Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

109th Session **Judgment No. 2937**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 2838 filed by the International Labour Organization (ILO) on 21 July 2009 and corrected on 31 July, Ms J. S.'s reply of 30 October, the ILO's rejoinder of 3 December 2009 and Ms S.'s surrejoinder of 26 January 2010;

Considering Article II, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS

1. By Judgment 2838 delivered on 8 July 2009 the Tribunal set aside the decision of 12 October 2007 whereby the Director-General of the International Labour Office, the ILO's secretariat, had dismissed the grievance filed by Ms S. in which she asked for the whole of her employment relationship with the Office to be redefined.

Referring to paragraph 10 of Circular No. 630, series 6, entitled "Inappropriate use of employment contracts in the Office", the Tribunal considered that "since […] the period of 171 days, or 5 months and 3 weeks, specified in the circular would perforce be exceeded while [Ms S.'s] services were still required, the Organization

was under an obligation to offer her another type of contract differing in length and terms from a special short-term contract", and it awarded Ms S. 30,000 Swiss francs in compensation for the injury suffered.

Paragraph 10 of above-mentioned Circular No. 630 reads as follows:

> "A Special Short-Term (SST) contract may be issued for a minimum of 30 days up to a maximum of 171 days (or 5 months and 3 weeks) within any 12 consecutive months. A series of SST contracts may be issued successively, up to a maximum of 171 days."

2. The ILO requests a review of Judgment 2838, alleging that it is "affected" by a material error.

It maintains that, contrary to the Tribunal's belief, it had complied with the obligation arising from the provision cited above. At the end of the period of 171 days under a special short-term contract, Ms S. was granted a short-term contract from 22 April 2005 to 28 February 2006, and "[t]he latter period involved a change in the conditions of service on 1 July 2005, in accordance with [Rule] 3.5 of the Rules governing conditions of service of short-term officials". The Organization therefore affirms that on expiry of the period of 171 days "the nature of the contracts in the present case [had] clearly [been] modified", since the letter dated 30 May 2005 specified that the "[s]hort-term contract conditions are applicable retroactively from 22 April 2005". Hence, contrary to the Tribunal's conclusion, it had offered the complainant another type of contract differing in length and terms from a special short-term contract.

3. The Tribunal has consistently accepted as a ground for review of its judgments "material error, i.e. a mistaken finding of fact which, unlike a mistake in appraisal of the facts, involves no exercise of judgment" (see Judgment 2586 and the cases cited therein).

In the present case, the Tribunal made no mistaken finding in Judgment 2838 of the kind referred to above. It stated in that judgment that it was clear from the evidence on file that it was in fact the special short-term contract beginning on 2 November 2004 which had been extended several times.

4. In doing so, the Tribunal, which explicitly mentioned the two successive changes to the contractual relationship referred to by the Organization, intended to rule that the change which took effect on 22 April 2005 did not alter the initial nature of the contractual relationship. Indeed, the letter of 30 May 2005, which did not escape the Tribunal's attention, merely offered an "extension" of the initial contract, indicating that "the short-term contract conditions [were] applicable", and it did not alter the nature of that contract.

5. It follows from the foregoing that Judgment 2838 is not tainted by any material error and that the application for review must therefore be dismissed.

6. Ms S. requested as a counterclaim that the Tribunal review its judgment "on the point concerning non-renewal of her contract inasmuch as that decision was not based on a valid ground". This counterclaim must be rejected because it is not based on any admissible ground for review pursuant to the Tribunal's case law (see, in particular, Judgments 442 and 570).

DECISION

For the above reasons,

The application and the counterclaim are dismissed.

In witness of this judgment, adopted on 30 April 2010, Mr Seydou Ba, Vice-President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 2010.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet