

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

T.

v.

CTA

(Application for review filed by the CTA)

123rd Session

Judgment No. 3719

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3437 filed by the Technical Centre for Agricultural and Rural Cooperation (CTA) on 26 June 2015, the reply of Mr I. T. of 24 September, the CTA's rejoinder of 18 December 2015 and Mr T.'s surrejoinder of 9 February 2016;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

CONSIDERATIONS

1. In Judgment 3437, delivered in public on 11 February 2015, the Tribunal allowed the complaint filed by Mr T. (hereinafter "the complainant") and therefore set aside the decision of 15 June 2011 terminating the complainant's appointment, as well as that of 5 October 2011 dismissing the internal appeal he had lodged against the aforementioned decision of 15 June. It ordered the reinstatement of the complainant, to the fullest extent possible, in the Centre, as from 14 March 2012, with all the legal consequences that that entailed. It stipulated that, if such reinstatement was impossible, the Centre should

pay him material damages calculated as indicated in that judgment. The Centre was also ordered to pay the complainant moral damages and costs.

2. The main reasons for that judgment are set out in considerations 7 to 9, which read as follows:

“7. In the instant case, it cannot be disputed that the CTA embarked upon a procedure designed to permit, as far as possible, the reassignment of staff members whose posts were to be made redundant.

8. However, it is clear from the submissions that, in order to help it to analyse whether staff members’ profiles fitted the new posts available after the restructuring, the Centre called on the services of an external consultant who assisted in drawing up score charts to assess the suitability of the staff members concerned for these new posts.

9. By thus commissioning an extraneous body to undertake a task which entailed interfering in the assessment of staff members’ suitability for the available positions, whereas the Staff Regulations made no provision for this, the Centre established an assessment system parallel to that which existed officially and which, moreover, did not offer staff members the safeguards inherent in the official system. Although the [CTA] submits that this skills assessment was conducted by a panel which had full discretion in the matter, it is plain that the positions of the panel were, at the very least, influenced by the conclusions reached by the external consultant. The evidence on file shows that the failure of the process for reassigning the defendant as a matter of priority was at least partly due to consideration of the results which he obtained in that parallel assessment process, as reflected in the score charts assessing his suitability for two of the positions for which he had applied.”

3. The Centre asks the Tribunal, through an application for review, to reconsider the conclusions which it reached in that judgment and to alter its decision.

The complainant submits that the application should be dismissed. He seeks an award of damages in compensation for the moral injury which he says he has suffered owing to the Centre’s wrongful conduct after it was notified of the judgment. He also claims costs.

4. Consistent precedent has it that under Article VI of its Statute the Tribunal’s judgments are final and without appeal and 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 defendant 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, and 3634, under 4).

5. The Centre submits that the aforementioned consideration 9 is tainted with various material errors. In its opinion, the Tribunal was wrong in finding that it had established an unlawful parallel assessment system which did not offer adequate safeguards to staff members when their possible reassignment was being examined. It asserts that the external consultant played only an administrative and logistic role throughout the procedure – a role provided for in its rules and regulations – and that he was not tasked with assessing staff members' suitability.

These submissions, which cannot really be regarded as pleas of material error but seek to call into question the Tribunal's interpretation of the facts of the case, are irreceivable in an application for review, as stated above. Moreover, the Centre provides no proof whatsoever that the consultant's involvement in the reassignment process as recorded in Judgment 3437 was based on any unambiguous text in force at the material time. Furthermore it offers no evidence that, in the "fit analysis", of which it provides a lengthy explanation, the consultant could not have exerted the influence noted in that judgment.

6. It is plain from the contents of the application for review that it has been filed only as an attempt to re-open issues already settled in the above-mentioned judgment. Since none of the pleas entered by the Centre warrants the requested review, the application must be dismissed.

7. The complainant seeks an award of damages in compensation for the moral injury which he says he has suffered owing to the Centre's breach of its duties to execute the contested judgment and to inform him properly of its intention to apply for a review of the judgment.

However, according to the case law of the Tribunal, where an organisation seeks to challenge a judgment unfavourable to itself by way of an application for review, the staff member concerned cannot make a counterclaim for damages in the context of his or her submissions on the application. Such a claim arises from a separate cause of action and should be pursued separately (see Judgments 1504, under 13, 2806, under 10, and 3003, under 50). This counterclaim will therefore be dismissed.

8. On the other hand, the complainant, who has been obliged to take part in these proceedings in order to protect his interests vis-à-vis the Centre, is entitled to costs in the amount of 2,500 euros.

DECISION

For the above reasons,

1. The CTA's application for review is dismissed.
2. The Centre shall pay the complainant costs in the amount of 2,500 euros.
3. The complainant's other claims are dismissed.

In witness of this judgment, adopted on 3 November 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakit , Judge, sign below, as do I, Dra en Petrovi , Registrar.

Delivered in public in Geneva on 8 February 2017.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ