

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**O.-E.**

*v.*

**CERN**

(Application for review)

**127th Session**

**Judgment No. 4127**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3994 filed by Ms L. O.-E. on 31 August 2018 and corrected on 12 September 2018;

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

Having examined the written submissions;

#### CONSIDERATIONS

1. The complainant requests the review of Judgment 3994, delivered in public on 26 June 2018, in which the Tribunal ruled on the complaint she had filed on 25 January 2017 against the European Organization for Nuclear Research (CERN).

2. In that complaint, the complainant challenged CERN's refusal to recognise that she was suffering from an occupational illness. In Judgment 3994, the Tribunal found amongst other things that the complainant had produced no evidence in support of her claims that challenged either the lawfulness of the procedure followed by the expert appointed to provide a final opinion on the diagnosis of her illness or the soundness of the expert's conclusions. The Tribunal also found that CERN had not breached its duty of protection towards the complainant

and that the Joint Advisory Appeals Board had not breached the complainant's right to be heard. Nevertheless, the Tribunal concluded that CERN had breached its duty of transparency as it had only allowed the complainant partial access to her medical file. Accordingly, the Tribunal awarded the complainant moral damages in the amount of 5,000 Swiss francs for the injury caused.

3. According to the Tribunal's case law, its judgments, pursuant to Article VI of its Statute, are "final and without appeal" and carry the authority of *res judicata*. They may therefore be reviewed only in exceptional circumstances and on strictly limited grounds. The only admissible grounds for review are failure to take account of material facts, a material error 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 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 Judgment 3305, under 3, and the case law cited therein).

4. In support of her application, the complainant submits that Judgment 3994 contains material errors and that the Tribunal failed to take account of material facts. She also asserts that she has discovered new facts on which she was unable to rely in the original proceedings.

5. With regard to the complainant's plea that Judgment 3994 contains material errors (such as the duration of her work from home, the use of "and" instead of "or" in the list of measures she requested to be put in place and the scope of her request to deactivate the Wi-Fi base), the Tribunal finds that the alleged material errors on which the complainant relies are not likely to have any bearing on the outcome of the case. This plea must therefore be dismissed.

6. With regard to the complainant's plea that material facts were not taken into account (such as the positive effects of some measures taken by CERN on her health), the Tribunal finds that this plea is an attempt to reargue matters relating to CERN's duty of protection, to

the origin of her illness and to her right to be heard before the Joint Advisory Appeals Board that were fully considered by the Tribunal in the earlier proceedings. In her application for review, the complainant puts forward no valid ground for reviewing the judgment in this respect.

7. Furthermore, in support of her application for review, the complainant requests the Tribunal to take into account several facts, “the details of which were given in [her] original report”. The complainant asks the Tribunal to find that CERN failed to take every possible reasonable action to reduce her suffering and the risks to her health in her work environment. As indicated in consideration 2, above, the Tribunal found in Judgment 3994 that CERN did not breach its duty of protection towards the complainant. As she merely revisits and reargues facts already considered by the Tribunal in the original proceedings, her application for review cannot be allowed on this ground.

8. The complainant also bases her application for review on the discovery of new facts on which she argues that she was unable to rely in the original proceedings. The complainant’s argument in that regard is related to documents contained in or allegedly missing from her CERN medical file that she consulted after Judgment 3994 was delivered in public.

As recalled in consideration 2, above, the Tribunal, in Judgment 3994, awarded the complainant moral damages in the amount of 5,000 Swiss francs for the injury caused by the fact that she had only been given partial access to her medical file. Raising arguments based on the content of her medical file that she consulted following the public delivery of Judgment 3994 cannot afford the complainant grounds for review of that judgment.

9. It follows that the application for review is clearly devoid of merit and must 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 15 November 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Patrick Frydman, Vice-President, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

GIUSEPPE BARBAGALLO

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ