

SIXTY-EIGHTH SESSION

In re HILL (No. 3)

(Application for review)

Judgment 1014

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 938 filed by Mrs. Paula Elizabeth Hill on 2 May 1989, the reply of 21 August of the Food and Agriculture Organization of the United Nations (FAO), the complainant's rejoinder of 28 September and the FAO's surrejoinder of 3 November 1989;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written evidence:

CONSIDERATIONS:

1. The complainant is applying for review of Judgment 938, which the Tribunal delivered on 8 December 1988 on her second complaint.

She was continuously employed by the FAO from July 1976. A minute of 15 May 1986 from the director of her division told her that because of her "unsatisfactory performance and negative attitude" her appointment, which was to end on 30 June, would not be renewed. She appealed and submitted medical certificates in support of her case, but a letter of 26 June 1986 rejected her appeal on the Director-General's behalf on the grounds of her many shortcomings.

On 1 August 1986 she put her case to the Appeals Committee, claiming, among other things, the grant of a continuing appointment or financial compensation and of sick leave. In its report of 20 March 1987 the Committee unanimously recommended rejecting her claim to sick leave and by a majority recommended rejecting her claim to a continuing appointment. In a letter of 6 July 1987 the Deputy Director-General told her that the Director-General had rejected her appeal and confirmed her separation from service at 30 June 1986.

2. In Judgment 938 the Tribunal upheld the decision not to renew her appointment but changed the effective date of termination from 30 June to 2 August 1986.

The judgment was based on the principle, stated in 12, that "a staff member cannot be separated while on sick leave" and on the Tribunal's conclusion, also in 12, that the decision of the FAO's medical service to grant the complainant sick leave only until 30 June 1986 "must be set aside because it was based on wrong information and applied the wrong test".

3. The complainant is asking the Tribunal to change the effective date of termination from 2 August to 24 October 1986. She says that medical certificates show that she was ill not just up to 2 August but up to 24 October, that she gave that information to the FAO in the course of her illness and that there has therefore been a technical error in assessing the medical evidence and setting the date of separation at 2 August instead of 24 October 1986. She produces seven medical certificates in support of her application.

The first six cover the period from 2 August to 24 October 1986. Though they bear dates prior to 8 October 1987, the date at which she filed her second complaint, only now has she submitted them to the Tribunal.

4. One issue disposed of in Judgment 938 was whether the complainant's separation date was correct, and the ruling that it was not makes the matter *res judicata*.

As the Tribunal has often declared, its judgments may not ordinarily be challenged. But in exceptional cases they are subject to review on such grounds as failure to take account of an essential fact, a material error involving no value judgment, failure to rule on a claim, or the discovery of an essential fact the parties were unable to rely on in

the original proceedings.

5. The present application fails to meet any of those requirements and so to qualify as an exceptional case.

The first six certificates were made before the earlier proceedings began, there is no reason why the complainant should not have produced them then, and it is too late for her to do so now. As for the seventh certificate, which is dated 17 December 1987, though she did enter it in the course of the exchange of written submissions on her second complaint, it was immaterial to the Tribunal's decision to change the date of separation to 2 August 1986.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 23 January 1990.

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner