

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**S. (M.) (No. 2)**

**v.**

**EPO**

(Application for review)

**121st Session**

**Judgment No. 3563**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3297 filed by Mr M. S. on 30 March 2015;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

#### CONSIDERATIONS

1. In Judgment 3297, delivered on 5 February 2014, the Tribunal dismissed the complainant's claim that his dismissal by the European Patent Organisation (EPO) on the ground of misconduct had been unlawful. More specifically, the EPO had found the complainant guilty of forging and falsifying documents and/or assisting a third party to forge and falsify documents, which had put the EPO's reputation in jeopardy. In parallel, the complainant faced criminal charges before the Dutch courts in connection with these events. The Tribunal held that the findings of the Disciplinary Committee and the Internal Appeals Committee (IAC), and the subsequent final decision of the President, were not vitiated by any flaw which would lead the Tribunal to

conclude that they should be set aside, and it therefore dismissed the complaint as unfounded on the merits.

2. The complainant seeks a review of Judgment 3297, alleging that the Tribunal failed to apply its own case law concerning the burden of proof and the proportionality of disciplinary sanctions. He argues that the Tribunal did not appraise the evidence correctly, because he was acquitted by the Dutch criminal court, which found that the evidence, while not excluding the possibility that the complainant was implicated in the offence, did not demonstrate beyond reasonable doubt that he was, and this ruling was subsequently upheld by the Court of Appeal. As a result, he submits that the findings of the Disciplinary Committee, the IAC and the Tribunal are in contradiction with the findings of the criminal courts, which, in his view, justifies a review of Judgment 3297.

3. In his application for review, the complainant essentially raises the same arguments as those raised in his first complaint. He does not argue that there are any new facts on which he was unable to rely in the first proceedings through no fault of his own. He simply disagrees with the Tribunal's appraisal of the evidence and its interpretation of the law. Furthermore, he reiterates his request for an oral hearing, which the Tribunal specifically rejected in consideration 5 of Judgment 3297.

4. It is well settled that the Tribunal's judgments are final and that they may only be reviewed in exceptional circumstances and solely on the grounds of failure to take account of a particular fact, a mistaken finding of fact that involves no exercise of judgement, omission to rule on a claim or the discovery of some new fact which the complainant could not invoke in time in the earlier proceedings (see, for example, Judgment 3379, under 1). As well, the ground on which review is sought must be one that would have led to a different result in the earlier proceedings (see Judgments 1952, under 3, 3000, under 2, and 3385, under 1). The complainant's arguments, as summarised above, demonstrate that the present application for review

does not raise any of the above grounds for review and that it is merely an attempt to re-litigate matters that were conclusively decided in Judgment 3297. As it is devoid of merit, it will 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 29 October 2015, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 February 2016.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

DRAŽEN PETROVIĆ