

118th Session

Judgment No. 3387

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3103 filed by Ms R. T. on 8 May 2012;

Considering Article II, paragraph 1, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. The complainant requests review of Judgment 3103, in which the Tribunal ruled on her first two complaints against the International Labour Organization (ILO). Her complaints were filed against the Director-General's decision of 25 November 2009, endorsing the recommendation of the Joint Advisory Appeals Board (JAAB) to reject her ten grievances as without merit. She also contested the 29 February 2008 decision not to renew her fixed-term contract upon its expiration on 30 April 2008, in which the Organization cited an inability to identify a position matching her profile and competencies and budgetary reasons.

2. In Judgment 3103 the Tribunal considered founded her claim that the absence of a reply by the responsible chief and refusal to organise an interview to provide her with feedback regarding competition No. 2007/68, was a violation of paragraph 13 of Annex I to the Staff Regulations, and thus awarded her moral damages in the amount of 5,000 Swiss francs as well as costs in the sum of 1,500 francs. The Tribunal dismissed her remaining claims, namely that she had a legitimate expectation of pursuing a career in the ILO, that her notification of termination during pregnancy violated Swiss employment law, that the ILO's inability to identify a regular budget post as a justification for the non-renewal of her contract was an error of fact, that she was subject to discrimination and unequal treatment, that she should have been given priority treatment for employment opportunities, and that her misplacement in the Integrated Resource Information System (IRIS) resulted in her not being placed in a regular budget post, as unfounded.

3. In the present request for review, the complainant submits new evidence in the form of a new document on staff movements, dated 4 November 2010, found on the ILO internal website under "archives" of the Human Resources Development Department, but which was not available at the time of the proceedings regarding her previous complaints leading to Judgment 3103. She specifically requests review of the Tribunal's decision not to set aside the Organization's refusal to renew her contract. In the document entitled "Staff Movements approved between 1 January 2005 and 14 March 2008", she is listed as having transferred from the Organization's Subregional Office in Moscow (SRO-Moscow) to a P.3 position in INTEGRATION as of 1 May 2007. Her position in INTEGRATION was formalised within IRIS as "Technical Officer.P3.50100.RB Temp". She claims that these documents

"provide competent proof in support of [her] original plea [...] namely, the abuse of authority on the part of the Office when:

- Not creating [her] position in INTEGRATION effective 1 January 2005 and officially not approving [her] transfer from SRO Moscow to INTEGRATION for 28 months [and]

- Converting [her] status away from a fixed-term official and in IRIS downgrading [her] to a temporary short-term contract holder subsequently.”

She also submits that the new evidence “confirms that [her] transfer to INTEGRATION was affected [sic] contrary to the requirement of the ILO Staff regulations, to ILO ongoing practices and to [her] employment contract”.

4. The Tribunal explained in Judgment 2693, under 2:

“The Tribunal’s judgments have the authority of *res judicata*. They will be reviewed only in exceptional circumstances and on limited grounds. These grounds include the discovery of a new fact. A new fact is a fact on which the party claiming it was unable to rely through no fault of its own; it must be a material fact likely to have a bearing on the outcome of the case (see Judgments 748, under 3, 1294, under 2, 1504, under 8, and 2270, under 2).”

5. The Tribunal finds that the information provided in the complainant’s application for review does not constitute a new material fact which would have any bearing on her case. Regardless of the publication date of the “new evidence” she produces here, the information contained therein is the same as that which was already introduced during the proceedings leading to Judgment 3103. The Organization had submitted then that the complainant’s position in INTEGRATION was paid for by a combination of resources, including deficit funding and a temporary budget allocation. It is unreasonable now to consider that her listing as “RB Temp” should somehow be considered surprising when it was discussed extensively before the JAAB and this Tribunal, particularly as the Organization has correctly stated that it was under no legal obligation to place the complainant on a regular budget post. Her assertion that being listed in IRIS under INTEGRATION sooner would have resulted in the automatic funding of her position was already examined by the Tribunal. As such, it falls under *res judicata* and cannot be considered a legitimate motive for a review of the judgment.

6. In the circumstances, the application for review must be dismissed in accordance with the summary procedure provided for in Article 7 of the Tribunal's Rules.

DECISION

For the above reasons,
The application is summarily dismissed.

In witness of this judgment, adopted on 9 May 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Andrew Butler, Deputy Registrar.

Delivered in public in Geneva on 9 July 2014.

GIUSEPPE BARBAGALLO
DOLORES M. HANSEN
HUGH A. RAWLINS
ANDREW BUTLER