

**G.-B. (No. 3)**

*v.*

**UNWTO**

(Application for review filed by UNWTO)

**138th Session**

**Judgment No. 4875**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4576 filed by the World Tourism Organization (UNWTO) on 2 August 2023, Mr J. G.-B.'s reply of 16 January 2024, UNWTO's rejoinder of 15 February 2024 and the complainant's surrejoinder of 18 March 2024;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal, and Article 6, paragraph 5, of its Rules;

Having examined the written submissions;

**CONSIDERATIONS**

1. UNWTO has applied for the review of Judgment 4576, delivered in public on 28 November 2022. This judgment concerns that application. However, the introductory observations in considerations 1 to 4 of Judgment 4873 are apt to apply in this matter as well.

2. It is unnecessary to summarise generally the reasoning and conclusions of the Tribunal in Judgment 4576. Both emerge clearly from the published reasons though the Organization challenges aspects of that reasoning as discussed in the following considerations.

3. However, some context should be provided for Judgment 4576. In at least some domestic legal systems the trial of a civil claim can, in appropriate cases, be conducted in two separate phases. The first phase involves a determination by the court of whether the defendant is legally liable. This might, for example, involve a determination of whether the defendant is legally liable for a breach of contract or whether the defendant is liable to pay the plaintiff damages for her or his negligence. If the outcome of this first phase is that the defendant is legally liable, then the second phase is undertaken and involves the determination, by way of quantification, of the damages payable to the plaintiff. On occasions, this second phase will require detailed evidence and analysis.

4. It is entirely unusual for the Tribunal to determine a complaint in phases analogous to the phases just discussed. However, the Tribunal decided to do in this matter as explained in Judgment 4453, at least in relation to material damages. This procedure was adopted for the benefit of the Organization, again as explained in Judgment 4453. But what is important, is that the legal liability of UNWTO was determined in that judgment, in the sense that the Tribunal determined that the complainant, Mr G.-B., had been unlawfully dismissed. What remained was only the determination, by way of quantification, of the material damages payable to Mr G.-B.

5. It is convenient to identify the applicable principles in a review. As the Tribunal recently observed in Judgment 4783, consideration 4 (see also Article 6 of the Tribunal's Rules):

“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.’”

6. UNWTO accepts these principles govern this application for review and relies on elements in them, arguing that the Tribunal failed to take account of material facts and committed a material error.

7. As it has in its application for review of Judgment 4453, the Organization characterises in the present application its failure to investigate the former Secretary-General's evidence as simply a due process flaw. This failure was more fundamental. The complainant had been a staff member of the Organization for almost 9 years and most of his conduct founding the decision to dismiss him occurred during the period the former Secretary-General was executive head. The import of the scant evidence from him that was considered, effectively explained and excused the conduct of the complainant. It is simply wrong for the Organization to say, as it does in its pleas:

“In other words, while the Tribunal considers that a due process flaw was committed when adopting the contested decision, it recognised that, should such a flaw had not been committed, the decision would have been considered not only as properly substantiated, but also warranted and proportionate to the proven misconducts.”

8. Nothing was said by the Tribunal which would warrant this observation, particularly the latter part of it.

9. Even though the Organization relies on a failure of the Tribunal to take account of material facts, it is difficult to discern what specific material fact, or facts, was said not to have been taken into account. One appears to emerge from UNWTO's pleas, namely that the Tribunal failed to take into account the fact that the Organization did attempt to ascertain from the complainant details of the former Secretary-General's knowledge, approval and instructions, while to no avail. But even accepting this is so, the material fact was whether the Organization itself attempted to ascertain directly from the former Secretary-General himself in any detail his evidence on these matters. There was no plea that it had.

10. Similarly, even though the Organization relies on the Tribunal committing a material error involving no exercise of judgement, it is difficult to discern what specific material error, or errors, were said to have been committed. One appears to emerge from UNWTO's pleas, namely the Tribunal's failure to answer what were characterised as two key legal questions. The first was whether "the Organisation [was] entitled to impose the sanction of summary dismissal on the sole misconducts committed under the tenure of the current Secretary-General" and the second was, "[i]f so, does the alleged failure of not considering enough the statements of the former Secretary-General, regarding the misconducts committed under his tenure, should be censured by the annulment of the summary dismissal decision?"

11. The second question was dependent on an affirmative answer to the first. But the first question is misconceived as a question the Tribunal should have addressed. It is entirely hypothetical. UNWTO, elected, in dismissing the complainant, to rely on conduct over a number of years including conduct during the tenure of the previous Secretary-General. It could have, but did not, focus only on conduct occurring during the tenure of the new Secretary-General. The Tribunal was only obliged to address questions arising from what the Organization actually did, not what it could have done.

12. Additionally, the Organization criticises the Tribunal for failing to exercise its powers (in particular the power to investigate under Article 11 of the Tribunal's Rules) to obtain from the previous Secretary-General detailed evidence of his knowledge, approval and instructions. Even if this were a material error, which it was not, it would have involved the exercise of judgement by the Tribunal. This is not an admissible ground of review. In any event, it is not the role of the Tribunal to determine, amongst other things, the gravity of the conduct and whether it would justify summary dismissal, which appears to be implicit in the suggestion that the Tribunal should have engaged in fact-finding of the type suggested.

13. The Organization has failed to make out a ground of review and this application should be dismissed.

14. The complainant seeks an order for costs in the sum of 1,500 euros to which he is entitled in the circumstances of this case given that he has been put to the trouble and expense of, legitimately, answering the Organization's pleas in this application to protect his interests.

#### DECISION

For the above reasons,

1. The application for review is dismissed.
2. UNWTO shall pay the complainant costs in the sum of 1,500 euros.

In witness of this judgment, adopted on 7 May 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 8 July 2024 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

MIRKA DREGER