

115th Session

Judgment No. 3197

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 2946 filed by Mr M.J. C. on 21 December 2010, the reply of the International Atomic Energy Agency (IAEA) of 9 May 2011, the complainant's rejoinder of 25 May and the IAEA's surrejoinder of 29 August 2011;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

CONSIDERATIONS

1. This is an application for review of Judgment 2946 in which the Tribunal joined two complaints. The first complaint challenged the non-renewal of the complainant's contract beyond its expiry date. The second complaint concerned the recruitment for an advertised post. The complainant claimed that the selection process was tainted by irregularities and that the subsequent Joint Appeals Board (JAB) proceeding was flawed inter alia by a lack of due process.

2. The complainant advances four grounds for review. They will be considered in turn. Before doing so, it is recalled that, as

provided in Article VI of the Statute, the Tribunal's judgments are final. Accordingly, they are subject to the application of the principle of *res judicata* and will only be reviewed in exceptional circumstances and on limited grounds. That is, "failure to take account of particular facts, a mistaken finding of fact that involves no exercise of judgment, omission to rule on a claim and the discovery of some new facts which the complainant was unable to invoke in time in the [earlier] proceedings" (see Judgment 1952, under 3).

3. The first ground relied upon concerns the Agency's application of its rotation policy that was at issue in Judgment 2946. The complainant seeks to introduce what he alleges is "new evidence" in the form of a statement made by the Deputy Director General in charge of the Department of Management (DDG) at the forty-sixth Staff Assembly.

4. The Tribunal explained in Judgment 2693, under 2: "A new fact is a fact on which the party claiming it was unable to rely through no fault of its own; it must be a material fact likely to have a bearing on the outcome of the case (see Judgments 748, under 3, 1294, under 2, 1504, under 8 and 2270, under 2)." As the Agency points out, the complainant referred to the DDG's statement in the JAB proceeding and this was the subject of comment in its report and also before the Tribunal in the case leading to Judgment 2946. It follows that this statement is not a new fact giving rise to review.

5. The complainant also seeks to introduce the evidence of two individuals who were not interviewed by the JAB. The complainant contends that this evidence is relevant to the allegation of bias he made against his former Director in the context of the selection process at issue in his second complaint. In light of the Tribunal's conclusion in Judgment 2946, under consideration 22, this evidence

would not have a bearing on the outcome of the judgment at issue. It reads:

“Once it is accepted, as it must be, that the complainant was subject to the rotation policy and that it was open to the selection panel and, later, the Director General to find that, by reason of his work on a multi-collector ICP-MS and experience in handling nuclear material, the selected candidate was better qualified than the complainant for the vacant position at the Seibersdorf Laboratories, much of the foundation for the complainant’s argument of bias and/or improper purpose disappears. And neither of the other matters upon which he relies in his pleadings will support a finding in that regard either in relation to his former supervisor or any other person in the Administration. Without a finding to the effect in relation to the complainant’s former supervisor, there is no basis for a finding that she improperly intervened in the selection process to have the complainant’s rating for the vacant post changed from ‘well qualified’ to ‘qualified’.”

6. In his third ground the complainant states that “there was a total breach of due process in that the JAB never spoke to [him] about [his] concerns” in relation to the selection process at issue in his second complaint. This is simply an attempt to revisit a matter already considered by the Tribunal and decided in Judgment 2946.

7. Lastly, the complainant raises the Agency’s alleged failure to conduct an investigation into misconduct on the part of the complainant’s former Director. This is an entirely new matter that was not before the Tribunal in Judgment 2946 and will not be considered.

DECISION

For the above reasons,
The application for review is dismissed.

In witness of this judgment, adopted on 8 May 2013, Mr Seydou Ba, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 July 2013.

Seydou Ba
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet