

**R. (No. 17)**

*v.*

**IAEA**

(Application for review)

**140th Session**

**Judgment No. 5047**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4755 filed by Mr R. R. on 30 April 2024 and corrected on 8 June 2024, the reply of the International Atomic Energy Agency (IAEA) of 26 July 2024, the complainant's rejoinder of 28 October 2024 and the IAEA's email of 10 December 2024 informing the Registrar of the Tribunal that it did not wish to file a surrejoinder but maintained the arguments articulated in its reply;

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 is an application for review of Judgment 4755. The applicant was the complainant in the proceedings leading to that judgment. It is convenient to continue to refer to him as the complainant.

2. It is desirable to set out the principles governing such an application at the outset. They have been described in numerous recent judgments and most recently in Judgment 4906, consideration 4:

“As the Tribunal has already recalled in consideration 2 of Judgment 4440, [...] pursuant to Article VI of its Statute, the Tribunal’s judgments are ‘final and without appeal’ and have *res judicata* authority. They may therefore 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 of review are a failure to take account of material facts, a material error (namely 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. The gist of the complaint leading to Judgment 4755 was that there had been investigations of allegations by the complainant against his supervisor, and also a more senior official, leading ultimately to decisions that both investigations be closed. The complainant argued that directly, or indirectly, these decisions were tainted by legal irregularity and raised ancillary issues concerning process.

4. In this application for review, the complainant summarizes his pleas under five headings, and later five subheadings under a general heading “CONCLUSION”. He does so in a way designed to attract one or more of the principles discussed in consideration 2 above. Generally, he fails to do so, but it is unnecessary to explain why, as his pleas are not substantiated in any event.

5. The first heading alleges material errors and that the Tribunal failed to take account of material facts. In his second plea in the original proceedings, the complainant argued he had never been given an opportunity to review evidence and comment on the testimony of the witnesses. In responding to and rejecting this plea, the Tribunal described the complainant as a “mere reporter of misconduct”. The complainant alleges this involved a mischaracterization of his status. It did not. The word “mere” did not preclude another status for other purposes. Rather it correctly identified his status for the purposes of

ascertaining his legal entitlement to review the evidence and comment on the witness testimonies gathered in the course of investigations IF 17-0021 and IF 17-0023.

6. The Tribunal recalls that investigation IF 17-0021 was launched in response to the complainant's allegations of misconduct, made on 29 April 2017 and 22 June 2017, against his then supervisor, Mr K., and the then Director, Division of Human Resources (MTHR). These allegations concerned the allegedly improper appointment of Mr K. to a post and the Director, MTHR's, purported failure to investigate previous allegations by the complainant against Mr K. The Tribunal further recalls that investigation IF 17-0023 was launched in response to the complainant's report of misconduct, made on 1 June 2017, against the Director, MTHR, for allegedly tampering with official records. It follows that in both instances, the complainant was a "mere reporter of misconduct" and, therefore, the Tribunal was correct to conclude, in Judgment 4755, consideration 6, that he was not entitled to review the evidence or comment on the witness testimonies. As for the complainant's allegation of institutional harassment, the Tribunal recalls that the complainant made this allegation on 7 March 2018, that is, after the 21 August 2017 decisions to close investigations IF 17-0021 and IF 17-0023. Following a thorough assessment, the Office of Internal Oversight Services considered that the complainant had not provided sufficient evidence to support this claim (of institutional harassment) and did not propose to investigate it further. Accordingly, there was no investigation report on this claim, which was, in any event, irreceivable in the Tribunal for failure to exhaust internal remedies. Accordingly, the Tribunal's characterization of the complainant as a "mere reporter of misconduct" did not involve a material error or a failure to take account of material facts. This plea is unfounded.

7. The second heading alleges that the Tribunal omitted to rule on a claim and made a material error in that it unlawfully denied the complainant's claim for moral damages for breach of due process consisting in the denial to provide him "full access to the investigation reports relied upon by the [Joint Appeals Board]". The Tribunal did

address this claim for moral damages in consideration 6 of Judgment 4755, where it explained that the complainant was a mere reporter of misconduct and therefore not entitled to be provided with a full and unredacted version of the final investigation reports. The Tribunal added that it had considered essentially the same argument in the complainant's fourteenth complaint (see Judgment 4703, consideration 9), and had dismissed it. The complainant speaks of "an automatic entitlement to moral damages" in certain circumstances. There is no such automatic entitlement and moral injury must be proved to found an award of moral damages (see, for example, Judgments 4832, consideration 56, and 4602, consideration 16). The Tribunal correctly concluded no moral injury had been established. This plea is unfounded.

8. The third heading is that the Tribunal omitted to rule on a claim. This concerns his claimed status as a whistleblower. The argument is misconceived. The Tribunal did address this matter in consideration 6 of Judgment 4755 and it rightly concluded that it was raised for the first time in the proceedings before the Tribunal and was therefore outside the scope of the complaint. Most importantly though, the complainant's alleged "whistle-blower retaliation claim" in the original proceedings was a plea, not a claim, and even if the Tribunal had failed to rule on it, which is not the case, such failure would afford no grounds for review. This plea is unfounded.

9. The fourth heading is that the Tribunal omitted to rule on a claim and failed to take into account material facts. This concerns the alleged excessive delay in the consideration of the complainant's request for review and internal appeal. This claim was addressed in consideration 7 of Judgment 4755 in detail, and the conclusion reached was that the delay was not inordinate. This would have been sufficient to dispose of this claim, but the Tribunal added, correctly, that no adverse effects were articulated and substantiated in the original proceedings.

10. The fifth heading is that new facts have been discovered. This concerns an argument of apprehended bias on the part of two judges who decided Judgment 4755. The argument is substantially repetitive of an argument to the same effect which has been rejected by the Tribunal on several occasions (see Judgments 4704, consideration 15, 4701, considerations 1 and 2, and 4520, consideration 1). Nothing persuasive is added to the pleas on this topic in these proceedings. This plea is unfounded.

11. In the result, the application for review will be dismissed.

12. The IAEA seeks an order that its filing costs be waived or, alternatively, that the complainant be ordered to pay the costs of the IAEA in an amount the Tribunal deems appropriate. These orders are sought on the footing that the application is clearly frivolous. The Tribunal is not satisfied the application should be characterized this way. Accordingly, orders of the type sought will not be made.

#### DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 8 May 2025, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 3 July 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

RENÉ M. VARGAS M.