Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

L. (No. 3)

v.

WTO

(Application for review)

124th Session **Judgment No. 3815**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3486 filed by Mr V. L. on 14 April 2016, the reply of the World Trade Organization (WTO) of 30 August, the complainant's rejoinder of 27 October, the WTO's surrejoinder of 1 December 2016, the complainant's further submissions of 31 January 2017 and the e-mail of 20 February 2017 by which the WTO informed the Registrar of the Tribunal that it did not wish to file final comments;

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

Having examined the written submissions;

CONSIDERATIONS

1. In Judgment 3486, delivered in public on 30 June 2015, the Tribunal ruled on the complainant's first complaint, challenging the termination of his contract by the WTO with effect from 30 April 2011.

Having noted that on 8 October 2010 the complainant had signed an agreement with the WTO terminating his appointment subject to several guaranties and the payment of compensation, the Tribunal considered that the agreement had not been tainted by any flaw in consent. It found that the agreement was the outcome of negotiations lasting several weeks, at the end of which the complainant had received the compensation that

he sought. As the agreement provided inter alia that the complainant "agree[d] not to initiate in the future any appeal or complaint in relation to [his] claims and grievances or in relation to [the] mutual agreement", the Tribunal held that the complaint in question was irreceivable and dismissed it on that ground.

2. By an application for review, the complainant requests the Tribunal to annul the decision in Judgment 3486 and to cancel the agreement of 8 October 2010 and the termination of his contract. He also seeks reinstatement at the WTO, damages of various kinds and an award of costs.

3. The complainant requested that oral proceedings be held, particularly with a view to hearing witnesses.

Contrary to what the complainant contends with some insistence in his submissions, the Tribunal is not bound to grant such a request. Article V of its Statute clearly permits the Tribunal to agree or decline to hold oral proceedings. It is therefore open to the Tribunal, if it considers it appropriate, to dismiss a request for oral proceedings (see, inter alia, Judgments 3779, under 3, and 3780, under 3).

The complainant's contention that the Tribunal's prerogative not to hold oral proceedings violates the European Convention on Human Rights is irrelevant. Apart from the fact that this contention appears unfounded, the Convention is not in any event applicable as such to international organisations within the legal system to which the Tribunal belongs (see, for example, Judgments 2236, under 11, 2611, under 8, or 2662, under 12).

In the present case, in view of the extensive and detailed submissions and evidence produced by the parties, the Tribunal considers that it is fully informed about the issues raised by this application for review and does not therefore deem it necessary to hold oral proceedings.

4. 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. In support of his application for review of Judgment 3486, the complainant relies on new facts on which he was allegedly unable to rely in the proceedings leading to that judgment. He refers to two documents of which he did not receive the full version until 4 March 2016, during the proceedings relating to his second complaint, namely, the summary of a meeting between him and the Director of the Human Resources Division on 15 July 2010 and a memorandum dated 4 October 2010 from the Director-General to the Chairman of the Appellate Body. In his further submissions, the complainant extends his plea to other new items of evidence adduced as annexes to the WTO's surrejoinder in the present proceedings, consisting of summaries of three meetings held on 29 June, 9 July and 29 July 2010 respectively, in the same conditions as that held on 15 July.

According to the complainant, the disclosure of these various documents constitutes and discloses new facts showing, as he claimed in the case leading to Judgment 3486, that he did not freely consent to the agreement of 8 October 2010 but signed it under duress.

6. The notion of a new fact, within the meaning of the above-mentioned case law, applies to a fact which not only could not be relied on in the original proceedings by the party concerned, for a reason outside its control, but is also of material importance and would have influenced the Tribunal's decision (see, for example, Judgments 748, under 3, 1294, under 2, 2270, under 2, 2693, under 2, and 3197, under 4).

7. The defendant submits that the above-mentioned summary of the meeting held on 15 July 2010 could have been made available to the complainant had he asked the Tribunal to order its disclosure in the proceedings concerning his first complaint. On this basis, it contends that the complainant's inability to rely on that item of evidence stemmed from his own lack of diligence, preventing him from relying on it as a new fact. This argument is hardly convincing at first sight, but in any event the question need not be determined.

8. Indeed, it is patently obvious that the various documents on which the complainant bases his application for review do not contain any information of material importance that would have influenced the Tribunal's decision had he produced them during the original proceedings. Thus, the submission of those items of evidence cannot be deemed to constitute or disclose any new facts within the meaning of the aforementioned case law.

9. The documents do demonstrate that the complainant vehemently wished to remain at the WTO, if at all possible, rather than having to separate from service. However, that unsurprising fact was already apparent from the written evidence submitted to the Tribunal in the original proceedings and, contrary to the complainant's contention, it in no way implies that he signed the agreement of 8 October 2010 under duress. Indeed, it is perfectly natural that, given the WTO's stated intention to terminate his appointment, the complainant was led to negotiate with the Organisation's officials with a view to drawing up a balanced agreement on the conditions of his departure.

10. Moreover, as the WTO rightly observes, the documents relied on by the complainant serve only to reinforce the Tribunal's findings in Judgment 3486. In fact, and as the summaries of the successive meetings that took place in the summer 2010 and a comparison between the indemnities initially offered and those finally granted by the WTO show, these documents confirm that the agreement of 8 October 2010 was the outcome of a negotiation lasting several weeks, at the end of

which the complainant had secured substantial benefits in return for agreeing to separate from the Organization's service.

In this respect, the Tribunal notes in particular that the complainant's assertion that he consistently refused to take part in such negotiations is belied by the content of some of the documents that he cites. For example, the summary of the meeting held on 29 July 2010 indicates that the complainant replied to the offer of compensation being presented at that time by saying that, "for him to consider a separation, the WTO would have to add something" or "offer more", which shows that on the contrary, he played an active role in the negotiations.

11. It ensues from the foregoing that the present application for review is merely an attempt to re-litigate matters that were conclusively decided in Judgment 3486 and must be dismissed in its entirety.

12. The WTO submits that the application is clearly vexatious.

The Tribunal shares that opinion, but since the defendant has not submitted a counterclaim for an order against the complainant on this basis, it cannot issue an order to that effect in this judgment.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 4 May 2017, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

(Signed)

GIUSEPPE BARBAGALLO DOLORES M. HANSEN PATRICK FRYDMAN

DRAŽEN PETROVIĆ