clearly a number of factors to take into account, namely:

a. the failure to take account of material facts;

b. a material error;

c. a false finding of fact concerning a document unilaterally provided by UNIDO and not available […], which involves no assessment;

d. the omission to rule on a claim which the complainant would have entered if the [Administrative Tribunal of the International Labour Organization] had not unilaterally decided in its correspondence dated 25 January 2010, signed by the Registrar of the Tribunal […]: 'The filing of this brief, which you are not asked to answer, has brought the written submissions to a close'. […]"

4. The Tribunal recalls that, in Judgment 2966, it did not rule on the merits of the dispute but accepted an objection to receivability submitted by the Organization. In the context of the application for review that is the subject of the present judgment, no account shall be taken of submissions dealing with the merits of the case.

5. The complainant puts forward, in particular, a plea based on the omission to rule on a claim which he "would have entered" if the

Tribunal "had not unilaterally decided" to put an end to the written submissions.

This plea is devoid of any relevance because the Tribunal could not, by definition, rule on a claim that had not been submitted to it.

Furthermore, the criticism levelled at the Registry of the Tribunal for not allowing the complainant to enter a claim on the grounds that he had been asked not to reply to the Organization's last brief is devoid of merit. In fact, the Registry merely recalled the relevant provisions of the Rules of the Tribunal. The complainant could, if he considered it necessary, have asked the President of the Tribunal for authorization to file additional written submissions if, for example, the Organization had annexed to its surrejoinder an item of evidence of which he had not been informed.

6. It should be recalled, however, that the Tribunal's ruling in Judgment 2966 was based on the fact that the complainant learnt of the decision of 15 August 2007, which he challenged, on 20 August 2007 at the latest.

7. The complainant submits that the date of 20 August 2007 "unilaterally established by the [Tribunal], which conforms to UNIDO's position, cannot be upheld as there is no material proof of an acknowledgement of receipt by e-mail validated by both parties".

8. This latter argument had already been made to the Tribunal when it first examined the case, giving rise to Judgment 2966, as the complainant maintained in his submissions that e-mails were of no legal value unless they were accompanied by an official document. The Tribunal had replied that, according to the case law, notification by e-mail was, in principle, deemed to be valid. It concluded, on the basis of an e-mail sent to the complainant, that the latter had plainly learnt of the decision of 15 August 2007 on 20 August 2007 at the latest. Challenging this finding is tantamount to accusing the Tribunal of an error of law. However, under the above-mentioned case law, an error of law does not afford grounds for review.

9. As none of the alleged grounds calls into question the decision, taken in Judgment 2966, on the receivability of the initial complaint, the Tribunal is bound to dismiss the application for review in accordance with 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