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

FIFTY-FOURTH ORDINARY SESSION

In re de VILLEGAS (No. 12)

Judgment No. 642

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Labour Organisation (ILO) by Mrs. Maria Adriana de Villegas on 14 November 1983 and presumed to be in corrected form by 13 January 1984, the ILO's reply of 30 March, the complainant's rejoinder of 1 June and the ILO's surrejoinder of 30 August 1984;

Considering Articles II, paragraph 1, and VII, paragraph 3, of the Statute of the Tribunal and Articles 11.17, 13.2 and 14.8 of the Staff Regulations of the International Labour Office;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows;

A. By Judgment No. 509 of 3 June 1982, on the complainant's fifth complaint against the ILO, the Tribunal quashed a decision of 27 June 1980 by the Director-General rejecting her claim to a certificate of service of the kind she believed she was entitled to under Article 11.17 of the ILO Staff Regulations; it cancelled a certificate of service dated 28 January 1980; and it dismissed her other claims for relief, observing that in particular her claims for compensation were irreceivable because there was no previous decision. The ILO gave her a new certificate of service dated 21 July 1982. On 29 July 1983 she wrote to the Director-General claiming compensation of 200,000 Swiss francs consisting of 1,000 francs a month from the date of her "original claim of 27 December 1978" up to the date of Judgment 509, or a total of 40,000 francs, and 160,000 francs as partial compensation for professional and moral injury on the grounds that, for want of a proper certificate, she was permanently unemployed. She got no answer and is challenging the implied decision to reject her claims in accordance with Article VII(3) of the Statute of the Tribunal.

B. The complainant contends in her brief that the refusal of her claims is unlawful on the grounds that the Tribunal held the decision of 27 June 1980 to be invalid. She repeats the claims in her letter of 29 July 1983 to the Director-General and seeks costs.

C. In its reply the ILO observes that whereas the complainant's claims in her fifth complaint were based on the loss of her employment with the ILO her present claims rest on her failure to find employment elsewhere. The purpose of the letter of 29 July 1983 was to secure a prior decision from the ILO, and she is indeed challenging an implied rejection of her claims. The Tribunal may have already rejected all claims by the complainant arising out of the certificate of service, but the complaint is in any event irreceivable. Article 13.2 of the Staff Regulations requires a staff member to file an internal appeal within six months of the treatment complained of, and by analogy the complainant should have acted within six months of the date of Judgment 509. Yet she waited for over twelve before writing to the Director-General. Even if such a rule did not apply by analogy her claims were time-barred under Article 14.8: "no claim under [the Staff Regulations] shall be entertained if it is submitted after the expiry of 12 months from the date on which the right to bring it forward accrued". She therefore failed to exhaust in time the internal means of redress. Her complaint is, besides, devoid of merit. The Tribunal ruled, not on the contents, but on the form, of the certificate, and its mere form could not alter her employment prospects. The contents of the cancelled certificate were actually designed not to harm her since they did not speak of unsatisfactory sides of her performance. Besides she has shown no causal link between the cancelled certificate and her failure to find a job; no prospective employer has ever asked the ILO about her.

D. The complainant rejoins that the Tribunal did not reject her present claims in Judgment No. 509, but only those on which there was no prior decision. No time bar against the internal appeal may be inferred by analogy from Article 13.2: a time bar must be express. If there is one in 14.8 the twelve months must count not from the date of the judgment -- and she was not present when it was delivered on 3 June 1982 -- but from the date of its

notification to her, and it is not established that that was before 29 July 1982. Besides, 14.8 is irrelevant because her claims do not come under the Staff Regulations, but rest on the general rule that any wrong which causes injury confers a right to compensation. As to the merits, she observes that what Judgment 509 objected to in the earlier certificates was that they did not properly inform prospective employers; thus the Tribunal recognised that the actual form and not just the contents might hamper her in finding employment. Since prospective employers could not assess her performance from the certificates she did suffer injury, and for that she is entitled to damages.

E. In its surrejoinder the ILO challenges as inconsistent and clearly mistaken the complainant's contention that her claims do not come under the Staff Regulations. It observes that she knew of the decision in Judgment 509 on the date on which it was delivered because she demanded a new certificate that very day. As to the merits, the ILO submits that the Tribunal never ruled on whether the form of earlier certificates spoilt her job prospects. Even supposing that it might have done, she has failed to show it actually did. She does not even say what employers she got in touch with.

CONSIDERATIONS:

1. By Judgment No. 509 of 3 June 1982 the Tribunal cancelled a certificate of service which the Director-General of the ILO had given the complainant on 28 January 1980. It also rejected her claims for compensation because there was no previous decision.

The complainant thereupon appealed to the Director-General and she is now seeking from the Tribunal damages amounting to 200,000 Swiss francs.

2. Her claim rests on the injury which she alleges she suffered because, having no certificate of service, she could not find other employment.

In fact the ILO did deliver a certificate, but it was a defective one and invalid. It was because the ILO was at fault that the Tribunal ordered the cancelling of the certificate.

3. Fault may engage liability, but need not do so: it must also be the direct cause of injury.

The Tribunal held that the certificate the Director-General had provided did not include all the information required by Article 11.17 of the Staff Regulations: a certificate should provide information which will give prospective employers a full picture of the applicant's qualifications.

The complainant's argument is that prospective employers were unable to assess fully the merit of her applications and that not a single potential employer got in touch with the ILO, being discouraged by the incomplete certificate.

4. The argument would succeed if the complainant's allegation were not unsupported. Although she need not offer formal proof, she ought to indicate what organisations and companies she approached and how they responded. Such evidence would not have been difficult for her to produce.

5. The complainant must establish injury, and she has failed to do so. The Tribunal will therefore dismiss the complaint and need not take up the ILO's plea of irreceivability.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 5 December 1984.

(Signed)

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner

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