

G.-B. (No. 3)

v.

UNWTO

(Application for review filed by UNWTO)

138th Session

Judgment No. 4873

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4453 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 4453, delivered in public on 27 January 2022. This judgment concerns that application, which is one of two applications concerning Judgment 4453, the other being an application for interpretation by the Organization. Two other applications have also been made in relation to another judgment, Judgment 4576, linked to Judgment 4453, namely an application for review of Judgment 4576 by the Organization and an application for interpretation by the Organization of that judgment. These four applications were filed on 2 August 2023 and the pleas were finalised on 18 March 2024 when the complainant filed his surrejoinder.

2. His lawyer requested that these various applications be dealt with at the 138th Session of the Tribunal scheduled to commence in late April 2024 notwithstanding this was only very shortly after the pleas were concluded. The Tribunal has acceded to this request particularly because there are also to be considered in this session five other applications concerning two judgments (Judgments 4456 and 4577), four of which are applications by UNWTO for either review or interpretation of those judgments. Those two judgments concern the dismissal of another member of staff of UNWTO at a similar time and for broadly similar reasons. The Tribunal observes that the pleas of UNWTO in those four applications are markedly similar to UNWTO's pleas in the four applications concerning Judgments 4453 and 4576 and yet the former four applications were filed on 22 March 2023, over four months before the applications concerning Judgments 4453 and 4576.

3. By an email dated 2 August 2023, UNWTO's lawyer sought the joinder of the four applications relating to Judgments 4453 and 4576. While these applications are interconnected, it is convenient to deal with them separately in order to ensure there is no uncertainty or ambiguity concerning the consideration of the pleas and the implementation of the relevant principles in each application. The legal issues are not the same or similar. No order of joinder should be made. The complainant's lawyer sought to characterise these applications as entirely vexatious and frivolous. This characterization is not patently inapt, but it is a question which need not be explored.

4. Given the marked similarity in the pleas just referred to in consideration 2, some of the language and analysis in the applications concerning Judgments 4456 and 4577 will be repeated in this judgment and the three other judgments dealing with the other applications relating to Judgments 4453 and 4576. Moreover, the following reasons can be taken to be informed by the reasons in the judgments concerning the other three applications.

5. It is unnecessary to summarise the facts on which Judgment 4453 is based nor is it necessary to summarise generally the reasoning and conclusions of the Tribunal in that judgment. Both emerge clearly from the published reasons though the Organization challenges aspects of that reasoning as discussed in the following considerations.

6. It is convenient to identify the applicable principles in a review at the outset. 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.’”

7. While UNWTO accepts these principles govern this application for review and relies on elements in them, the substance of its argument is beyond the scope of a review.

8. The Organization argues that the Tribunal failed to take account of material facts and committed a material error. Firstly, UNWTO characterises 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 approximately 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, 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.”

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

9. The complainant makes the point in his response to the initial pleas by the Organization in its application for review, correctly, that the Organization never identified what were the mistaken findings of facts by the Tribunal or explain that such mistaken findings did not involve an exercise of judgement. The closest the Organization comes to identifying a flaw in the Tribunal’s reasoning is that:

“[...] it is not true to say that ‘no attempt was made to ascertain from [the former Secretary-General] details of his knowledge, approval and instructions’. Rather the contrary. It is all the more so that the testimonies of the former Secretary-General were submitted by the Complainant during the internal disciplinary proceedings.”

10. This involves a distortion of what the Tribunal said, namely that UNWTO failed to ascertain from the former Secretary-General details of his knowledge, approval and instructions. What is important is that UNWTO has not pointed to any evidence adduced during the proceedings leading to Judgment 4453 nor during the present proceedings, which would sustain a finding of fact that attempts were made.

11. Otherwise, no material error is identified.

12. UNWTO has failed to make out a ground of review. Accordingly, this application should be dismissed. That being so, it is unnecessary to deal with the pleas of the complainant that the application is moot and time-barred and that, additionally, the principles of waiver and estoppel operate to preclude the making of the application.

13. 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