

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

M. (No. 2)

v.

EPO

(Application for review)

127th Session

Judgment No. 4130

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3970 filed by Mr T. M. on 8 October 2018;

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. In his second complaint against the European Patent Organisation (EPO), the complainant challenged the decision not to prolong his service beyond 30 November 2014, the date on which he reached the statutory retirement age. Considering that decision to have been taken “on the basis of irrelevant grounds”, the Tribunal set it aside in Judgment 3970, rendered on that second complaint. Under point 2 of the decision in the judgment, the EPO was ordered to pay the complainant “financial compensation for the material injury resulting from the refusal to prolong his service, as indicated in consideration 12”, namely “a sum equivalent to **two years’ remuneration**, calculated on the basis of his final net salary before he left the EPO, less the amount of payments from various retirement pensions which he received in respect

of the **24 months** following his departure and any professional earnings during that same period” (emphasis added).

2. Pointing out that in consideration 10 the Tribunal indicated that “[t]he length of the extension of the complainant’s service taken into account to determine this material injury will be, in this case, **the period of three years** running from 1 December 2014” (emphasis added), the complainant contends that it is this period of three years that should have served as the basis for the calculation of the compensation due to him. He submits that Judgment 3970 is thus tainted by a “material error likely to have a bearing on the outcome of the case”.

3. Consistent precedent has it that, pursuant to Article VI of the Statute of the Tribunal, the latter’s 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, for example, Judgments 3001, consideration 2, 3452, consideration 2, and 3473, consideration 3).

4. As indicated in consideration 12 of Judgment 3970, in order to determine the amount of compensation to be awarded to the complainant, the Tribunal took into account “various considerations” set out not only in consideration 10 but also in consideration 11, the meaning of which the complainant appears to deliberately overlook. Indeed, although the Tribunal did indicate, in consideration 10, that, in order to determine the material injury sustained by the complainant a period of three years of continuous employment would be taken into account, it stated, in consideration 11, that it could not be said with

certainty, however, that the prolongation of service requested by the complainant would not have been rejected on grounds other than those censured in the judgment, such that the injury in question consisted only of the denial of a valuable opportunity to benefit from such a prolongation. For that reason, the Tribunal decided, in full knowledge of the facts, to limit the amount of damages awarded to the complainant on this count to a sum equivalent to two years' remuneration (less certain deductions), as indicated in consideration 12.

Contrary to the complainant's assertions, which are based on an incomplete citation of the Tribunal's reasoning, Judgment 3970 is thus in no way tainted by any material error.

5. It follows from the foregoing that the application for review filed by the complainant is clearly not admissible. It will therefore be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 15 November 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Patrick Frydman, Vice-President, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

(Signed)

GIUSEPPE BARBAGALLO PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ