SIXTY-NINTH SESSION

In re LOROCH (No. 7)

(Application for review)

Judgment 1027

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 950 filed by Mr. Kim Joseph Loroch on 23 June 1989, the reply of 4 August of the Food and Agriculture Organization of the United Nations (FAO) of 4 August, the applicant's rejoinder of 15 August and the FAO's letter of 25 August 1989 to the Registrar stating that it did not wish to file a surrejoinder;

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

Having examined the evidence;

CONSIDERATIONS:

1. This is an application for review of Judgment 950 of 8 December 1988. That judgment dismissed an earlier application of the complainant's for review of Judgment 620 of 5 June 1984, which had rejected his second complaint against the FAO.

The two judgments may be recapitulated as follows.

Judgment 620

2. The complainant had a heart attack in March 1974. He wrote to the FAO to say that he had contracted angina pectoris because of stress at work and to claim compensation for serviceincurred illness. Having had his claim rejected, he asked that a medical board be convened to examine the medical aspects. The board recommended dismissing the claim, the Director-General accordingly dismissed it and the complainant filed his second complaint impugning that decision.

In Judgment 620 the Tribunal ruled that some of the complainant's grievances were well founded and it awarded him damages, which it set ex aequo et bono at 20,000 United States dollars, and $2,000 in costs. It held, first, that the regular medical examinations of staff provided for in the FAO Manual were binding on the Organization and that if the complainant had been examined from time to time he would have had the opportunity to take precautions against his illness. Secondly, it held that there had been procedural flaws in the way in which the medical board had reached its conclusions: its members should have met to discuss the case and not just have consulted each other in writing or by telephone.

As to the substance of the board's findings, however, the Tribunal dismissed the complainant's objections in the following passage:

"The Tribunal may not substitute its own views for those of the experts. It will not entertain the complainant's plea that their findings were superficial, illogical or at variance with up-to-date medical opinion. The material issue is whether correct procedure was observed in consulting them."

Judgment 950

3. In his sixth complaint, which the Tribunal dismissed in Judgment 950, the complainant applied for review of Judgment 620 and in particular of the dismissal of his claim to compensation for service-incurred illness. He contended that the Tribunal should have reviewed its decision on the basis of "independent authoritative opinion". He offered such an opinion in the form of a letter from the president of a body known as the American Institute of Stress which he said was "the ultimate authority and expertise" on matters of stress. The letter concluded by stating that "it would be hard to conceive a more clear-cut example of a job stress related cardiovascular condition" than

the complainant's. A further letter from the president of that institute was submitted with his rejoinder. It observed, among other things, that the professional background and experience of the members of the medical board "did not make them particularly able to render an authoritative opinion on the issue before them" and that that warranted review of Judgment 620. The complainant accordingly asked the Tribunal "to reopen the medical aspects" of the case.

In Judgment 950 the Tribunal pointed out that its judgments had the force of res judicata and might not ordinarily be challenged. It observed, however:

"In exceptional cases they are subject to review on such grounds as failure to take account of essential facts, 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 pleadings. To justify review, there must be evidence of some exceptional circumstance, such as accident or inadvertence, cogent enough to displace the principle of finality of judgment."

The Tribunal went on to declare that in that case there were no such circumstances, that in essence what the complainant was seeking was that the Tribunal "substitute a different medical opinion for that of the medical board", and that that could not "constitute admissible grounds for review".

The earlier application therefore failed.

The instant application

4. On the criteria stated in Judgment 950 and quoted in 3 above the present application too must fail. There is, again, no evidence of any exceptional circumstance that would warrant review. The complainant's submissions and the medical references therein do not suggest that there was any essential fact which the Tribunal failed to take into consideration or any essential fact the complainant was unable to rely on in the original pleadings or indeed any admissible reason for review.

The complainant again dwells on the alleged lack of qualifications of the members of the medical board, on its "incompetence" and on its "worthless findings". What he is asking the Tribunal to do is what it refused in Judgment 950, and that is to "substitute a different medical opinion for that of the medical board".

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 Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 26 June 1990.

Jacques Ducoux
Mohamed Suffian
E. Razafindralambo
A.B. Gardner

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