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

NINETY-FIRST SESSION

***In re* Abdur (No. 2), Drechsler (No. 2) and Zeller (No. 2)** **Judgment No. 2059**
(Application for review)

The Administrative Tribunal,

Considering the application for review of Judgment 1915 filed by Mr Rahim Abdur, Mrs Herta Drechsler and Mr Dietrich Zeller on 3 July 2000, the reply of 12 October from the International Atomic Energy Agency (IAEA), the complainants' rejoinder of 20 December 2000 and the Agency's surrejoinder of 6 April 2001;

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

Having examined the written submissions;

CONSIDERATIONS

1. The complainants are staff members in the General Service category at the International Atomic Energy Agency (IAEA). They are seeking review of Judgment 1915 delivered on 3 February 2000 on the grounds that it contains an error of fact likely to affect the original ruling.

2. According to consistent precedent, and contrary to the Agency's assertion, the Tribunal may allow an application for review, but only in quite exceptional circumstances. As stated in Judgment 1507 (*in re* Morier No. 2), in accordance with Article VI of its Statute, its judgments are "final and without appeal" and carry the authority of *res judicata*. Admissible grounds for review are therefore strictly limited: failure to take account of a material fact, an error of fact which involves no exercise of judgment, omission to rule on a claim, and the discovery of some new facts which the complainant was unable to rely on in the original proceedings. Moreover, the plea must be such as to affect the original ruling (see Judgment 1255, *in re* Bansal No. 4 and Harpalani No. 4, under 2). The grounds which are not admissible for an application for review are an alleged mistake of law, failure to admit evidence, misinterpretation of the facts and omission to comment on a plea (see in particular Judgment 442, *in re* de Villegas No. 4, under 2).

3. By Judgment 1915 the Tribunal dismissed complaints challenging the lawfulness of the Agency's decision to apply to staff in the General Service category the salary scales set for Vienna following a salary survey carried out in Vienna by the International Civil Service Commission (ICSC) in 1996. That survey was conducted pursuant to an earlier decision by the ICSC to phase out the language allowance granted to General Service staff in duty stations where the national language is not one of the Agency's working languages.

4. The complainants submit that the judgment contains a mistake of fact in that it asserts that "compensation for the use of a second language in these jobs (in the form of being placed in a higher occupational group) was fully taken into account".

The Tribunal is satisfied that its decision does not show any error of fact involving no exercise of judgment.

After examining the parties' submissions, the documents produced and in particular the method used in comparing jobs in the common system with those of the "comparator employers", the Tribunal concluded that if jobs covered by a collective agreement were included in the survey in the case of the petroleum industry "compensation for the use of a second language in these jobs ... [had been] fully taken into account".

The complainants observe that after Judgment 1915 was delivered, some of the "comparator employers" indicated that "during the 1996 salary survey conducted by the ICSC, all of the [external] jobs that were compared ... with the ICSC's benchmark jobs and for which salary data were collected were jobs that did not require a knowledge of spoken and written English". But that fact affords no evidence that the Tribunal's finding was mistaken and involved no exercise of judgment.

5. Even if an error of fact was proved - which is not the case - Judgment 1915 is sufficiently justified by other reasons for the Tribunal to affirm that the alleged error had no decisive affect on its ruling. The fact of knowing that, out of the twenty-two "comparator employers", two "major" ones in the petroleum industry, for which there were salary data, did not require a knowledge of written and spoken English for the jobs surveyed, could not decisively affect a decision which found, unlike Judgment 1713 (*in re* Carretta and others), that the main local employers did require their staff to have knowledge of and work in a language other than the local one for no extra pay.

6. The conclusion is that the application for review must be dismissed.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 4 May 2001, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2001.

(Signed)

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 27 July 2001.