

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

L. (Ha.) (No. 2)

v.

EPO

(Application for review)

141st Session

Judgment No. 5201

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 4986 filed by Mr Ha. L. on 13 February 2025 and corrected on 17 April 2025;

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;

CONSIDERATIONS

1. In Judgment 4986, delivered on 6 February 2025, the Tribunal dismissed as unfounded the complainant's second complaint against the European Patent Organisation (EPO) which concerned his appraisal report for 2017. The complainant seeks a review of that judgment, alleging that the Tribunal failed to take account of material facts and that new facts have been discovered, which, according to him, could have a bearing on the outcome of his case.

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 5016, consideration 3, and the case law cited therein).

3. The complainant contends, firstly, that, in Judgment 4986, the Tribunal failed to take account of material facts presented in his rejoinder, including evidence, which demonstrated the inaccuracy of the three “incidents” described in his 2017 appraisal report in support of the negative assessment of his performance. Secondly, he claims that the Appeals Committee’s opinion concerning his appeal against the decision not to grant him a step advancement in the 2018 Rewards Exercise for his performance in 2017, which was adopted on 23 October 2023 and communicated to him on 26 October 2023, constitutes a new fact warranting the review of Judgment 4986.

4. The complainant’s submissions do not support a conclusion that Judgment 4986 should be reviewed.

5. First, the Tribunal notes, with regard to the alleged failure to take account of material facts relating to the three “incidents” described in the complainant’s 2017 appraisal report in light of the facts and evidence presented in his rejoinder, that these elements were addressed in Judgment 4986. In consideration 5 of Judgment 4986, the Tribunal set out the complainant’s arguments regarding the “substantive irregularities in his 2017 appraisal report” and mentioned, *inter alia*, that the complainant alleged “[an] unsubstantiated, discriminatory and arbitrary setting of his functional and core competencies” and that he stressed that “the reporting officer gave undue weight to three incidents when assessing his performance and that he was unduly characterized as ‘underperformer’”. After recalling its limited power of review in

matters of staff appraisals, the Tribunal addressed this allegation in consideration 7 of the same judgment, as follows:

“As regards the complainant’s allegation regarding the alleged unsubstantiated, discriminatory, and arbitrary setting of his functional and core competencies, according to the Tribunal’s well-established case law, the burden of proving such allegations – which, in reality, amounts to accusing his reporting and countersigning officers of bias – rests with the complainant, and mere suspicion is clearly insufficient (see, for example, Judgments 4637, consideration 17, and 4010, consideration 9). In this case, the complainant has failed to provide any credible evidence showing that his functional and core competencies were evaluated on discriminatory or arbitrary grounds. His arguments regarding competency settings appear to be a disagreement with the weight given to certain incidents, rather than evidence of unfair treatment. Accordingly, this allegation must be dismissed as devoid of merit.

The Tribunal agrees with the Appraisals Committee that no evidence nor arguments have been provided to substantiate that the report was arbitrary or discriminatory. The Vice-President of [Directorate-General 4] therefore correctly accepted this conclusion in the impugned decision.”

It is worth noting that the Tribunal added that:

“8. The preceding reasons entail a detailed and comprehensive consideration of all arguments advanced by the complainant. It cannot be assumed that in the future reasons of this character will be given and that the matter will not be dealt with in a much more summary way. The lawfulness of the prevailing legal framework, at the relevant time, for the making and reviewing of performance appraisals in the EPO has been established (see Judgment 4637, considerations 11 to 14). The very limited grounds for impeaching the making of a performance appraisal or its review have been identified (see Judgment 4564, considerations 2 and 3).”

6. There is indeed nothing to suggest, in reading these conclusions, that the Tribunal did not take into account certain facts or evidence presented by the complainant in his rejoinder during the original proceedings, as he maintains in his application for review. In any event, the complainant’s plea is tantamount to arguing that the Tribunal made an incorrect assessment of facts. As such, it does not constitute an admissible ground for review (see, for example, Judgment 4888, considerations 8 and 10, or Judgment 3983, considerations 4 and 8).

7. Second, concerning the complainant's contention that the Appeals Committee's findings in its opinion of 23 October 2023 constitute a new fact on which he was not able to rely in the original proceedings and which could have a bearing on the outcome of his case, the Tribunal observes that such opinion was communicated to the complainant on 26 October 2023, that is, prior to the adoption, on 24 October 2024, of Judgment 4986. Accordingly, the complainant had the opportunity to bring this matter to the Tribunal's attention during the original proceedings. In particular, under Article 9, paragraph 6, of the Rules of the Tribunal, the complainant could have sought the President's authorization to submit a further written statement to present his arguments concerning the opinion of the Appeals Committee well before the Tribunal examined his second complaint at its 139th Session in October 2024. Consequently, irrespective of whether the Appeals Committee's findings might actually have had or not an impact on the outcome of the case, they do not, in any event, constitute a new element of fact on which the complainant was unable to rely in the original proceedings.

8. It follows from the foregoing that the complainant's application for review is clearly devoid of merit and will therefore be summarily dismissed in accordance with the procedure provided for 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 13 November 2025, Mr Patrick Frydman, Vice-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 10 February 2026 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

JACQUES JAUMOTTE

CLÉMENT GASCON

RENÉ M. VARGAS M.