

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

C. (No. 2)

v.

Global Fund to Fight AIDS, Tuberculosis and Malaria

(Application for review)

120th Session

Judgment No. 3475

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3247 filed by Ms C. C. on 5 May 2014;

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 3247, the Tribunal dealt with a complaint filed by Ms C.. The judgment was delivered in public on 5 February 2014. In the original complaint filed on 27 September 2011, Ms C. identified the defendant as the Global Fund to Fight AIDS, Tuberculosis and Malaria, which is an organisation which has submitted to the jurisdiction of the Tribunal. However the Tribunal concluded that the complainant had been, at the time of the events to which the complaint was directed, an official of the United Nations Office for Project Services (UNOPS), which has not submitted to the jurisdiction of the Tribunal. Accordingly the Tribunal concluded that the complaint was

not receivable on the basis that it had no jurisdiction to adjudicate on the complaint.

2. In the present complaint filed on 5 May 2014 (the second complaint) Ms C. seeks a review of the judgment delivered on 5 February 2014. It is convenient, at this point, to identify the principles governing the review by the Tribunal of an earlier Tribunal judgment. The starting point is that the Tribunal's judgments have the authority of *res judicata*. As discussed recently in Judgment 3392, under 8, the Tribunal has stated many times that it will review a judgment only in exceptional circumstances and then only on limited grounds. There are several pleas in favour of review that it will not admit. These include an alleged mistake of law, an alleged mistake in the appraisal of the facts, failure to admit evidence and absence of comment on the parties' pleas. Other pleas in favour of review may be admitted if they are such as to affect the Tribunal's decision. They include failure to take account of essential facts, a material error (i.e. a mistake in a finding of fact which does not involve any value judgment and is therefore distinguishable from misappraisal of the evidence), failure to rule on a claim and the discovery of a new fact on which one of the parties was not able to rely in the proceedings that culminated in the judgment (see Judgments 748, under 3, 1294, under 2, 1504, under 8, 2270, under 2, and 2693, under 2).

3. In her brief, the complainant accepts that she "was rightly considered as a UNOPS staff member after January 2009". However she argues that the decision to terminate her contract in December 2010 was taken by the Global Fund. She also refers, in some detail, to the arrangements between the Global Fund and UNOPS and, in particular, the Inter-Agency Mobility Accord of 2005. The complainant argues that under that Accord she was conferred with a right to appeal against administrative decisions and, relevantly, the decision to terminate her contract. However as noted in consideration 20 of Judgment 3247, the Tribunal's jurisdiction is limited and defined by organisations submitting to the Tribunal's jurisdiction and the complainant being an official (or former official) of an organisation that has so submitted.

No argument is advanced by the complainant that she was not an official of UNOPS at the time of the events to which her original complaint was directed. Indeed, as just noted, a concession is made by the complainant that this was so. She was not, at the relevant time, an official of the Global Fund. Even if, as the complainant argues, she had under the Accord a right to challenge the termination decision of the Global Fund (if in fact such a decision had been made), the existence of that right does not create an entitlement to enforce it before the Tribunal if she was not an official of the organisation (the Global Fund) against which the right is sought to be enforced. No basis is made out warranting a review of Judgment 3247.

Accordingly, the complaint is clearly devoid of merit and must be dismissed summarily in accordance with the procedure set out in Article 7 of the Tribunal's Rules.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 15 May 2015, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 30 June 2015.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ