

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

J. (No. 2)

v.

Global Fund to Fight AIDS, Tuberculosis and Malaria

(Applications for interpretation and review
of Judgment 4074 filed by Mr J.)

136th Session

Judgment No. 4657

THE ADMINISTRATIVE TRIBUNAL,

Considering the applications for interpretation and for review of Judgment 4074 filed by Mr G. J. J. on 15 October 2020, the reply of the Global Fund to Fight AIDS, Tuberculosis and Malaria (hereinafter “the Global Fund”) of 2 February 2021, Mr J.’s rejoinder of 9 March 2021, the Global Fund’s surrejoinder of 21 June 2021, Mr J.’s further submissions of 2 March 2023 and the Global Fund’s final comments thereon of 17 March 2023;

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

Having examined the written submissions;

CONSIDERATIONS

1. The complainant is a former staff member of the Global Fund. His contract was terminated with three months’ notice by letter dated 6 February 2012. At the material time, he was serving as ad interim Director of the Corporate Services Cluster under a contract due to conclude on 30 April 2013. After unsuccessfully seeking internal review of the decision to terminate his contract, the complainant filed a complaint with the Tribunal (which was his second one) in October 2016 challenging that

decision. Orders were made in his favour in Judgment 4074, delivered in public on 6 February 2019. That judgment was preceded by Judgment 3425, delivered in public on 11 February 2015, in which the Tribunal had sent the complainant's first complaint back to the Global Fund so that the internal appeals procedure could be followed.

2. The complainant has filed two applications with the Tribunal on 15 October 2020. One was an application for review of Judgment 4074. The other was for the interpretation of that judgment.

3. However, there is a threshold issue to be addressed, namely whether the application for review is receivable having regard to the time taken after Judgment 4074 was delivered to file the application for review. Receivability is a matter that can be raised by the Tribunal *ex officio*. In Judgment 1952, consideration 3, the Tribunal said that an application for review should be filed within a reasonable time. To similar effect are Judgments 3982 and 2219. In the first-mentioned of these latter cases, the period was patently unreasonable and the application was dismissed as irreceivable (and also baseless on the merits).

4. In this case the application for review was filed over 20 months after Judgment 4074 was delivered in public. The amounts payable under the judgment were paid, the Tribunal infers from correspondence in evidence, sometime shortly before 3 April 2019.

5. The Tribunal invited the applicant and the Global Fund to make submissions on the question of receivability. The central issue is whether 20 months is a reasonable time. The Global Fund effectively said it would abide by the Tribunal's decision. The complainant's submissions were made on 2 March 2023. He recounts that in early April 2019 he began the process of trying to obtain documents from the Global Fund he apparently hoped to use in any application for review. He had some very limited success but was mainly unsuccessful. By July 2019 it would have been apparent to the complainant that the prospect of obtaining the documents then being sought was negligible. He could

have then filed the application for review. But he persisted into 2020 in making requests through channels he had not hitherto followed. The complainant made a confidential submission concerning his personal circumstances from February 2020 until September 2020. The import of this submission was that the focus of his time and energy were those personal circumstances and the making of the application for review was “forgotten”. But even accepting this is correct it does not account for a delay of approximately a year from the time the judgment was made public until these personal circumstances began to unfold. The complainant could have applied for a review, but did not in this period. Even discounting the total time following February 2020, the time taken to file the application for review was unreasonable. It is thus irreceivable.

6. However, in the circumstances of this case, it is appropriate to refer to the merits of the application for review notwithstanding that the application is irreceivable. For a considerable period, the process of review was not expressly recognised in the Tribunal’s Statute, but it now is in Article VI by an amendment made by the International Labour Conference on 7 June 2016. However, the settled principles governing the process of review have been developed by the Tribunal over time and before the amendment and continue to apply. As the Tribunal most recently observed in consideration 2 of Judgment 4440: “[P]ursuant 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).”

7. The complainant's pleas in his brief are divided into four sections. Nothing of substance emerges from his rejoinder. The first section is an introduction. The second section is entitled "Interpretation of Judgment 4074" and the third, "Review of Judgment 4074". The final section concerns relief, headed "Request". The second section concerning interpretation contains two subheadings, one is "Short term Contract" and the other is "The Balance of Probabilities". As discussed shortly, the application for interpretation is misconceived. However, some of the commentary in the second section uses language which accords with the language in the preceding consideration concerning the scope of an application for review. Treating that commentary as directed to the application for review, notwithstanding that it appears under the second heading concerning interpretation, the substance of the commentary is to challenge findings made by the Tribunal in Judgment 4074 concerning some of the essential contractual documents. It is no more than an argument that there had been a misinterpretation of the facts. This is not a basis for review.

8. The commentary in the third section, concerning the review, is a mixture of factual assertions by the complainant mainly about his status and role within the Global Fund and its failure to provide documents which would disclose his status and role. This commentary does not disclose any error of the type referred to in consideration 6 above. Accordingly, the application for review should be dismissed.

9. The complainant's application for interpretation of Judgment 4074 is misconceived. An application for interpretation raises for consideration the meaning of the decision contained in a judgment and potentially its legal effect (see Judgments 4409, consideration 6, 3822, consideration 5, and 3014, consideration 3). In exceptional cases (and this case is not such a case) such an application can concern the grounds of the judgment as well but only if the decision refers to them explicitly so that they are indirectly incorporated in the decision (see Judgments 4567, consideration 3, 3564, consideration 1, and 2483, consideration 3). In the present case the orders actually made

were clear and unambiguous. No occasion arises for their interpretation. The application for interpretation should be dismissed.

DECISION

For the above reasons,

The applications for interpretation and for review are dismissed.

In witness of this judgment, adopted on 17 May 2023, Mr Michael F. Moore, President of the Tribunal, Mr Patrick Frydman, Vice-President of the Tribunal, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

PATRICK FRYDMAN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ