EIGHTY-FIFTH SESSION

In re Masens (No. 2)

(Application for review)

Judgment 1751

The Administrative Tribunal,

Considering the application filed by Miss Liana Yvonne Masens on 21 April 1998 for review of Judgment 1700;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. Judgment 1700 dismissed the first complaint from Miss Masens as irreceivable. She is seeking review of that judgment on the grounds of "mistaken statement of fact as against appraisal of the evidence".

2. She sees the mistaken statement of fact in contradictory arguments put forward by the defendant, the United Nations Industrial Development Organization (UNIDO), about the date of the final decision. She refers to the report of 25 March 1996 by the Joint Appeals Board on her internal appeal. She observes that the Board quoted the Organization's submission to it that the challengeable final decision had been the Director-General's letter of 15 November 1993 confirming an earlier decision, of 2 November 1993, by the Director of the Personnel Services Division and that the time limit of sixty days set in Rule 112.02(a) for a request for review had therefore elapsed on 15 January 1994. She points out that in its submissions to the Tribunal the Organization contended that it was the letter of 2 November 1993 from the Director of Personnel Services that had been the final decision. She concludes: "There are two contradictory deadlines provided by none other than UNIDO itself" and on account of "this ambiguous and contradictory situation" she asks the Tribunal to "note the error and rule this as a mistaken statement of fact, as a fundamental fault, and therefore declare the case receivable".

3. Whatever was said to the Joint Appeals Board, the Tribunal had to consider the arguments before it. The Organization contended - and the Board held - that the challengeable decision was the one of 2 November 1993. The complainant contended that it was the one of 15 November 1993 and that the memorandum of 2 November had not given her notice of special leave but rather confirmed that there had been informal discussions with her about a proposal to put her on such leave.

4. The Tribunal held that the decision to put her on special leave was notified to her in the memorandum of 2 November 1993; that there was nothing tentative about the decision, which had been taken by the Director-General; and that, being mere repetitions of the decision in the memorandum of 2 November 1993, the letters of 15 November 1993 and of 28 February 1995 had set off no new time limit.

5. What the complainant sees as a mistaken statement of fact or fundamental fault is a finding of fact made by the Tribunal on all the relevant evidence before it. As it held in Judgment 442 (*in re* de Villegas No. 4) and has held many times since, the Tribunal will not allow review on the grounds of an alleged mistake in appraisal of the facts, i.e. the interpretation it has put on the evidence.

6. The complainant is bound under the *res judicata* rule by the findings of fact in Judgment 1700. Her application being clearly irreceivable, the Tribunal dismisses it in accordance with the summary procedure in Article 7 of the Rules.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 8 May 1998, Miss Mella Carroll, Vice-President, Mr. Mark Fernando, Judge, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 9 July 1998.

Mella Carroll
Mark Fernando
James K. Hugessen

A.B. Gardner

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