

EIGHTY-SECOND SESSION

In re Perez-Venero (No. 2)

(Application for review)

Judgment 1593

The Administrative Tribunal,

Considering the application for review of Judgment 1448 filed by Mr. Alejandro Perez-Venero on 7 July 1996;

Considering Articles II, paragraph 5, and VII, paragraphs 1 and 3, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. This is an application for the review of Judgment 1448, which dismissed Mr. Perez-Venero's complaint of 29 March 1994 against his former employer, the United Nations Industrial Development Organization (UNIDO). In that complaint he alleged that UNIDO had wrongfully separated him from service and he identified what he saw as two unlawful decisions: first, what he termed "notice of dismissal" in a memorandum dated 4 October 1993, which in a memorandum of 1 November 1993 he had asked the Director-General to review; secondly, an "agreed termination" dated 10 November 1993. The Tribunal held that under Article VII(1) of its Statute the complaint was for two reasons irreceivable: (1) the memorandum dated 4 October 1993 did not constitute notice of dismissal but was intended only to initiate discussion, and at that time there was no actual decision to terminate; and (2) though the decision to terminate had been notified to him on 10 November 1993 he had failed to take any action to initiate, let alone exhaust, his internal remedies.

2. The complainant is seeking review on the grounds that the Tribunal erred in dealing with his case under Article VII(1) of its Statute. He contends that his memorandum of 1 November 1993 was notification of a claim by him to a decision by the Director-General -- "no matter the nature of that decision" -- and that he was entitled to have direct recourse to the Tribunal under VII(3) because the Administration had failed to take a decision upon that claim within sixty days of the notification thereof.

3. What he is pleading is a mistake of law in failing to deal with his case under Article VII(3). As the Tribunal has declared in Judgment 442 (*in re de Villegas No. 4*) and in many other judgments the plea of mistake of law does not afford admissible grounds for review. It therefore fails.

4. Besides, even assuming that the complainant's memorandum of 1 November 1993 was, as he now alleges, a "claim to a decision", the substance of that claim was that the UNIDO should not terminate his appointment. Although the letter of 10 November 1993 embodying the "agreed termination" made no reference to that claim, it was a decision on the subject of that claim. Thus it would have been mistaken to say that the Administration failed to take a decision within sixty days: Article VII(3) was inapplicable.

5. Being clearly irreceivable, the application must be summarily dismissed in accordance with Article 7 of the Tribunal's Rules.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 30 January 1997.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner

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