

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

F. (No. 14)

v.

EPO

(Application for review)

141st Session

Judgment No. 5173

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4898 filed by Mr T. F. on 4 October 2024, the reply of the European Patent Organisation (EPO) of 9 January 2025, the complainant's rejoinder of 22 April 2025 and the EPO's surrejoinder of 23 July 2025;

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. By Judgment 4898, delivered on 8 July 2024, the Tribunal dismissed the complainant's fourteenth complaint, as well as applications to intervene filed by other staff members of the European Patent Office, the EPO's secretariat, concerning the reform introduced by the Administrative Council's decision CA/D 2/15 of 26 March 2015, which amended some provisions of the Service Regulations for permanent employees of the Office relating to sick leave and invalidity.

In that complaint, the complainant challenged Articles 15 and 16 of decision CA/D 2/15 to the extent that they amended, as of 1 April 2015, Article 84 of the Service Regulations by abolishing the lump sum

that was previously payable in case of permanent invalidity of an employee.

2. The complainant seeks the review of Judgment 4898.

3. The complainant requests that, “for reasons of impartiality and procedural integrity”, the panel appointed to rule on his application for review should not include any judge who participated in the adoption of the judgment under review.

However, the Tribunal recalls that the fact that one of its members sat on the panel that delivered a judgment cannot, of itself, be considered to disqualify her or him from ruling on an application for review of that judgment (see, for an example relating to other applications for review submitted by the same complainant, Judgment 4888, consideration 2). In the present case, since it appeared necessary that the panel hearing the application for review should include a judge familiar with the original proceedings, the complainant’s request has been met to the greatest extent possible by the constitution of a panel presided by a different judge and including two judges who did not sit on the first panel.

4. According to the Tribunal’s case law, its judgments are “final and without appeal”, pursuant to Article VI of its Statute, 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, which is based on the Tribunal’s case law, the only admissible grounds for review of a judgment 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, those pleas must be likely to have a bearing on the outcome of the case. Conversely, pleas of a mistake of law, failure to admit evidence, misinterpretation of the facts or omission to rule on a plea are not admissible grounds for review (see, for example, Judgments 4705, consideration 2, 4327, consideration 3, 3473, consideration 3, 3452, consideration 2, or 3001, consideration 2).

5. Among the numerous pleas raised in the complaint that led to Judgment 4898, the complainant submitted, as the Tribunal mentioned in consideration 4(a) of the judgment, that the General Consultative Committee (GCC) was not properly composed when it was consulted, at a meeting held on 27 February 2015, on the proposed reform abolishing the permanent invalidity lump sum. The plea was based on the fact that there were only nine members of the Central Staff Committee (CSC), rather than ten as required by the applicable provisions, sitting on the GCC at that meeting.

6. The CSC normally consists of ten full members, all of whom are *ex officio* members of the GCC, and ten alternate members, who may be called upon to sit on the GCC in the event of the absence of a full member. At the material time, the CSC only had nine full members and nine alternate members, due to the resignation of one full member and one alternate who had not been replaced. At the 27 February 2015 GCC meeting, only nine CSC members attended, as no alternate sat. The complainant maintained that this circumstance was attributable to a failure on the part of the EPO and resulted from a violation of Article 38(1) of the Service Regulations and Article 7(3) of Circular No. 355, in effect at the material time, which govern, respectively, the composition of the GCC and the CSC.

7. In consideration 5 of Judgment 4898, the Tribunal addressed the plea in question in the following terms:

“The plea listed as (a) in consideration 4 [...] should be rejected. Irrespective of which is the correct interpretation of Article 38(1) of the Service Regulations and of Article 7(3) of Circular No. 355, and even if it were to be accepted that there should have been ten members of the CSC sitting in the GCC, this would not be, in the present case, a substantial flaw. Indeed, the number of members appointed by the President was equivalent to the number of members of the CSC so that the balance in the composition of the body was not altered. Therefore, that issue has no bearing on the outcome of the case.”

8. In the application for review, the complainant submits that the Tribunal's statement in consideration 5 of Judgment 4898, quoted above, that "the number of members appointed by the President was equivalent to the number of members of the CSC", is factually incorrect. Based on this submission, he alleges that the judgment is tainted, in this respect, by a material error, as well as by a related failure to take account of a material fact, justifying its review.

9. Even assuming that either or both of those grounds for review were well founded, they would have no bearing on the outcome of the case. This is because, in any event, the complainant's plea, mentioned in consideration 4(a) of the judgment, which was addressed in consideration 5, would undoubtedly have been rejected by the Tribunal.

10. Indeed, it was clear from the documents in the original case file that the EPO had taken all necessary steps to allow the CSC to appoint one of its alternate members, in accordance with current administrative practice, to replace its missing full member at the 27 February 2015 GCC meeting where the proposed reform abolishing the permanent invalidity lump sum was discussed. Thus, and as the Appeals Committee rightly and unanimously concluded in its opinion of 23 April 2020, the fact that a tenth member of the CSC did not sit on the GCC at this meeting was not attributable to the Office. In these circumstances, the consultation of the GCC could not be considered irregular, as any other solution would have involved accepting that the CSC could deliberately obstruct the holding of a GCC meeting, which is plainly untenable.

11. It follows from the foregoing that, according to the case law cited above, the application for review should be dismissed, without it being necessary to further examine the merits of the grounds submitted in support thereof.

12. The complainant asks the Tribunal, as an alternative claim, to "clarify [c]onsideration 5" of Judgment 4898.

However, such request is irrelevant in the context of an application for review, since it relates to the interpretation of the judgment, not its review. Even if the present application were to be reclassified to this extent as an application for interpretation, the latter would not be receivable anyway. Under Article 6, paragraph 5, of the Tribunal's Rules, which, as indicated earlier, is based on the Tribunal's case law, an application for interpretation can only concern the decision contained in a judgment, and not the grounds thereof, unless the decision itself refers to them explicitly so that they are indirectly incorporated in it (see, for example, Judgments 4409, consideration 6, 3822, consideration 5, and 3564, consideration 1). In the present case, the decision in Judgment 4898, which merely indicated that the complaint and the applications to intervene were dismissed, did not refer to consideration 5. Moreover, according to the Tribunal's consistent case law, an application for interpretation is receivable only if the meaning of the judgment concerned is uncertain or ambiguous to such an extent that the judgment cannot be executed (see, for example, Judgments 4568, consideration 3, 4409, consideration 6, and 3822, consideration 5). Even assuming that Judgment 4898 would involve some uncertainty or ambiguity on the point in dispute, its execution clearly did not raise any difficulty.

13. As the application for review fails, the complainant is not entitled to costs.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 30 October 2025, Mr Michael F. Moore, President of the Tribunal, Mr Patrick Frydman, Vice-President of the Tribunal, and Mr Jacques Jaumotte, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

PATRICK FRYDMAN

JACQUES JAUMOTTE

RENÉ M. VARGAS M.