

R. (No. 14)

v.

IAEA

(Application for review)

139th Session

Judgment No. 4951

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4703, filed by Mr R. R. on 5 October 2023, the reply of the International Atomic Energy Agency (IAEA) of 25 January 2024, and the complainant's email of 13 May 2024 informing the Registrar of the Tribunal that he did not wish to file a rejoinder;

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. This judgment concerns an application for review of Judgment 4703. The applicant was the complainant in the proceedings leading to Judgment 4703, delivered in public on 7 July 2023. The judgment addressed the fourteenth complaint of the complainant. Briefly described, the complainant's grievance in those proceedings concerned a decision to close the case arising from his reports of alleged misconduct and to reject his request to be provided with an unredacted version of the final investigation report. His complaint was dismissed. The background facts and the Tribunal's reasons for dismissing the complaint are set out in Judgment 4703.

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, in this application for review, purports to confine his pleas to the grounds just referred to, but in fact, does not. This will be discussed shortly. The pleas are advanced under seven headings. The first is that there had been an “[o]mission to rule on a claim: inordinate delay in the investigation”, the second is that there had been an “[o]mission to rule on a claim from material error involving no exercise of judg[e]ment: unlawful delegation of investigative authority”, and the third is that there had been a “[f]ailure to take account of material fact: arbitrary omission of requisite disclosure”.

4. The fourth heading is that there had been an “[o]mission to rule on a claim, for arbitrary dismissal of claims and counterclaims crucial to the case”, the fifth heading is that there had been a “[f]ailure to take account of material facts in matters of receivability”, the sixth is that there had been a “[m]aterial error involving no exercise of judg[e]ment, for absence of reasoning in the final decision”, and the seventh is that there was a “fundamental flaw in [the] proceedings, for reasonable apprehension of bias on the part of two [...] Judges ruling on the case”.

5. The first contention that there had been an omission to rule on a claim, namely that there had been an inordinate delay in the investigation, is misconceived. A “claim” is the request for relief of a particular character. Typically, it will be a claim that the impugned decision is set aside or a claim that the complainant be awarded damages or compensation. This is the meaning of the word “claim” in the applicable principles, set out in consideration 2 above, even though it may be accepted that the word “claim” is otherwise also used with its generic meaning in the Tribunal’s case law more generally. The distinction between claims and pleas is illustrated in the following passage from Judgment 3640, consideration 3:

“The complainant’s claims that the Tribunal should declare that ‘[his] complaint [...] is receivable in all respects’, ‘that the impugned decision is unlawful because it is tainted with errors of fact and of law and with substantial formal and procedural flaws’ and that ‘[his] summary dismissal for serious misconduct in fact constitutes wrongful dismissal callously imposed’ shortly before the expiry of his employment contract and the end of his career, may be dismissed at the outset as irreceivable. Indeed, they can only be regarded as mere pleas in support of the complainant’s claims for the setting aside of the impugned decision and for damages.”

6. The applicant’s pleas under the first heading, set out in consideration 3 above, do not concern a claim but rather pleas advanced conceivably in support of the claims in the original proceedings, effectively arguing in this application for review that the Tribunal did not address those pleas. That is to say, the Tribunal failed to rule on those pleas. Such an argument is not comprehended by the relevant principle relied on by the complainant, as recalled in consideration 2 above.

7. Moreover, the pleas on this topic are not based on what is said in Judgment 4703. The Tribunal addressed the pleas in that judgment by saying they were irreceivable.

8. The observations in considerations 5 and 6 above are equally applicable to the matters adverted to under the second and fourth heading, set out in considerations 3 and 4 above.

9. Under the third heading, set out in consideration 3 above, the complainant advances pleas supporting a contention that there had been a failure to take account of a material fact, namely that there had been an arbitrary omission of requisite disclosure. This matter was addressed by the Tribunal in Judgment 4703 and the complainant was unsuccessful. In effect, the complainant seeks to re-agitate this issue on the merits under the guise of alleging there having been a material error or a failure to take account of a material fact. There were neither and he cannot do so.

10. Under the fifth heading, set out in consideration 4 above, the complainant advances pleas supporting a contention that there had been a failure to take account of material facts in matters of receivability. His real grievance appears to be the reasons given by the Tribunal and what he views as their inappropriate brevity. This is not a ground of review.

11. Under the sixth heading, set out in consideration 4 above, the complainant challenges the adequacy of the reasons given in Judgment 4703. This plea is expressed in the most generalised way and, in any event, is not a ground for review (see, for example, Judgment 4888, consideration 8).

12. Under the seventh heading, also set out in consideration 4 above, the pleas are to the effect that there were two judges on the panel which adopted Judgment 4703 who should not have been, because, at the least, they give the appearance of being biased and not impartial. Plainly, the complainant does not accept the reasoning of the Tribunal rejecting this argument in other matters concerning him and, especially, in Judgment 4701, which was referred to in Judgment 4703. He should. In any event, the notion of discovery of a new fact, within the meaning of the case law cited in consideration 2 above, does not comprehend the discovery of a fact arising after the events with which the litigation is concerned (see, for example, Judgment 4736, consideration 9). Thus, the seventh ground is not receivable.

13. The application for review does not establish any ground which, under the applicable principles, set out in consideration 2 above, would warrant disturbing Judgment 4703.

DECISION

For the above reasons,

The application for review is 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