

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

N.

v.

FAO

(Application for interpretation)

128th Session

Judgment No. 4179

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation of Judgment 3879 filed by Mr N. N. on 29 December 2017 and corrected on 9 February 2018, the reply of the Food and Agriculture Organization of the United Nations (FAO) of 19 June, the complainant's rejoinder of 14 August and the FAO's surrejoinder of 3 December 2018;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS

1. In Judgment 3879, delivered in public on 28 June 2017, the Tribunal dismissed the complainant's challenge against the decision not to renew his contract of employment when it expired on 3 June 2013 as irreceivable, pursuant to Article VII, paragraph 1, of the Tribunal's Statute, because he had failed to exhaust internal remedies. At that time that decision was the subject of another challenge which was in the internal appeal process. However, the complainant also challenged the "unsatisfactory" overall rating in his 2011 Performance and Competency Enhancement (PACE) appraisal report, which the Tribunal decided to set aside, as well as the impugned decision of 1 April 2014 which had

confirmed that rating. Point 2 of the decision in Judgment 3879 consequently stated as follows:

“The complainant’s 2011 PACE appraisal report is set aside; the FAO shall remove it from the complainant’s file and it shall be disregarded for subsequent action.”

The complainant applies for an interpretation of this point of the decision.

2. The complainant points out that he also received an “unsatisfactory” overall PACE rating for the year 2012, which was also the subject of another internal appeal at the time when he made the present application. He states that his contract of employment was terminated for unsatisfactory performance as a result of his two consecutive unsatisfactory PACE appraisal reports. He asserts that as the Tribunal set aside his 2011 PACE appraisal report, the basis for terminating his employment no longer exists particularly as point 2 of the decision in Judgment 3879 stated that his 2011 PACE appraisal report “shall be disregarded **for subsequent action**” (complainant’s emphasis). He “requests the Tribunal to provide an interpretation with reference to this sentence, for consequent compliance by FAO”.

3. According to the Tribunal’s case law, an application for the interpretation of any aspect of a judgment will not be receivable where the judgment is clear and unambiguous and the application is merely filed “to obtain an opinion on a legal issue, to obtain a reply from the Tribunal to a question that it was not required to address in the context of the judgment to which the application relates, or to circumvent an internal procedure in which disputes regarding the execution of the judgment could be resolved in accordance with the adversarial principle” (see, for example, Judgment 3014, under 3).

4. The complainant argues, in effect, that the “subsequent action” in point 2 of the decision in Judgment 3879 must be to remedy his separation from the Organization as the decision not to renew his appointment resulted directly from the 2011 PACE appraisal report, which the Tribunal has set aside. He insists that otherwise, point 2 would be ambiguous as the parties would have ascribed two separate meanings to it.

Point 2 would not be ambiguous merely because the parties subjectively may not agree on its meaning or effect, as the complainant suggests. Objectively, point 2 of the decision in Judgment 3879 is clear and unambiguous. It means that, the Tribunal having set aside the complainant's 2011 PACE appraisal report and ordered its removal from his file, it is not to be taken into account as a valid PACE appraisal report affecting any decisions or actions concerning the complainant.

5. In the foregoing premises, the application herein for interpretation of point 2 of Judgment 3879 is rejected and will accordingly be dismissed.

DECISION

For the above reasons,

The application for interpretation is dismissed.

In witness of this judgment, adopted on 13 May 2019, Mr Giuseppe Barbagallo, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

YVES KREINS

DRAŽEN PETROVIĆ