

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

I.

v.

Global Fund to Fight AIDS, Tuberculosis and Malaria
(Application for review)

131st Session

Judgment No. 4338

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3866 filed by Ms G. I. on 2 December 2017 and corrected on 8 May 2018, the reply of the Global Fund to Fight AIDS, Tuberculosis and Malaria (hereinafter “the Global Fund”) of 23 October 2018, the complainant’s rejoinder of 8 February 2019, the Global Fund’s surrejoinder of 20 May, the complainant’s further submissions of 4 November 2019 and the Global Fund’s final comments thereon of 30 January 2020;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS

1. Judgment 3866 concerned the decision of the Global Fund to terminate the complainant’s appointment for not having successfully completed her probationary period. In that judgment, the Tribunal concluded that the Global Fund had disregarded and breached the well-established principles in the case law regarding probation. The Tribunal set aside the decision to terminate the complainant’s appointment, ordered the Global Fund to remove all adverse material from the complainant’s personnel file and awarded her damages and costs. The complainant seeks a review of Judgment 3866 on four grounds.

2. It is well settled that the Tribunal's judgments are final and carry the authority of *res judicata*. 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 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. 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, consideration 2, 3452, consideration 2, 3473, consideration 3, 3634, consideration 4, 3719, consideration 4, and 3897, consideration 3).

3. As her first ground for review, the complainant contends that she discovered new facts that have a bearing on the outcome of her case on which she was unable to rely in the earlier proceedings. In support of this position, the complainant refers to an exchange of emails in January and February 2018 with Ms B., an individual with whom she had worked in 2012 and 2013. The complainant observes that in the exchange of emails she received information that she was fired in retaliation for her pursuit of an investigation of malfeasance in Serbia. The complainant contends that this new evidence demonstrates that retaliation was the motivation for the harassment to which she was subjected. This is a misrepresentation of the content of Ms B.'s January and February 2018 emails, as there is nothing in those emails which relates to retaliation, harassment or the complainant's termination of employment. Thus, those emails do not provide any new facts, let alone facts that would likely have a bearing on the outcome of the case. The first ground is therefore unfounded.

4. The complainant contends in her second ground for review that the Tribunal made a material error of fact in considering that she had failed to file a written report of harassment that would have necessitated an investigation of her allegations of harassment. The complainant submits that she had complied with all procedural requirements for reporting harassment. As explained above in consideration 2, a material error is a mistaken finding of fact involving no exercise of judgement.

In consideration 13 of Judgment 3866, the Tribunal found that “a careful review of the record [did] not show a written report of harassment that would necessitate a prompt and thorough investigation of the allegations on the part of the Global Fund”. This is a finding of fact that required the exercise of judgement in the review and interpretation of the facts. Thus, the complainant’s contention that the Tribunal’s finding was a material error is unfounded.

5. In her third ground, the complainant submits that the Tribunal omitted to rule on her claim that the termination of her employment was an abuse of authority. This ground is unfounded. In her complaint, the complainant advanced a number of arguments, including allegations of abuse of authority in several instances, as pleas in support of her claim that the termination of her appointment was unlawful. As stated in consideration 2 above, an omission to rule on a plea affords no grounds for review.

6. Lastly, in ground four, the complainant submits that the Tribunal omitted to rule on her claim that the termination of her appointment amounted to a disciplinary sanction. This ground is also unfounded. In consideration 13 of Judgment 3866, the Tribunal specifically stated that “it cannot be said that any of the actions complained of amount to retaliation, unequal treatment or the imposition of a disciplinary sanction”.

7. As the complainant has not established a ground for review, her application for review will be dismissed.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 29 October 2020, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 December 2020 by video recording posted on the Tribunal's Internet page.

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

DRAŽEN PETROVIĆ