

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

K. (Nos. 1 and 2)

v.

ITU

(Applications for review)

138th Session

Judgment No. 4906

THE ADMINISTRATIVE TRIBUNAL,

Considering the applications for review of Judgments 4567, 4568 and 4569 filed by Mr E. K. on 4 August 2023;

Considering the application for review of Judgment 4584 filed by the complainant on 8 August 2023;

Considering the application for review of Judgment 4732 filed by the complainant on 15 August 2023;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal and Articles 6, paragraph 5, and 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. The complainant, a former staff member of the International Telecommunication Union (ITU), has filed applications for review of Judgments 4567, 4568 and 4569, delivered in public on 6 July 2022, in which the Tribunal firstly dismissed his application for interpretation of Judgment 4370 concerning his first complaint, in which he challenged ITU's decision to subject him to mandatory retirement as from 31 July 2017, and secondly dismissed his applications for interpretation and review of Judgment 4440. The latter judgment was rendered on a

previous application for review filed by the complainant against aforementioned Judgment 4370.

The complainant has also filed an application for review of Judgment 4584, delivered in public on 1 February 2023, by which the Tribunal dismissed his second complaint, in which he sought the cancellation of the recruitment procedure to fill the post that he had held until he retired.

Lastly, he has filed an application for review of Judgment 4732, delivered in public on 7 July 2023, by which the Tribunal dismissed an application for interpretation of aforementioned Judgment 4567.

2. The complainant has requested the recusal, in all cases concerning him, of the judge presiding over the panel charged with hearing and determining these applications. However, for the same reasons as set forth in Judgment 4584, consideration 2, the Tribunal finds that this claim should be dismissed.

3. The five above-mentioned applications for review are directed against judgments concerning related cases and rest on similar arguments. Accordingly, they will be joined to form the subject of a single judgment.

4. As the Tribunal has already recalled in consideration 2 of Judgment 4440, rendered, as has been stated, on a previous application for review filed by the complainant, 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. Under Article 6, paragraph 5, of the Rules of the Tribunal, the only admissible grounds of review are a failure to take account of material facts, a material error (namely a mistaken finding of fact involving no exercise of judgement), an omission to rule on a claim, or the discovery of new facts on which the complainant was unable to rely 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 4327, consideration 3, 3473, consideration 3, 3452, consideration 2, and 3001, consideration 2).

5. In support of his applications, the complainant submits that Judgments 4567, 4568, 4569, 4584 and 4732 are flawed by material errors and that the Tribunal failed to take account of material facts. Furthermore, he relies on the discovery of a new fact.

6. Firstly, in respect of the material errors, the complainant submits that these consist of “incorrect findings of material facts”*, “incorrect findings of fact”* and “legally invalid and incorrect”* findings of fact, which formed the bases for the decisions in Judgments 4567, 4568, 4569, 4584 and 4732. However, the Tribunal finds that the complainant’s objections do not relate to material errors but are solely an attempt to challenge the view taken by it in the judgments in question. As it is, the legal assessments made by the Tribunal in a judgment cannot be challenged in an application for review (see Judgments 4440, consideration 4, and 3984, consideration 5).

7. The complainant next submits that, when it rendered Judgments 4567, 4568, 4569, 4584 and 4732, the Tribunal failed to take account of material facts. However, it is plain from the complainant’s arguments on this point that he is in fact seeking to argue that the Tribunal incorrectly appraised the facts in question. Such an argument does not afford an admissible ground for review (see Judgments 4440, consideration 5, and 3983, consideration 6).

8. Lastly, the complainant relies on an allegedly new fact. Though the existence of a new fact may indeed afford grounds for review, the fact must date from before the judgment and be such as would have affected the ruling had the Tribunal known of it in time (see Judgments 4440, consideration 8, 3561, consideration 5, and 1545,

* Registry’s translation.

consideration 5). In this case, the Tribunal fails to see, in any event, how the factual details provided by the complainant would have led it to decide differently on the claims that were submitted to it in the complaints leading to Judgments 4567, 4568, 4569, 4584 and 4732.

9. It follows from all the foregoing that the applications for review filed by the complainant are clearly devoid of merit and must therefore be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,

The applications for review are dismissed.

In witness of this judgment, adopted on 24 May 2024, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

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

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

MIRKA DREGER