

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

S.

v.

UNIDO

(Application for review)

126th Session

Judgment No. 3988

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3951 filed by Ms H. S. on 20 April 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. This judgment concerns an application for review of Judgment 3951 on the complainant's first complaint against the United Nations Industrial Development Organization (UNIDO). As required by the Tribunal's case law, the complainant attempts to identify, as the basis for the review, one of the very limited number of grounds on which a judgment can be reviewed. As the Tribunal recalled in Judgment 3897, under 3, the only admissible grounds for review are the 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 which the complainant was unable to rely on 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. What, in substance, the complainant says is that the Tribunal failed to take into account particular facts when rendering Judgment 3951. This is not an admissible ground for review but, in any event, as shortly explained, the application is misconceived.

2. The application for review is focused on the observations of the Tribunal in consideration 5 of Judgment 3951. The decision impugned in the initial complaint form (filed on 11 December 2015) leading to that judgment was a decision of 15 September 2015 which effectively affirmed a decision not to meet claims for compensation for a service-incurred injury or illness. In additional submissions filed by the complainant, she sought to impugn another decision of 13 January 2017. The Tribunal said in consideration 5:

“[I]n her additional submissions of 2 March 2017, the complainant seeks to impugn a decision of the Director General of 13 January 2017 following an internal appeal and the consideration of that appeal by the Joint Appeals Board. The subject matter of those proceedings was not the rejection of her claims under Appendix D discussed earlier. At the time the complainant filed the present complaint on 11 December 2015, any complaint about the subject matter of the 13 January 2017 decision would have been irreceivable at least for the reason that the complaint would have been premature. It is not open to the complainant to seek to impugn in these proceedings the decision she challenges in her pleas in the additional submissions of 2 March 2017. Thus it is unnecessary for the Tribunal to address the lawfulness of the decision of 13 January 2017.”

3. In her pleas in support of the application for review, the complainant recounts the events which led to the filing of the additional submissions which also picks up earlier events concerning grievances the complainant had with UNIDO. The gist of those pleas is that she should have been able to impugn the decision of 13 January 2017 in the proceedings commencing with the complaint filed on 11 December 2015, in order to save exertion and cost on the part of all parties and, perhaps additionally, on the basis that she was led to believe as a result of correspondence with the Tribunal’s Registry that it was open to her to challenge that more recent decision.

4. The simple answer to these pleadings is that whatever the complainant believed may be the merits or desirability (and even if her beliefs were well founded) of enabling her to broaden the subject matter of the proceedings commenced with the complaint filed on 11 December 2015 and whatever she may have understood Registry to have been saying, the Tribunal was correct in what it said in consideration 5 of Judgment 3951, namely that it was not open to the complainant to challenge the more recent decision in the proceedings which were then on foot.

5. The application for review is misconceived. The complainant's pleas, as summarised above, demonstrate that the present application for review does not raise any admissible ground for review and that it is in fact merely an attempt to re-open issues already settled in Judgment 3951. As it is clearly devoid of merit, it must 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 18 May 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 26 June 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ