

R. (No. 18)

v.

IAEA

(Application for review)

140th Session

Judgment No. 5048

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4756 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 4756. 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 4756 was that a decision had been unlawfully made not to conduct an investigation into his allegation that there had been a breach of confidentiality concerning the publication of a letter he had addressed to the Director General. Additionally, he had been unlawfully denied compensation.

4. The letter was published. The consequential issue was whether misconduct attended the publication which would have warranted an investigation. The short answer, as found by the Office of Internal Oversight Services and accepted by the Director General and the Tribunal, was that the publication was not the product of misconduct justifying an investigation, but of a design flaw in the Electronic Records Management System (ERMS).

5. In this application for review, the complainant summarizes his pleas, under three headings. He does so in a way designed to attract one or more of the principles discussed in consideration 2 above.

6. The first heading is that there had been a material error and a failure to account for material facts in the original proceedings. The starting point in the pleas on this topic is the finding by the Tribunal in Judgment 4756 that the publication of the letter was the product of a design flaw in the ERMS and not misconduct. This finding by the

Tribunal was not a mistaken finding of fact involving no exercise of judgement. It did involve judgement, which was not erroneous. There was a legitimate basis open to the Tribunal to make this finding. There was no failure to take account of material facts having regard to the foundational finding that the publication was the product of a design flaw and not misconduct. This plea is unfounded.

7. The second heading is that there had been an omission to rule on a claim and a failure to take into account material facts in the original proceedings. The centerpiece of this plea concerns the rejection by the Tribunal of a claim for damages for, firstly, the publication and, secondly, the IAEA's delay in reviewing his case. The Tribunal's conclusions were, as to the first, that the complainant had not submitted evidence establishing damage to his reputation or other injury, and, as to the second, that the Administration's review period was not unreasonable in the circumstances and that he had not articulated the adverse impact which the alleged delay had on him. Plainly, in both respects, these claims were ruled on. Additionally, they were findings involving an exercise of judgement in assessing the terms and scope of the pleas. This plea is unfounded.

8. The third heading is that there had been an omission to rule on a claim and the discovery of new facts. This concerns the adjudication of the complaint by two judges who, the complainant alleges, raise a question of apprehended bias. 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.

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

10. 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.