

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

M.

v.

UNESCO

(Application for review)

131st Session

Judgment No. 4365

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4224 filed by Mr A. S. E. M. on 10 June 2020 and corrected on 18 June 2020;

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

Having examined the written submissions;

CONSIDERATIONS

1. The complainant requests the review of Judgment 4224, delivered in public on 10 February 2020, in which the Tribunal ruled on the complaint he had filed on 28 April 2017 against the United Nations Educational, Scientific and Cultural Organization (UNESCO).

2. In that complaint, the complainant challenged the disciplinary measure of his summary dismissal. In Judgment 4224, the Tribunal found that the complainant was still a serving staff member when he was notified of the decision to dismiss him summarily and that he ought therefore to have resorted to internal means of redress prior to filing a complaint with the Tribunal. As he did not do so, the Tribunal concluded that the complaint was irreceivable for failure to exhaust the internal means of redress offered by the Staff Regulations and Staff Rules of the Organization.

3. Under the Tribunal's case law, pursuant to Article VI of its Statute, its judgments are "final and without appeal" and carry *res judicata* authority. They may therefore be reviewed only in exceptional circumstances and on strictly limited grounds. The 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 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 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 Judgment 3305, under 3, and the case law cited therein).

4. In support of his application, the complainant submits that Judgment 4224 contains a material error and that the Tribunal failed to take account of material facts.

5. In respect of the plea that Judgment 4224 contains a material error, the complainant argues that, contrary to what the Tribunal stated, he was no longer a serving staff member when he received notification, in a letter dated 8 November, of the decision to dismiss him summarily. He says that he was in fact notified of this decision on 10 November, two days after it had, according to him, taken effect. As a result, he no longer had access to internal means of redress and was entitled to file a complaint directly with the Tribunal.

In his complaint, the complainant produced a certificate of employment showing that he had been a UNESCO staff member from 1 August 2002 to 10 November 2016, and, in his rejoinder, he further stated that he had "separated from UNESCO on 10 November 2016 upon receiving notification of the decision to dismiss him summarily with immediate effect". UNESCO confirmed that "the complainant did indeed separate from the Organization on 10 November 2016". It was therefore established that, in accordance with the general principle of international civil service law that a decision adversely affecting a staff member cannot have retroactive effect from a date prior to the date on which it is notified to her or him (see Judgment 1669, under 17), the decision to dismiss the complainant summarily had taken effect on 10 November 2016.

The complainant's plea must therefore be dismissed. The Tribunal further observes that by this plea the complainant attempts to initiate discussion of an issue – namely, the date on which the decision to dismiss him summarily came into effect – which was not disputed in the proceedings leading to Judgment 4224.

6. With regard to the plea that material facts were not taken into account, the complainant submits that by refusing UNESCO's request that it be allowed to confine its reply to the issue of the receivability of the complaint, the President of the Tribunal had necessarily dismissed UNESCO's objection to receivability.

The complainant is mistaken. The President's decision, issued in the exercise of his general power to direct the conduct of the proceedings, in no way prejudged the receivability of the complaint and had no bearing on the complainant's duty to exhaust internal remedies.

That plea too must therefore be dismissed.

7. It follows from the foregoing that the application for review is clearly without merit and must 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 application for review is dismissed.

In witness of this judgment, adopted on 30 October 2020, Mr Patrick Frydman, President of the Tribunal, Ms Dolores M. Hansen, Vice-President of the Tribunal, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 December 2020 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN DOLORES M. HANSEN GIUSEPPE BARBAGALLO

DRAŽEN PETROVIĆ