Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

T. (No. 10) and K. (No. 11)

v.

EPO

(Applications for review)

132nd Session **Judgment No. 4414**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4195 filed by Mr P. O. A. T. on 30 September 2019, the reply of the European Patent Organisation (EPO) of 3 December 2019, the complainant's rejoinder of 11 January 2020 and the EPO's surrejoinder of 21 February 2020;

Considering the application for review of Judgment 4195 filed by Mr A. C. K. on 1 October 2019, the EPO's reply of 3 December 2019, the complainant's rejoinder of 20 January 2020 and the EPO's surrejoinder of 3 March 2020;

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

Having examined the written submissions;

CONSIDERATIONS

1. Judgment 4195 concerned the decision of the EPO to amend Article 83 of the Service Regulations and its Implementing Rules, which regard the conditions governing sickness insurance for employees' spouses. The complainants had challenged it on the basis that the amendments had breached their acquired rights. The Tribunal concluded that none of the three measures introduced in the amendments to Article 83 breached any acquired rights. The Tribunal was satisfied in that case that the increased contribution rate resulting from the additional contribution

for spouses was reasonable, justified and modest, and the Organisation had not discriminated against the complainants. The Tribunal did not address issues of receivability or the subsidiary arguments raised by the various complainants in their pleas as the complaints failed on the merits on the principal issues.

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 the two applications for review concern the same judgment, they will be joined to be the subject of a single judgment. One of the complainants, Mr K., requests that the application be examined by judges who were not involved in Judgment 4195. This request was rejected by the President of the Tribunal, though he decided that the application for review will be considered by a panel which is not entirely the same as the panel which adopted Judgment 4195.

4. The complainants seek a review of Judgment 4195 on two grounds. As a first ground, they submit that the Tribunal omitted to rule on a claim. This ground is unfounded. The claim the complainants allege was not dealt with was a claim for damages for delay in the proceedings. No such claim was made. As for the costs, no award was made as the complaints failed.

5. The second ground for review is that the Tribunal failed to take into account the material fact that "the guarantee of [a] 2.4 % ceiling had to be considered (according to the [c]omplainants and to the

[I]nternal [A]ppeal [C]ommittee) as a crucial point involving an acquired right". In the applicants' view, "the Tribunal should have analyzed and decided whether the ceiling had to be considered an acquired right in itself or not". As explained above in consideration 2, a material error is a mistaken finding of fact involving no exercise of judgement. In consideration 7 of Judgment 4195, the Tribunal found that "none of the three measures introduced in the amendments to Article 83 breached any acquired rights". This is a finding that required the exercise of judgement in the assessment of the facts. More specifically, the existence of the 2.4 per cent ceiling was a fact, but whether or not it could be considered an acquired right involved evaluation of this fact, which, in the case at hand, the Tribunal rejected. Thus, the complainants' contention that the Tribunal failed to take into account a material fact is unfounded. Moreover, it should be noted that the Tribunal had fully considered both the complainants' submissions and the IAC's opinion regarding the 2.4 per cent ceiling, but, contrary to those submissions and opinion, concluded (under consideration 9) that "the conditions under which health insurance for employees' spouses is provided do not give rise to an acquired right" and that "[t]he Organisation [wa]s entitled to adjust the contribution rate if there [we]re compelling reasons (including budgetary reasons), within reasonable limits". The Tribunal was satisfied that the increased contribution rate resulting from the additional contribution for spouses "was reasonable, justified and modest".

6. As the complainants have not established any grounds for review, their applications for review will be dismissed.

DECISION

For the above reasons,

The applications for review are dismissed.

In witness of this judgment, adopted on 8 June 2021, Mr Patrick Frydman, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2021 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

DRAŽEN PETROVIĆ