

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

E.

v.

IOM

(Application for review)

139th Session

Judgment No. 4933

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4745 filed by Mr Y. E. on 30 April 2024, the reply of the International Organization for Migration (IOM) of 27 June 2024, the complainant's rejoinder of 22 July 2024 and IOM's surrejoinder of 15 August 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. The complainant joined IOM in November 2019 serving as Senior Field Security Officer at grade P-4 at the duty station in Tripoli, Libya. By a letter of 12 June 2020, he was informed that the Deputy Director General had decided to impose on him the disciplinary sanction of discharge after due notice based on an assessment of his behaviour as serious misconduct. The complainant's serious misconduct was described in the disciplinary decision as follows:

- (i) he had departed his duty station without prior authorization, and with no apparent intention to return in light of his upcoming inter-agency transfer to the United Nations Department of Safety and Security (UNDSS) in Pakistan;
- (ii) he had left the IOM Mission in Libya without a Senior Field Security Officer (as he was the only one) during a difficult period due to local fighting and the global COVID-19 pandemic, in circumstances where it was not known when and if he would be able to return; and
- (iii) he had worked remotely from Cairo, Egypt, without prior approval for that flexible working arrangement.

On 11 July 2020, the complainant eventually separated from IOM.

On 14 June 2021, he filed a complaint with the Tribunal challenging the rejection of his appeal against the decision to discharge him after due notice on the grounds that the disciplinary proceedings were affected by procedural flaws, that his behaviour did not amount to serious misconduct and that, in any event, the sanction was disproportionate and tainted by bias and prejudice against him.

2. In Judgment 4745, delivered in public on 31 January 2024, the Tribunal was satisfied that the Organization's finding that the complainant committed serious misconduct was lawful and that it was open to IOM to find, on the evidence, that the complainant's misconduct was proved beyond reasonable doubt. Since the Organization lawfully considered the complainant's behaviour to be serious misconduct, which put its operations and reputation at risk, the Tribunal found that the chosen sanction was not disproportionate to the charges. For these reasons, the Tribunal dismissed the complaint.

3. In his application for review, the complainant contends that the Tribunal has committed material errors and has failed to take account of material facts which had a significant bearing on the outcome of the case. More specifically, he argues that (1) the Tribunal has made an incorrect finding of fact concerning a request for annual leave he had made for the period 18 to 26 May 2020, (2) at no point in

time, until the disciplinary sanction was imposed on him, was he informed that he was not entitled to work remotely from Cairo, Egypt, (3) the Tribunal omitted to take account of the fact that the complainant's travel to Cairo occurred during a very critical period worldwide (that is, the COVID-19 pandemic) and (4) he did not put the IOM Mission in Libya at risk.

4. It is well settled that the Tribunal's judgments are final and carry the authority of *res judicata*. As a result, they may be reviewed only in exceptional circumstances and on strictly limited grounds. As indicated in Article 6, paragraph 5, of the Rules of the Tribunal (which reflects the case law), the only admissible grounds are failure to take account of material facts, a material error (in other words, a mistaken finding of fact involving no exercise of judgement, which thus differs from misinterpretation of the facts), 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. Conversely, pleas of a mistake of law, failure to admit evidence, misinterpretation of the facts or omission to rule on a plea afford no grounds for review (see, for example, Judgments 4908, consideration 4, 4782, consideration 3, 4414, consideration 2, 3897, consideration 3, 3719, consideration 4, 3634, consideration 4, 3473, consideration 3, 3452, consideration 2, and 3001, consideration 2).

5. The Tribunal considers that the complainant's submissions do not support a conclusion that Judgment 4745 should be reviewed on the grounds under which he makes the application for review.

6. As regards the alleged failure to take account of material facts, the Tribunal notes that the complainant is in essence simply alleging that the Tribunal incorrectly appraised the facts in question. Such arguments do not however constitute admissible grounds for review (see Judgments 4736, consideration 6, 4440, consideration 5, and 3983, consideration 6).

In the present matter, the Tribunal observes that, on the one hand, it was clearly indicated in Judgment 4745 that both of the complainant's requests for annual leave had been expressly rejected by the Organization. The alleged incorrect finding of fact concerning the timing of the second rejection, as well as the inference that the complainant suggests should be drawn from the alleged mistake that this rejection did not occur "shortly after" the related request, are certainly not findings of fact involving no exercise of judgement.

On the other hand, the argument put forward by the complainant, to the effect that he had implicitly been authorized to work from Cairo, similarly attempts to rely on and draw inferences from an alleged mistake relating to the factual finding of the absence of any prior approval by IOM, which again manifestly does not concern findings of fact involving no exercise of judgement.

7. To the extent that the application is based on alleged material errors, the Tribunal finds that the complainant's arguments do not relate to material errors but are solely an attempt to challenge the views taken by it in Judgment 4745. The legal assessments made by the Tribunal in a judgment cannot be challenged in an application for review (see Judgments 4736, consideration 7, 4440, consideration 4, and 3984, consideration 5).

In this regard, it is first obvious, from a reading of consideration 6 of Judgment 4745 notably, that the Tribunal was clearly aware of and alert to the fact that the relevant events occurred during the COVID-19 pandemic. The suggestion that the Tribunal allegedly failed to take into consideration the fact that the complainant travelled to Cairo during a very critical period worldwide in assessing his situation does not qualify as a material error. It is rather a disguised attempt to indirectly seek another interpretation of the relevant facts.

Second, in consideration 8 of Judgment 4745, in assessing the Organization's evidence that the complainant put the IOM Mission in Libya at risk, the Tribunal particularly pointed to the fact that IOM had demonstrated that the complainant was the only Senior Field Security Officer in that IOM Mission, during a very difficult period because of

the fighting in Libya and due to the pandemic, and that he was not easily replaceable. The Tribunal added that the fact that a staff member took unauthorized leave and worked remotely without approval reasonably entailed, by itself, a reputational risk for the Organization. The mere mention that the complainant did not refute that evidence did not amount to a shifting of the applicable burden of proof in circumstances where the Tribunal was satisfied, as it indeed stated, that it was open to IOM to find, on the evidence, that the complainant's misconduct was proved beyond reasonable doubt.

8. The Tribunal concludes that, as the complainant is essentially confining himself to revisiting arguments advanced unsuccessfully in his complaint and expressing disagreement with the Tribunal's appraisal of the evidence and interpretation of the law, his application for review is in fact a mere attempt to reopen issues already settled in the original judgment (see, for similar cases, Judgments 4736, consideration 11, 4122, consideration 7, and 3897, consideration 4). But the matters raised are *res judicata* and the complainant puts forward no legitimate ground to reopen the findings made by the Tribunal in the original judgment (see Judgments 4440, consideration 7, and 3479, consideration 6).

9. It follows from the foregoing that the complainant's application for review, which does not raise any of the limited grounds for review mentioned in consideration 4 above, is clearly devoid of merit and must therefore be dismissed.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 5 November 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Mr Clément Gascon, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

CLÉMENT GASCON

HONGYU SHEN

MIRKA DREGER