

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**B.**

*v.*

**UNIDO**

(Application for review)

**140th Session**

**Judgment No. 5092**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4815 filed by Mr M. B. on 30 September 2024;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal and Articles 6, paragraph 5, and 7 of its Rules;

Having examined the written submissions of the complainant;

#### CONSIDERATIONS

1. The complainant is a former official of the United Nations Industrial Development Organization (UNIDO) who was summarily dismissed in August 2020 for lack of integrity and serious misconduct. He seeks a review of Judgment 4815, delivered on 8 July 2024, by which the Tribunal dismissed his complaint impugning the Director General's decision to maintain that disciplinary sanction at the end of the internal appeal process.

2. 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, Judgment 4906, consideration 4, and the case law cited therein).

3. In support of his application for review, the complainant submits, firstly, that the Tribunal failed to take account of material facts. He asserts, in this regard, that the Tribunal did not take into account certain extenuating circumstances, namely his long record of good conduct, the fact that he admitted to some of the charges of misconduct and duly cooperated with the investigators, the fact that he acted in good faith and had no malicious intentions, and the fact that no financial and/or reputational harm was suffered by the Organization and he obtained no personal gain from his actions. However, although these matters were not mentioned specifically in Judgment 4815, it cannot be inferred that they were not taken into account. On the contrary, as the complainant had raised these points in his pleadings, the Tribunal considered the question of extenuating circumstances and unequivocally concluded, in consideration 19 of Judgment 4815, that it “discern[ed] no extenuating circumstances in this case”. This plea is unfounded.

4. The complainant also contends that, in concluding that the Director General duly explained why he had decided to depart from the recommendation of the Joint Appeals Board, the Tribunal failed to take account of its case law according to which full and adequate reasons must be given in such a case. However, the complainant simply disagrees with the Tribunal’s finding, in consideration 17 of Judgment 4815, that the reasons given by the Director General were adequate. This was an assessment involving the exercise of judgement on the part of the Tribunal. According to the case law cited above, such a plea is not an admissible ground for review.

5. Secondly, the complainant contends that the Tribunal omitted to rule on a claim, since, according to him, it did not address the Organization's failure to give him access to evidence, such as witness statements, or transcripts or summaries of interviews, in the course of the disciplinary process and the internal appeal. The complainant asserts that the Tribunal "misinterpreted this claim and completely twisted it".

However, the allegation that the Organization failed to give the complainant access to evidence was not a claim, within the meaning of the case law cited above, but one of several pleas put forward by the complainant, who argued that the impugned decision was unlawful because his right to due process had been violated – an argument that was rejected by the Tribunal in consideration 15 of its judgment. Consequently, even if the Tribunal had omitted to rule on this plea, such omission would not constitute an admissible ground for review. Moreover, the complainant's assertion of misinterpretation of his pleadings does not constitute such a ground either, since the Tribunal's interpretation of a party's written submissions cannot be properly challenged in an application for review (see, for example, Judgments 4888, consideration 7, and 4705, consideration 11).

6. Thirdly, the complainant alleges that Judgment 4815 contains material errors justifying its review.

7. The first alleged error concerns the rejection by the Tribunal, in consideration 7 of Judgment 4815, of his argument that the *nemo iudex in causa propria* principle was breached because both the initial decision to dismiss him and the final decision on his appeal were taken by the Director General. However, in concluding that this argument was unfounded, the Tribunal, which referred to its case law on this issue and to the applicable statutory provisions, made a legal assessment, not a finding of fact. As indicated above, the plea of mistake of law is not an admissible ground for review.

8. The second alleged error concerns the Tribunal's finding, in consideration 12 of Judgment 4815, that it was not necessary to convene the Joint Disciplinary Committee prior to imposing the disciplinary sanction of summary dismissal. Again, the complainant is alleging a mistake of law, since he is challenging the conclusion reached by the Tribunal as to whether the provisions of an Administrative Circular governing disciplinary measures (UNIDO/DA/PS/AC.87) were applicable. In so doing, he does not raise an admissible ground for review.

9. The third alleged error concerns the Tribunal's finding that the complainant had a conflict of interest in the recruitment of Ms M.-N. He submits that a conflict of interest, as defined in the UNIDO Code of Ethical Conduct, did not arise and that "[i]t is not clear how the facts could be considered as a conflict of interest". By this plea, the complainant is challenging an assessment obviously involving the exercise of judgement on the part of the Tribunal. This is not an admissible ground for review.

10. Lastly, the complainant alleges that the Tribunal committed a material error "by considering fraud as established based solely on converging presumptions". In his view, the requisite standard of proof was not met. Again, the complainant is calling into question an assessment by the Tribunal involving the exercise of judgement. He does not raise an admissible ground for review.

11. It follows from the foregoing that the application for review is clearly devoid of merit and will be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

#### DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 30 May 2025, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, 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.

PATRICK FRYDMAN

JACQUES JAUMOTTE

CLÉMENT GASCON

RENÉ M. VARGAS M.