Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

K. (No. 14) and T. (No. 17)

v.

EPO

(Application for review)

121st Session **Judgment No. 3562**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3538 filed by Mr A. C. K. and Mr P. O. A. T. on 3 September 2015 and corrected on 18 September 2015;

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

Having examined the written submissions;

CONSIDERATIONS

1. This judgment deals with an application for review of Judgment 3538 delivered in public on 30 June 2015 (the "impugned judgment"). It is convenient to set out at this point the principles governing the consideration of such an application. They were summarised by the Tribunal in Judgment 3385, consideration 1:

> "It is well settled that the Tribunal's judgments may only be reviewed in exceptional circumstances and on the grounds of 'failure to take account of the particular facts, a mistaken finding of fact that involves no exercise of judgment, omission to rule on a claim and the discovery of some new facts which the complainant was unable to invoke in time in the [earlier] proceedings' (see Judgment 1952, under 3). As well, '[t]he ground on which

review is sought must be one that would have led to a different result in the earlier proceedings' (see Judgment 3000, under 2)."

2. The impugned judgment dealt with a challenge by three employees or former employees of the European Patent Organisation (EPO) to a decision to increase their individual pension contributions from 8 per cent to 9.1 per cent. The legal vehicle for doing so was their April 2007 payslips. The applicants for review are two of the original complainants.

3. In their brief the applicants identify five bases on which they seek to demonstrate that the impugned judgment was flawed. The first challenged an observation of the Tribunal in relation to one of the orders they sought (the maintenance of the total contribution rate at 27.3 per cent whereby their own pension contribution rate remains at 8 per cent) that "[w]hether and why such an order can or should be made is entirely obscure". All the Tribunal was saying was that if the complainants established that the underlying decision of the Administrative Council which had resulted in the increase in their pension contribution was unlawful and it was open to the Tribunal to so declare, it would not follow that an order could or should be made in which the Tribunal determined what the rate should be. That would be a matter for the Administrative Council if they sought to revisit the issue of pension contributions. The challenged observation points to the fact, which is correct, that the complainants failed to identify the jurisdictional basis on which this order could be made and, if jurisdiction existed, the reason why it should be made. In any event, and more fundamentally, the applicants have not identified how this allegedly incorrect statement would, if corrected, alter the result. Thus this first basis seeking to demonstrate that the impugned judgment was flawed does not raise a ground of review.

4. The second basis concerns an observation of the Tribunal that "[a]n actuary is a highly skilled professional who would ordinarily acquire the knowledge to undertake the work of an actuary during years of tertiary study at a high-level". The applicants say that

in Germany anybody can "stamp and sign a mathematical calculation as an [actuary] without any risk of prosecution". However the issue ultimately was whether the actuarial analysis advanced by the complainants in the absence of supporting expert opinion from an actuary providing expert evidence on which the Tribunal could act. The applicants do not seek to demonstrate in their application for review that any of the complainants, including themselves, had actuarial expertise and experience. So the criticism of the observation of the Tribunal leads nowhere. Again this second basis seeking to demonstrate that the impugned judgment was flawed does not raise a ground of review.

5. The third and related basis concerns the failure of the Tribunal to order an expert enquiry under Article 11 of its Rules. Nothing is said by the applicants to suggest that their pleas on this point raise any issue comprehended by the grounds of review referred to in consideration 1 above.

6. The fourth basis concerns the observations of the Tribunal about the way the complainants' pleas were structured. Again this did not raise any issue comprehended by the grounds of review referred to in consideration 1 above.

7. The fifth basis concerns the characterisation of alleged health effects on one of the applicants of pursuing the complaint as "self-induced". The Tribunal observed that "[a]ny personal consequences on Mr [K.] cannot be attributed to the EPO by way of an award of moral damages". No legal argument is advanced in this application that this is wrong. Accordingly, and again, this does not raise any issue comprehended by the grounds of review referred to in consideration 1 above.

8. It follows that the application for review should be summarily dismissed in accordance with the procedure provided for in Article 7 of the Tribunal's Rules.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 29 October 2015, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 February 2016.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ