

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

O. (No. 3)

v.

WHO

(Application for review)

120th Session

Judgment No. 3473

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3296 filed by Mr D. O. on 2 May 2014 and corrected on 6 August 2014;

Considering Article II, paragraph 5, 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 3296, delivered on 5 February 2014, by which the Tribunal dismissed his second complaint.

The complainant, who worked at WHO's Regional Office for Africa, was informed by a memorandum dated 1 December 2006 that he was appointed with immediate effect to post 3.2390 and promoted to grade BZ.07.01 as of that date. On 20 February 2007 he received a "Personnel Action" form (the "PA") confirming his assignment to post 3.2390 and his promotion to grade BZ.07.01 as of 1 December 2006.

On 13 April 2007 he submitted an appeal to the Regional Board of Appeal in which he contended that he had performed the duties

pertaining to post 3.2390 since January 2000 and complained that he had received extra pay only for the period between 1 July 2004 and 1 April 2005. He therefore requested additional compensation. At the end of the internal appeal proceedings, the Director-General, recognising that the complainant had performed the duties of post 3.2390 ad interim for an extended period, agreed on 25 January 2011 to grant him extra pay – together with interest – for the period between 1 April 2005 and 30 November 2006. This was the decision which the complainant impugned in his second complaint.

2. In Judgment 3296 the Tribunal, having examined the receivability of that complaint, concluded that the “PA” received on 20 February 2007 could not be regarded as a new final action within the meaning of Staff Rule 1230.8.1, and that the only action which would have been open to appeal before the Regional Board of Appeal was the memorandum of 1 December 2006. Since the complainant had not filed his appeal against that memorandum with the Regional Board of Appeal within the prescribed 60-day time limit, the Tribunal found that the complainant’s internal appeal had been time-barred and that his complaint was therefore irreceivable for failure to exhaust the internal means of redress.

3. The Tribunal recalls that, according to a consistent line of precedent, pursuant to Article VI of its Statute, its judgments are “final and without appeal” and carry the authority of *res judicata*. They may therefore be reviewed only in exceptional circumstances and on strictly limited grounds. As stated in Judgments 1178, 1507, 2059, 2158 and 2736, 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 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 Judgments 3452, under 2, and 3001, under 2.)

4. In support of his application for review, the complainant complains of “unacceptable delays [...] in granting [his] promotion” to post 3.2390, alleges various flaws in the proceedings before the Regional Board of Appeal and criticises the decision of the Director-General of 25 January 2011. Furthermore, the complainant relies on a “new fact”, alleging that it was after attending a training course on 27 and 28 February 2007, during which he had been informed of his rights, that he took the decision to file his appeal on 13 April 2007 against the “PA” which he had received on 20 February 2007.

5. The aforementioned training course does not constitute a new fact within the meaning of the Tribunal’s case law (see Judgments 748, under 3, 1294, under 2, 1504, under 8, and 2270, under 2); as it took place on 27 and 28 February 2007, the complainant could have relied on it in his second complaint filed on 21 April 2011. Moreover, the Tribunal finds that none of the other pleas entered come within the ambit of the case law cited under 3, above.

6. It follows from the foregoing that the application for review must be summarily dismissed in accordance with the procedure provided for 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 7 May 2015, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 30 June 2015.

(Signed)

CLAUDE ROUILLER

SEYDOU BA

PATRICK FRYDMAN

DRAŽEN PETROVIĆ