

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**M. (Nos. 1 and 2)**

**v.**

**IAEA**

(Applications for review)

**139th Session**

**Judgment No. 4950**

THE ADMINISTRATIVE TRIBUNAL,

Considering the applications for review of Judgments 4753 and 4754, filed by Mr S. M. on 29 April 2024, the reply of the International Atomic Energy Agency (IAEA) of 10 July 2024, the complainant's rejoinder of 1 August 2024 and the IAEA's email of 19 August 2024 informing the Registrar of the Tribunal that it did not wish to file a surrejoinder;

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 has filed applications for review of Judgments 4753 and 4754. As these applications for review are directed against judgments concerning related cases and rest on similar arguments, they will be joined to form the subject of a single judgment (see, for example, Judgment 4906, consideration 3). The applicant was the complainant in the proceedings leading to Judgments 4753 and 4754, delivered in public on 31 January 2024. The judgments addressed the first and second complaints of the complainant. Briefly described, the complainant's grievance in Judgment 4753 concerned a decision to

place on his personnel file a letter of 17 December 2020, notifying him that he had committed serious misconduct for which he would have been summarily dismissed had he not separated from the IAEA, and to relevantly inform all affected individuals, whereas the grievance in Judgment 4754 concerned a decision to close his harassment complaint against several staff members. His complaints were dismissed. The background facts and the Tribunal's reasons for dismissing the complaints are set out in the respective judgments.

2. It is convenient to identify the applicable principles in a review at the outset. As the Tribunal recently observed in Judgment 4888, consideration 4:

“The Tribunal’s consistent precedent has it that, pursuant to Article VI of its Statute, its judgments are ‘final and without appeal’ and carry *res judicata* authority. They may be reviewed only in exceptional circumstances and on strictly limited grounds. Under Article 6, paragraph 5, of the Rules of the Tribunal, the only admissible grounds therefor are a failure to take account of material facts, a material error (in other words, a mistaken finding of fact 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, those pleas must be likely to have a bearing on the outcome of the case. On the other hand, 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 4705, consideration 2, 4327, consideration 3, 3473, consideration 3, 3452, consideration 2, or 3001, consideration 2).”

3. The complainant develops his pleas compendiously concerning both judgments. In the circumstances, this is a reasonable and acceptable approach. Two grounds are relied on. One is that there had been a failure on the part of the Tribunal to take account of material facts and the other is that the Tribunal had fallen into material error entailing a mistaken finding of fact involving no exercise of judgement. A centerpiece of the pleas in these applications for review is a commentary on the draft and Final Investigation Report, arguing that there are numerous inconsistencies in the reports, there had been a failure of the Office of Internal Oversight Services (OIOS) to deal adequately with evidence concerning staff being approached and

recruited to participate in a group claim against the complainant, and that the complainant's complaints were not adequately reflected and investigated in the report.

4. A convenient starting point in considering the applications for review is the criticism made by the complainant of the Tribunal's approach to the pleas he advanced when initially presenting his case. In each judgment, the Tribunal cited case law confirming that it generally defers to findings of investigative bodies (such as the OIOS), will not reweigh the evidence collected by an investigative body, and will "interfere only in the case of manifest error". The Tribunal went on to say (without making minor adjustments to the text having regard to the judgment in which it appears):

"[I]n these proceedings the complainant goes a little further and says explicitly in his brief that he is not asking the Tribunal to reassess the OIOS's findings. His reason for taking this position is that he believed this 'would not be within the Tribunal's scope nor would add to this appeal, considering that he resigned and that the disciplinary process had been closed without the imposition of a sanction'. It is unnecessary to analyse this reason. All that is presently relevant is that he is not asking the Tribunal to reassess the OIOS's findings and, consistent with this approach, the Tribunal does not do so. Thus, the summary quoted above from the letter of 17 December 2020 can be taken to reflect the uncontroverted facts, as found by OIOS. It is not open to the complainant to not invite scrutiny of the OIOS findings while, at the same time, relying on the comments (dated 31 July 2020) he made on the draft investigation report and the comments (dated 1 September 2020) he made on the Final Investigation Report. Neither commentary is persuasive proof of the facts asserted."

5. The last sentence in this passage is important and will be referred to shortly. However, contrary to what the complainant asserts, the Tribunal did not, in the above-quoted passage, misstate what was said by the complainant about not asking the Tribunal to reassess the findings of the OIOS. The Tribunal was entitled to act on the basis of what was explicitly said in the pleas, particularly as the complainant was represented by a lawyer. It did so. The lawyer now says that "[w]hat the [complainant] meant is that there was no reason for the Tribunal to undertake a complete reassessment of the investigation in the absence

of a disciplinary measure to contest, however he clearly pointed out to the errors affecting the investigative reports and asked the Tribunal to review them, in order to establish whether the contested decision was a lawful one". The complainant and those advising him must take responsibility for what was said rather than what was meant. It is not for the Tribunal to divine what was meant if not reflected in what was said. In any event, the Tribunal's interpretation of written submissions cannot be challenged in an application for review (see Judgments 4888, consideration 7, 4706, consideration 11, and 4705, consideration 11).

6. In the pleas, in the applications for review, the complainant repeats factual arguments challenging the findings made by the OIOS and its approach in its draft and Final Investigation Report. However, these pleas, as framed, are not comprehended by the principles governing a review. Moreover, arguments to the same effect were said by the Tribunal, in the above-quoted passage of the judgments in question, to not constitute persuasive proof of the facts asserted by the complainant. In the circumstances, nothing more needed to have been said by the Tribunal and this provides a sufficient foundation to reject the factual case advanced in these applications for review.

7. The applications for review do not establish any ground which, under the applicable principles set out in consideration 2 above, would warrant disturbing Judgments 4753 and 4754.

## DECISION

For the above reasons,

The applications for review are dismissed.

In witness of this judgment, adopted on 18 October 2024, Mr Patrick Frydman, President of the Tribunal, Mr Michael F. Moore, Vice-President of the Tribunal, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Mirka Dreger, Registrar.

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

PATRICK FRYDMAN

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

MIRKA DREGER