

**118th Session**

**Judgment No. 3390**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3116 filed by Mr N.J. G. on 26 September 2012;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

**CONSIDERATIONS**

1. In Judgment 3116, delivered on 4 July 2012, the Tribunal dismissed a complaint filed by the complainant, a former student air traffic controller at the European Organisation for the Safety of Air Navigation (Eurocontrol), against the 1 October 2009 decision of the Director General to endorse the opinion of the Joint Committee for Disputes to dismiss his internal appeal as unfounded, as well as his earlier decision of 20 March 2009 to terminate the complainant's appointment with Eurocontrol with effect from 30 April 2009. The complaint was dismissed as his scanned complaint form sent via an e-mail of 11 May 2010 lacked elements which were necessary to identify it as a complaint, and his completed complaint was sent

six days after the deadline established by Article VII, paragraph 2, of the Tribunal's Statute.

2. In his application for review of that judgment, the complainant presents as an error of fact that the Tribunal's Registrar had informed him, after receiving his scanned complaint form of 11 May, that it was incomplete as submitted and that he needed to complete it in its essential points but that she subsequently did not accept his 18 May 2010 submission as being filed on 11 May.

3. The Tribunal's judgments have the authority of *res judicata*. The Tribunal has stated many times that it will review a judgment only in exceptional cases and then only on limited grounds. There are several pleas in favour of review that it will not admit. They are an alleged mistake of law, an alleged mistake in the appraisal of the facts, failure to admit evidence and absence of comment on the parties' pleas. Other pleas in favour of review may be admitted if they are such as to affect the Tribunal's decision. They include failure to take account of specific facts, material error (i.e. a mistake in a finding of fact which does not involve any value judgment and is therefore distinguishable from misappraisal of the evidence), failure to rule on a claim and the discovery of some new fact – i.e. a fact which one of the parties was not able to rely on in the proceedings that culminated in the judgment (see Judgments 748, under 3, 1294, under 2, 1504, under 8, 2270, under 2, and 2693, under 2).

4. The present application for review does not present any of the acceptable grounds for review as detailed under 3 above. The Tribunal notes that the deadline for the submission of the complainant's completed complaint form was 12 May 2010. He filed it on 18 May 2010. As such, his complaint was clearly time-barred. As mentioned specifically in Judgment 3116, under 6: "this case does not fall within the purview of the thirty-day time limit prescribed by Article 6(2) of the Rules for correction of complaints". The Registrar notified the complainant: "I noticed from your attachment that some points (e.g. postal address in point 1, pleadings in point 3, and the list of

supporting documents on page 3) in the complaint form are not filled in – please make sure that you complete all points in the form before mailing your submissions.” There is no indication that the Registrar had extended the deadline for submitting his complaint. These circumstances were all presented in the submissions to his first complaint and were fully considered by the Tribunal prior to the taking of its decision and the publication of Judgment 3116. The application for review is therefore clearly devoid of merit and must be dismissed in accordance with the summary procedure provided for in Article 7 of the Rules of the Tribunal.

#### DECISION

For the above reasons,

The application for review is summarily dismissed.

In witness of this judgment, adopted on 9 May 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 9 July 2014.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ