

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

G.

v.

UNESCO

(Application for review)

132nd Session

Judgment No. 4436

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4221 filed by Mrs U. G. on 6 August 2020 and the reply of the United Nations Educational, Scientific and Cultural Organization (UNESCO) of 9 November 2020, no rejoinder having been submitted by the complainant;

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

Having examined the written submissions;

CONSIDERATIONS

1. The complainant requests an oral hearing alleging that “UNESCO has been given the opportunity to meet the [J]udges of the Tribunal, as is stated in the video of the judgment-reading posted online” and that “[she] wishes to prevent any misstatement on her person, the facts or her motivations by her adversary in this case”. This allegation is vague. UNESCO refutes it stating that it did not meet with the Judges of the Tribunal to discuss the case. The Tribunal confirms this and notes that, in Judgment 4221, it rejected the complainant’s request for an oral hearing on the basis that it considered that the issues raised by the complainant could be fairly resolved on the detailed submissions, materials and documents which the parties provided. The request for an oral hearing in the present proceedings is rejected as the allegation upon which it is made has no basis in fact.

2. In her complaint leading to Judgment 4221, delivered in public on 10 February 2020, the complainant impugned “the final administrative decision of the Director-General of UNESCO, received [by her] on 7 August 2018” which rejected inter alia her request to reclassify her post at the P-5 grade level. In the impugned decision, the Director-General had accepted, in the first place, the Appeals Board’s recommendation that the complainant’s appeal was time-barred insofar as it was directed against the “decision” that was taken in June 2011 to remove the title of Secretary of the 2001 Convention from her 2016 job description. In the second place, in the impugned decision the Director-General had accepted the Appeals Board’s recommendation to reject the complainant’s request to reclassify her post at grade P-5. The Tribunal found, in consideration 15 of Judgment 4221, that the complainant’s contentions that the decision to classify her post at grade P-3 was unlawful, tainted with abuse of authority and violated the principle of equal pay for work of equal value, were unfounded.

3. In the third place, the Tribunal found, in consideration 5 of Judgment 4221, that the Director-General correctly did not accept the Appeals Board’s recommendation to pay the complainant a special post allowance from October 2011 until her post was properly classified based on the duties that she actually performed or until she truly ceased to perform those duties. The Tribunal found that the Board’s recommendation was made in error because, under Staff Rule 103.17, which provides the basis for the payment of a special post allowance, this payment was to be made where a staff member is called upon to assume, temporarily, most or all of the functions of a post of a higher grade for a period of more than three months, which was not the case in this matter, as the complainant herself had observed. The Tribunal also rejected the complainant’s plea that the Appeals Board was not properly constituted or that its members were partial in the sense stated in considerations 5 and 6 of Judgment 2667. It further found that she provided no credible evidence to support her contentions that the Board was not an independent, neutral or transparent body and was biased in favour of the Administration, or that her right to a fair hearing before the Board was violated in breach of the Organization’s duty of care to her. The Tribunal further rejected the complainant’s claims for damages.

4. Pursuant to Article VI of the Statute of the Tribunal, judgments shall be final and without appeal but the Tribunal may nevertheless consider applications for review. Consistent precedent has it that a judgment of the Tribunal may be reviewed only in exceptional circumstances and on strictly limited grounds. The rationale for this was stated, for example, in Judgment 3899, consideration 3, which reiterates the terms of Judgment 3815, consideration 4, as follows:

“Consistent precedent has it that, pursuant to Article VI of its Statute, the Tribunal’s judgments are ‘final and without appeal’ and have *res judicata* authority. They may therefore be reviewed only in exceptional circumstances and on strictly limited grounds. As stated, for example, in Judgments 1178, 1507, 2059, 2158 and 2736, the only admissible grounds for review are failure to take account of material facts, a material error involving no exercise of judgement, 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. Pleas of a mistake of law, failure to admit evidence, misinterpretation of the facts or omission to rule on a plea, on the other hand, afford no grounds for review (see, for example, Judgments 3001, under 2, 3452, under 2, and 3473, under 3).”

5. The complainant’s application contains five discernible grounds for review. She contends, as a first ground, that the Tribunal omitted to rule on her “claim” for equal remuneration since, on the express request of her supervisors, she had assumed factually new (or additional) responsibilities and tasks for which she was entitled to be paid under the basic principles enshrined in the UNESCO Human Resources Manual and based on “work value”. This ground for review is plainly unmeritorious as, in considerations 5 and 15 of Judgment 4221, the Tribunal expressly ruled on that issue (see also considerations 2 and 3 of this judgment).

6. The complainant contends, as a second ground for review, that the Tribunal failed to take into account material facts in that she was the only person who ever factually assumed the function of Secretary of the 2001 Convention. This contention is essentially aimed at contesting the Tribunal’s analysis and finding in consideration 14 of Judgment 4221 that there was no error in the omission of the title of Secretary of the 2001 Convention from the complainant’s 2016 job description or in the decision that her post was correctly graded at P-3. The complainant submits that, in making this finding, the Tribunal should not have relied

upon the provisional list of participants of the fifth session of the Meeting of States Parties dated 28-29 April 2015, because it was a UNESCO internal document which was never distributed or officially published. UNESCO however points out that, although the document was marked as “distribution limited”, it was an official document and not merely an internal working draft as the complainant seems to suggest. The Tribunal knows of no legal basis that precluded its reliance on the subject document. The complainant provides none. As consideration 14 of Judgment 4221 shows, the subject document was only one of several documents and items of evidence upon which the Tribunal’s finding was based. The complainant repeats her assertion that, as proven by the record of oral exchanges she provided, the States Parties addressed her as Secretary in the presence of all her supervisors without anyone objecting. In effect, she calls into question the Tribunal’s exercise of judgement in assessing the evidence, as it did in consideration 14 of Judgment 4221. This amounts to an attempt to re-litigate the issue that the Tribunal already decided after it considered all of the relevant evidence. Such an attempt affords no grounds for review (see, for example, Judgment 4327, consideration 3).

7. The complainant contends, as a third ground for review, that the Tribunal made a material error in considering the facts, asserting that there was a mistake in the statement of facts of Judgment 4221. She does not show how or where the Tribunal adverted to the alleged mistaken facts in arriving at any of its findings in Judgment 4221 but asserts, in effect, that all Secretaries of Conventions were graded P-5 and that she worked “exactly on the same level as the other Secretaries (then P-5) and the lack of correct classification [of her post] was only due to unethical motivations”. Thereby, the complainant calls into question the Tribunal’s exercise of judgement, evidenced in its legal and factual analysis and findings in considerations 12 to 15 of Judgment 4221. In consideration 14, the Tribunal found that there was no error in the omission of the title of Secretary of the 2001 Convention from the complainant’s 2016 job description or in the decision that her post was correctly graded at P-3. In consideration 15, it found that the duties and responsibilities of the posts with which she sought to compare her post were not similar. This is an inadmissible ground for review as it amounts to a new attempt to re-litigate an issue that the Tribunal has already decided (see Judgment 4327, consideration 3). So also is the complainant’s

contention, in her fourth ground for review, that the Tribunal made a material error in its appreciation of the evidence as there was, in fact, a violation of her right to a fair trial. The Tribunal dismissed this allegation as unfounded in consideration 17 of Judgment 4221.

8. The complainant contends, as a fifth ground for review, that new facts were discovered on which she was unable to rely in the original proceedings. She alleges that a new fact shows that her “own” post was advertised by an email of 2 July 2020 but she was excluded from the process as she was not yet graded P-4. The case law states that, though the discovery of a new fact may afford grounds for review, the fact must date from before the material judgment and be such that it would have affected the ruling had the Tribunal known of it in time (see Judgment 1545, consideration 5). Inasmuch as the new fact mentioned by the complainant is subsequent to the date of Judgment 4221, whilst it may afford a ground for a new complaint, it affords no ground for review of that judgment. UNESCO informs the Tribunal that the matter involving the email is *sub judice* as the complainant has lodged a new appeal against it to the Appeals Board.

9. It follows that, as the complainant’s application does not raise any admissible ground for review of Judgment 4221, it must be dismissed.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 2 June 2021, Mr Patrick Frydman, President of the Tribunal, Ms Dolores M. Hansen, Vice-President of the Tribunal, and Sir Hugh A. Rawlins, 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

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ