Registry's translation, the French text alone being authoritative.

SEVENTY-THIRD SESSION

In re LEONOR (No. 2)

(Application for review)

Judgment 1178

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 1075 filed by Mr. Mauricio Leonor on 30 September 1991 and corrected on 14 November 1991, the reply of 31 January 1992 from the International Labour Organisation (ILO), the complainant's rejoinder of 6 April and the ILO's surrejoinder of 8 May 1992;

Considering Article II, paragraph 1, of the Statute of the Tribunal, Article 9, paragraphs 2 and 5, of the Rules of Court and Articles 11.8 and 11.16 of the Staff Regulations of the International Labour Office;

Having examined the written evidence;

CONSIDERATIONS:

1. Judgment 1075 of 29 January 1991 dismissed Mr. Leonor's complaint challenging a decision the Director of the Personnel Department of the International Labour Office had taken on 3 January 1990 on the Director-General's behalf. It held that in signing on 6 September 1989 an agreement on the termination of his appointment the complainant had not been subject to duress on the Organisation's part and that, contrary to what he had maintained, his appraisal report for 1988-89 had not been tainted with abuse of authority. That is the judgment of which he applies for review.

2. According to the case law the Tribunal's rulings carry the authority of res judicata. An application for review will succeed only in exceptional cases and several pleas in favour of review will not be entertained at all. They include an alleged mistake of law, an alleged mistake in appraisal of the facts and failure to admit evidence. To allow an application for review on any such grounds would be to let anyone who was dissatisfied with a ruling challenge it indefinitely in defiance of the res judicata rule. Nor may there be review on the grounds of omission to address pleas submitted by the parties. Otherwise there would have to be express rulings on all such pleas even if they were plainly immaterial.

Other pleas in favour of review may be entertained if they are such as to affect the ruling. They include an omission to take account of particular facts; a material error, i.e. a mistaken finding of fact that involves no exercise of judgment; an omission to rule on a claim; and the emergence of a so-called "new" fact, i.e. one the complainant discovered too late to cite in the original proceedings.

3. The complainant is putting forward almost all the above pleas, even some that precedent precludes because they are not admissible, and his pleas address both the section of Judgment 1075 about the agreement on termination and the section about his appraisal report.

The termination of the complainant's appointment

4. As to the section about the agreement on termination he has three pleas: material errors, disregard of essential facts and discovery of new facts.5. As to material errors he objects, first, to the finding that the only pressure applied was the setting of a time limit for signing the agreement on termination. What he is saying is not that there was any mistake over the length of time he had been given but that it was unreasonable. That is a matter of appraisal and so his plea does not afford admissible grounds for review.

He also contends under this head that he was put under pressure of other sorts that would have become plain in the oral proceedings he applied for. As stated in 2 above, failure to allow evidence is not an admissible plea for review,

and the argument therefore fails.

Another material error he alleges was the statement that the Organisation's offer which led to the signing of the agreement was "gratuitous". But here again what he is alleging is misappraisal of the evidence, a plea that will not be entertained.

He takes issue with the view that his refusing the ILO's offer would not have made his position any worse. But even supposing the view was incorrect there would have been no material error about that. Again he is advancing the inadmissible plea of misreading of the evidence, and so it fails.

6. His second line of argument is that the Tribunal overlooked essential facts, and he identifies six: (1) the parties' "leonine" relationship; (2) the circumstances surrounding the negotiation; (3) intimidation; (4) the fact that he was not a lawyer; (5) Article 11.8 of the Staff Regulations; and (6) the provisions of ILO Convention No. 158.

What he is alleging under (5) and (6) is disregard, not of facts, but of legal provisions. To misread such texts would amount to a mistake of law, and that does not afford admissible grounds for review.

As to points (1) to (4), he argues that they show that the discussions prior to his signing the agreement were not true negotiations because the ILO set the scene, determined the wording of the agreement, intimidated him and took advantage of his lack of legal experience. But the facts he marshals to back up this argument were all relied on in his original complaint, and Judgment 1075 took them into account since it held, under 17, that in signing the agreement on 6 September 1989 he was not under unlawful pressure from the ILO. He may feel that that is a wrong conclusion on the evidence, but again that affords no admissible grounds for review.

7. Lastly, he alleges a new fact in that a third option was open to him, over and above the two he was offered, but was never mentioned in the negotiations, and the Chief of the Personnel Development Branch negotiated in bad faith by failing to offer the third option. The existence of that option was, he says, revealed to him in an appendix to the ILO's surrejoinder in the original proceedings and he was therefore unable to raise the issue.

He was free, if he so wished, to apply for leave to enter further submissions under Article 9(2) of the Rules of Court or to apply for adjournment under Article 9(5). His application for oral proceedings was no substitute for the submission of new arguments in answer to the surrejoinder. There is no evidence to suggest that the complainant made any Article 9 application or that he was refused permission to allege discovery of a new fact before the written proceedings closed. So the fact he alleges may not be treated in the present context as a "new" one warranting review.

The appraisal report

8. The complainant's objections to what Judgment 1075 said about the appraisal report are based on alleged material errors and misreading of essential facts.

9. He says that it was "utterly mistaken" to declare that the dispute was only with his immediate supervisors, since it went right up to the head of the department, and to hold that consulting three supervisors obviated any risk of personal prejudice. Plainly what he is objecting to is, not the actual finding that there was a dispute, but the assessment of its extent and consequences: in other words, an appraisal of evidence, which does not afford grounds for review.

He goes on to cite other allegations he describes as mistaken. They are that he was on trial in F/PROF, that the study which prompted the disagreement over technical matters was his main task, that he was guilty of insubordination and that his reaction to criticism of his paper was to make a personal attack on his supervisor. The Tribunal examined those allegations in the original pleadings. Finding them immaterial, it gave them no weight. The complainant may not object to the judgment on the grounds that the absence of a ruling on them was mistaken.

10. As for disregard of essential facts, the complainant alleges that communication between himself and his supervisors suffered because of a dispute over technical matters. But the judgment refers under 20 to the controversy and says that it led to a "breakdown in communication". There is therefore no question of overlooking the fact.

The complainant alleges that other facts were disregarded, namely that the proceedings before the Reports Board

were tainted with many flaws, breach of good faith and breach of his right to a hearing. All those issues were put to the Tribunal in the context of the original challenge to the appraisal report. The Tribunal took the view that the complainant's objections were unfounded and in doing so it examined all the evidence before it and made an appraisal. It was not required to rule expressly on each one of them. There is therefore no evidence to suggest that it overlooked any of the facts alleged above.

Alleged failure to rule on the claim to a permanent appointment

11. The complainant observes that in his appeal to the Director-General he maintained that the refusal to grant him a permanent appointment was one feature of the ILO's unfair treatment of him. He made the same claim in his original complaint, he says, and the Tribunal failed to rule on it.

As was said under 2 above, failure to rule on a claim does constitute admissible grounds for review provided that it is material to the ruling on the case. But since the Tribunal upheld the agreement on termination under Article 11.16 of the Staff Regulations, there was no question of allowing the claim to a permanent appointment, which the validity of the agreement precluded. The implication was therefore obvious that the judgment rejected his claim to a permanent appointment.

The claims to damages and costs

12. Since the application for review is dismissed so are the complainant's claims to damages and costs.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment Tun Mohamed Suffian, Vice-President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Edilbert Razafindralambo, Deputy Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 15 July 1992.

(Signed)

Mohamed Suffian
Mella Carroll
E. Razafindralambo
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.