Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

G. (No. 2)

v.

WHO

(Application for review)

124th Session **Judgment No. 3818**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3685 filed by Ms C. G. on 23 February 2017;

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

Having examined the written submissions;

CONSIDERATIONS

1. In Judgment 3685 the Tribunal dismissed as irreceivable a complaint of the complainant filed on 21 November 2013. The Tribunal did so because, at the date of the filing of the complaint, the complainant had not exhausted internal means of redress as required by Article VII, paragraph 1, of the Tribunal's Statute.

2. The complainant had been employed by the World Health Organization (WHO). In a letter dated 1 September 2011 the complainant was formally informed of a decision to abolish her post and was notified that her appointment would be terminated effective 31 December 2011. She filed a notice of intention to appeal the decision to the Headquarters Board of Appeal (HBA) on 21 October 2011 and a statement of appeal on 9 December 2011. In Judgment 3685, the Tribunal sets out the events

concerning the hearing of the appeal that culminated in the report of the HBA being sent to the Director-General on 20 November 2013 recommending the appeal be dismissed as unfounded. Thereafter, for a limited period, attempts were made to resolve the matter by agreement. This proved unsuccessful and on 31 March 2014 the Director General wrote to the complainant informing her that she had decided to follow the HBA's recommendation to dismiss her appeal as unfounded.

3. In Judgment 3685, consideration 6, the Tribunal noted that Article VII, paragraph 1, of its Statute served several related purposes and referred, in particular, to the observations of the Tribunal in Judgment 3222, considerations 9 and 10. But the Tribunal also noted that, in certain circumstances, a complainant can be taken to have exhausted internal means of redress if the internal appeal proceedings were unlikely to end within a reasonable time having regard to the circumstances existing at the time the complaint was filed.

4. In her application for review, the complainant acknowledges the limited grounds on which the Tribunal might review a judgment and refers to Judgment 3000, dealing with an application for review of Judgment 2854. However she seeks to establish that at least one if not several of those grounds can be made out. The complainant argues the Tribunal based its consideration on a wrong conclusion, omitted to rule on her claim and omitted to take into account a particular fact. The gravamen of the complainant's case on the application for review is that Article VII, paragraph 1, was not germane and the receivability of her complaint should have been assessed by reference to Article VII, paragraph 3. Accordingly, having regard to that latter provision, she contends she was entitled, as a matter of fact, to file her complaint with the Tribunal because her internal appeal had not been resolved within 60 days of the commencement of that appeal. The Tribunal is prepared to assume that the question raised is not simply a plea of mistake of law, which is not an admissible ground for review (see Judgment 1999).

5. This argument confuses the operation of Article VII. A "final decision" for the purposes of Article VII is a decision following the

process of internal appeal or, less usually, a decision that cannot be the subject of internal appeal having regard to the applicable staff rules or regulations. It is unnecessary to discuss whether there are other characteristics of a decision necessary to render it a "final decision". What Article VII, paragraph 3, accommodates is a situation where a claim is made by an official and no action or decision on that claim occurs or is made within 60 days of the claim being made. In those circumstances the official can have recourse to the Tribunal as if there had been a "final decision", because after the effluxion of the prescribed time, there can be taken to be an implied decision. If the organization takes a step in an internal appeal, that forestalls an implied rejection of the appeal that could be challenged before the Tribunal (see, for example, Judgment 3428, consideration 18).

6. The application for review is devoid of merit and should be summarily dismissed in accordance with the procedure set out in Article 7 of the Tribunal's Rules. The Tribunal notes that it would have been open to the complainant to file a further complaint impugning the final decision when it was made on 31 March 2014 in order to regularise what was being sought to be achieved by the complaint filed on 21 November 2013, but this did not occur.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 16 May 2017, Mr Giuseppe Barbagallo, Vice-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 28 June 2017.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ