

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

G. (No. 2)

v.

Eurocontrol

(Application for review)

139th Session

Judgment No. 4956

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4765 filed by Mr R. G. on 21 March 2024, the reply of the European Organisation for the Safety of Air Navigation (Eurocontrol) of 31 May 2024, the complainant's rejoinder of 24 June 2024 and Eurocontrol's surrejoinder of 13 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, a staff member of Eurocontrol, has filed an application for review of Judgment 4765, delivered in public on 31 January 2024, by which the Tribunal dismissed his second complaint regarding the decision to open an administrative investigation into his conduct and the dismissal of his harassment complaint.

2. As the Tribunal has already recalled on numerous occasions (see, in particular, Judgments 4906, consideration 4, and 4440, consideration 2), its judgments are "final and without appeal" pursuant to Article IV of its Statute and have *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, 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, for example, Judgments 4327, consideration 3, 3473, consideration 3, 3452, consideration 2, and 3001, consideration 2).

3. In support of his application, the complainant firstly submits that Judgment 4765 is tainted by a material error in that the Tribunal made a mistaken finding of fact when it considered that his complaint was irreceivable insofar as it concerned the rejection of his harassment complaint because he had not exhausted the internal means of redress. Secondly, he considers that the Tribunal failed to rule on the following claim in his complaint: “Declare that the investigation conducted outside any framework by the [Head of Human Resources and Services] is unlawful and breached the complainant’s fundamental rights”*.

4. As regards, firstly, the material error, the complainant submits that it consists in the failure to take into account a specific fact, in that the Tribunal considered that the complainant had not exhausted the internal means of redress before filing his complaint with the Tribunal. The complainant explains that, since his harassment complaint was contained in his internal complaint of 19 October 2020, lodged in accordance with Article 92(2) of the Staff Regulations governing officials of the Eurocontrol Agency, and since that internal complaint was not dealt with in an express decision within the prescribed time limit, he was entitled to file a complaint with the Tribunal against the

* Registry’s translation.

implied decision rejecting that internal complaint pursuant to Article VII, paragraph 3, of the Statute of the Tribunal.

However, the Tribunal considers that the complainant's allegation of a material error is based on an error in his interpretation of Judgment 4765. Contrary to what the complainant contends, in Judgment 4765 the Tribunal noted that the complainant had submitted his complaint of harassment in an internal complaint he had lodged on 19 October 2020, pursuant to Article 92(2) of the Staff Regulations, concerning a memorandum of 6 October 2020 informing him of the opening of an administrative investigation into his conduct. However, the Tribunal considered that the complaint of harassment, although contained in an internal complaint lodged on the basis of Article 92(2) of the Staff Regulations, should be regarded as having been submitted under a separate procedure, provided for by Article 5(2)(a) of Rule of Application No. 40 concerning harassment pursuant to Article 12a of the Staff Regulations. In accordance with aforementioned Rule of Application No. 40, any decision on that complaint of harassment, whether express or implicit, ought therefore to have been challenged using the remedies and within the time limits specified by Article 92 of the Staff Regulations. Since the complainant challenged that decision directly before the Tribunal in his complaint, the Tribunal did not commit a material error or fail to take account of particular facts in finding, in consideration 3 of Judgment 4765, that the complainant had contravened the requirement laid down in Article VII, paragraph 1, of the Statute of the Tribunal that internal means of redress be exhausted. The complainant's contention that he had the opportunity in his submissions to the Tribunal in support of his complaint to put forward pleas against the Director General's decision of 1 June 2021 to reject his complaint of harassment and that he was thereby exempted from the requirement that internal means of redress be exhausted, is misconceived.

In this respect, the Tribunal further observes that the situation with which the complainant takes issue in the present application for review is simply the direct consequence of the confusion created by the complainant himself by mixing up in the internal proceedings two legally distinct procedures, namely the procedure for internal complaints

against an administrative decision and the procedure for complaints of harassment within the meaning of Rule of Application No. 40.

5. As regards the second plea in the application for review, namely the alleged failure to rule on one of the claims in the complainant's complaint, the Tribunal notes that his request for the setting aside of the decision (memorandum) of 6 October 2020 to open an administrative investigation into his conduct was expressly declared irreceivable in consideration 2 of Judgment 4765. It goes without saying that this declaration of irreceivability also applied to the claim seeking to have the "investigation"* conducted by the Head of Human Resources and Services during her holidays in Italy, which was the very reason for the decision to open an administrative investigation, declared unlawful. The Tribunal did therefore respond to that claim. In any event, the Tribunal notes that in consideration 5 of Judgment 4765, it expressly stated that the complaint should be "dismissed in its entirety".

6. It follows from the foregoing that, without there being any need for the Tribunal to rule on the objections to receivability raised by Eurocontrol, the complainant's application for review is unfounded and must therefore be dismissed in its entirety.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 14 November 2024, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

* Registry's translation.

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

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLEMENT GASCON

MIRKA DREGER