Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

T. (No. 2)

v.

WHO

(Application for review)

121st Session **Judgment No. 3561**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3141 filed by Mr I. T. on 7 January 2014 and corrected on 25 February, the reply of the World Health Organization (WHO) of 4 June, the complainant's rejoinder of 21 July and WHO's surrejoinder of 13 October 2014;

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

Having examined the written submissions;

Considering that the facts of the case may be summed up as follows:

In Judgment 3141, delivered on 4 July 2012, the Tribunal found that the decision to terminate the complainant's appointment in May 2008 was unlawful. It therefore ordered WHO to grant the complainant a temporary six-month appointment and to pay him costs in the amount of 5,000 Swiss francs.

In execution of Judgment 3141, WHO handed the complainant a cheque for 5,000 Swiss francs on 19 July 2012 and then offered him a temporary contract – which he accepted on 26 July – for the period 1 October 2012 to 31 March 2013.

On 27 July 2012 the complainant wrote to the Director of the Human Resources Management Department to advise her that he was

expecting "specific proposals" on compensation for the financial and moral injury which he considered he had suffered owing to the length of the proceedings leading to Judgment 3141. On 30 July the Director replied that WHO had executed the judgment in question "in accordance with its terms". On 20 August the complainant submitted four financial proposals to her "with a view to putting an end to the dispute once and for all". On 4 September WHO pointed out to the complainant that it had already paid all the sums due to him pursuant to Judgment 3141. However, it proposed an arrangement whereby, if he agreed to the cancellation of his temporary contract, it would pay him a sum corresponding to six months of his basic salary, an "allowance for [his] wife" and "an additional sum" of 20,000 Swiss francs.

On 5 September the complainant turned down this proposal, but asked that his "name be kept on the roster for [his] next assignment without having to redo the tests which [he] [had] already passed". Having been informed on 27 September that this request had been rejected, he referred the matter to the Headquarters Board of Appeal on 2 November 2012.

On 24 September 2013 the Director-General informed the complainant that, in accordance with the Board's recommendation, she had decided to dismiss his appeal as irreceivable *ratione materiae*, since it concerned "decisions" which had formed the subject of Judgment 3141.

The complainant seeks a review of Judgment 3141 on the basis that a new fact has come to light, namely the injury which he considers he suffered owing to the length of the internal appeal proceedings concerning the termination of his appointment and of the proceedings before the Tribunal which led to that judgment.

He asks the Tribunal, through this application for review, to order WHO to pay him 37,313 Swiss francs to cover costs incurred as a result of the aforementioned proceedings. He also requests the reimbursement of "subsistence expenditure", rent and health insurance premiums which he paid during those proceedings. In addition, he claims costs for the current proceedings. Subsidiarily, he asks to be "given the

opportunity […] to prove by all legal means the reality of the facts as stated by him".

WHO contends that none of the complainant's submissions constitutes admissible grounds for review. If his application were to be regarded as a complaint impugning the decision of 24 September 2013, WHO holds that it would be time-barred and therefore irreceivable.

CONSIDERATIONS

1. The complainant asks the Tribunal, by means of an application for review of Judgment 3141, to order WHO to pay him various sums in compensation for the injury which, he alleges, arose from the overall length of the internal appeal proceedings concerning the termination of his appointment and of the proceedings before the Tribunal which led to this judgment.

2. The complainant has requested oral proceedings and, if necessary, the hearing of witnesses. In view of the abundant and sufficiently clear submissions and evidence produced by the parties, the Tribunal considers that it is fully informed about the case and does not therefore deem it necessary to grant this request.

3. Consistent precedent has it that, pursuant to Article VI of the Statute of the Tribunal, the latter's judgments are "final and without appeal" and carry the authority of *res judicata*. 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.)

4. In support of his application for review, the complainant, who does not deny that Judgment 3141 was fully and promptly executed by WHO, relies on a new fact on which, he says, he was unable to rely during the proceedings which led to the judgment. As stated above, this fact consists of the alleged existence of injury related to the length of the proceedings before the Tribunal and of the internal appeal proceedings which preceded them.

5. It is clear that, in his first complaint, the complainant did not request compensation for the "subsistence expenditure", housing expenditure and health insurance premiums which he now seeks to have reimbursed.

However, the notion of a "new fact" within the meaning of the above-mentioned case law refers to an aspect of the dispute, knowledge of which during the initial proceedings would have led the Tribunal to reach a different decision on the claims submitted to it at that juncture. It cannot, under any circumstances, apply to a fact which serves as the basis for additional claims presented in subsequent proceedings.

Indeed, an application for review cannot afford a complainant the opportunity to make new claims (see Judgment 1295, under 6) or, in particular, to "seek a form of relief which was not sought in the [original] case" (see Judgment 609, under 4).

This is, however, the very purpose of the application filed by the complainant in the instant case.

6. In addition, the Tribunal notes that the complainant offers no proof that it would have been impossible for him to request compensation for the injury in question during the proceedings leading to Judgment 3141.

Contrary to his submissions, the uncertainty surrounding the outcome and the date of completion of those proceedings in no way prevented him from formulating such a request, since the Tribunal's

case law allows conditional claims, even when their exact amount is not specified.

Nor does the complainant have any grounds for asserting that such a request, having been filed directly with the Tribunal, would have been irreceivable, because the condition that internal means of redress must be exhausted would in any case not apply in respect of compensation for damage related to the length of proceedings (see, for example, Judgments 2744, under 6, and 3429, under 4).

7. Moreover, the claim that the amount of the costs awarded to the complainant should be increased must obviously be dismissed. In Judgment 3141 the Tribunal set this amount at 5,000 Swiss francs. This point has *res judicata* authority and in his application for review the complainant puts forward no valid ground for reviewing the judgment in this respect (regarding the dismissal of a similar claim, see the aforementioned Judgment 1295, under 9).

8. The application for review filed by the complainant will not therefore be allowed.

9. The Tribunal notes that it would certainly be possible, having regard to the context in which this application was filed, to redefine it as a complaint challenging the decision of 24 September 2013 in which the Director-General upheld the dismissal of the complainant's claims for compensation at the end of the internal appeal proceedings.

However, such a complaint would, in any event, have to be dismissed as irreceivable, as it was not filed within the ninety-day time limit laid down in Article VII, paragraph 2, of the Statute of the Tribunal. Indeed, the complainant is wrong in submitting on the basis of a notification from the post office, a copy of which he produces, that in this case the time limit did not start to run until 8 October 2013. As indicated on the document in question, that date was the deadline for collecting the registered letter from WHO and not the date on which it was actually notified to the addressee. Notification in fact took place on 1 October 2013, as is undisputedly proved by the copy

of the acknowledgement of receipt placed in the file by WHO. Thus, the complaint filed with the Tribunal on 7 January 2014 was filed after the expiry of the aforementioned period of time available to the complainant to impugn the decision of 24 September 2013.

10. It follows from the foregoing that the Tribunal will not allow the complainant's subsidiary claim that he should be "given the opportunity […] to prove by all legal means the reality of the facts as stated by him", because the issue of whether the injury alleged by the complainant actually materialised has no bearing on the outcome of the case.

11. The dismissal of the complainant's various claims analysed above necessarily leads to the dismissal of his claim for costs for these proceedings.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 3 November 2015, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 February 2016.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ