

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**D.**

**v.**

**IOM**

(Application for review)

**128th Session**

**Judgment No. 4150**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3848 filed by Mr F. D. on 27 March 2018 and the reply of the International Organization for Migration (IOM) of 20 August 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. In Judgment 3848, the Tribunal concluded that the Director General's 2 August 2013 decision not to renew the complainant's contract was a disguised disciplinary measure and, therefore, unlawful. The Tribunal set aside the Director General's 24 April 2014 decision as well as his earlier decision of 2 August 2013, awarded the complainant moral damages and costs, and ordered IOM to remove from the complainant's personnel file all materials in relation to allegations and findings of misconduct and any decisions taken regarding those allegations and findings.

2. In his application for review of Judgment 3848, the complainant submits that the Tribunal committed an error of fact by not taking into consideration one of his requests for relief in his complaint, namely, that the Tribunal order his reinstatement, and in his rejoinder he asked the Tribunal “to recognize and recommend the measures as stipulated in [his complaint]”. In making this assertion, the applicant fails to note that in his requests for relief in his rejoinder he asked the Tribunal to offer him a similar position with full right and access and support to relevant vacancies. In Judgment 3848, consideration 10, the Tribunal observed:

“The complainant initially asked the Tribunal to order his reinstatement. However, subsequently, in his rejoinder, he abandoned that request and asked the Tribunal to assign him to another similar post.”

3. 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).

4. In the present case, the alleged error of fact was not a “mistaken finding of fact involving no exercise of judgement”. In his rejoinder the complainant materially altered his request for relief in relation to the reestablishment of his employment with IOM. As a result, the Tribunal found that the complainant had abandoned his initial request for reinstatement. Accordingly, the complainant has not established a ground for review and the application will be dismissed.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 16 May 2019, 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 3 July 2019.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ