

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

L. (No. 4)

v.

EPO

(Application for review)

137th Session

Judgment No. 4783

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4424 filed by Mr C. L. on 6 April 2022, the reply of the European Patent Organisation (EPO) of 27 September 2022, the complainant's rejoinder of 9 November 2022 and the EPO's surrejoinder of 11 January 2023;

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

Having examined the written submissions;

CONSIDERATIONS

1. This is an application for the review of Judgment 4424. It is unnecessary to repeat all the issues it addressed and the detailed facts on which the judgment is based.

2. The relief the complainant seeks in this application is that he be awarded “[m]aterial damages equivalent to 54 working days salary at [his] equivalent daily rate from 3 November 2008 until 14 January 2009”, together with interest. This claim is made on the assumption there was a reviewable error by the Tribunal in its consideration of this specific question. On this precise topic the Tribunal had said in consideration 10:

“Even if the complainant is correct that his absence from work for the period 3 November 2008 to 14 January 2009 was not unauthorised leave, he singularly fails to demonstrate in his pleas what the material damage was that he suffered, if that is a correct characterisation of his claim. His focus was on what can only be described as extravagant claims for moral damages for this and other events.”

3. It is desirable to provide some context. As recounted in consideration 2 of Judgment 4424, the complainant was in dispute with the EPO about his absences from work due to what he claimed was ill health between February 2008 and mid-2009. Whether he was absent because of ill health was in contention. In fact, he returned to work on 15 January 2009. In its report, the Appeals Committee recommended (a recommendation rejected by the Vice-President of Directorate-General 4, acting by delegation of the President of the Office, in the impugned decision) that the complainant’s absence from work for the period 24 November 2008 to 14 January 2009 should be “reinstated as authori[s]ed, with the administrative and financial consequences that follow”. In his complaint filed with the Tribunal he sought, by way of relief, moral and punitive damages. No claim was made for material damages.

4. The principles applicable in an application for review are well settled (see, for example, Judgment 4736, consideration 4, and the case law cited therein):

“[T]he 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.”

5. While he does not do so in his complaint brief, the complainant does seek to establish in his rejoinder how two of these grounds have been engaged. The first ground is that the Tribunal allegedly committed a material error of fact. The factual error was said to be that the Tribunal did not consider that the complainant had suffered any financial consequence for the decision placing him on unauthorised absence, namely the non-payment of the 54 days, even though this was not the case. The complainant acknowledges this was not stated explicitly. Even if this analysis were correct (which it is not) it does not constitute a failure to take into account a material fact. The second ground is that the Tribunal allegedly failed to rule on a claim. Relevantly that was a claim for material damages. Having regard to the relief sought in the complaint leading to the judgment being reviewed, no such claim was made.

6. The application for review should be dismissed.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 20 October 2023, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

MIRKA DREGER