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

FIFTY-SEVENTH ORDINARY SESSION

In re VERRON (No. 2)

(Application for review)

Judgment No. 704

THE ADMINISTRATIVE TRIBUNAL,

Considering the application filed by the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 6 November 1984 for review of Judgment 607 (in re Verron), the reply filed by Mr. Michel Verron on 21 December 1984, corrected on 8 February 1985 and filed again on 15 February, the Organization's rejoinder of 30 April and Mr. Verron's surrejoinder of 26 June 1985;

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

Having examined the written evidence;

CONSIDERATIONS:

1. Mr. Verron joined the staff of UNESCO in 1970 and served under fixed-term appointments until 31 March 1981, when the last of them expired. There were lengthy administrative proceedings in which his main claim was for a further appointment under a new contract. He also claimed sick leave or the benefit of what is known as "hiatus financing". By a decision of 24 March 1983 the Director-General rejected all his claims as time-barred.

He then submitted a complaint to the Tribunal. In its judgment of 12 April 1984 the Tribunal rejected the Organization's plea of irreceivability but gave the complainant only partial satisfaction. Although the impugned decision was set aside insofar as it refused to grant him sick leave as from 1 April 1981, it rejected on the merits his objections to the decision not to reappoint him or grant him the benefit of hiatus financing.

The Organization has filed an application for review of the judgment.

2. The Tribunal's judgments carry the authority of res judicata. They are, however, subject to review on application either by the complainant insofar as he is not satisfied or by the defendant organisation when its decision is set aside or it is ordered to pay damages. Whichever party is the applicant, the Tribunal will review a judgment only in exceptional cases. Such is the rule of all jurisdictions which allow review. For that reason several pleas are inadmissible as grounds for review, such as allegations of error of law or misappraisal of the evidence. Nor does the failure to hear evidence or to rule on pleas submitted by the parties afford admissible grounds for review.

Other pleas may be admissible provided they may have an effect on the Tribunal's decision. Examples are failure to take account of specific facts, material error, i.e. a mistaken finding of fact which does not involve any value judgment and is therefore distinguishable from misappraisal of evidence, failure to rule on a claim and the discovery of some "new fact", i.e. a fact which one of the parties was not able to rely on in the proceedings that culminated in the judgment.

3. The Organization's first plea is that, as it contended in its earlier submissions, the Tribunal ought to have declared the complaint irreceivable. It produces two letters, dated 23 and 30 March 1981, declaring that the complainant's appointment, which was to expire on 31 March, would not be renewed and that he must therefore make arrangements to return home.

Although neither letter was produced in the original proceedings, the complainant has never denied that he received them and he does not do so in his reply to the Organization's application.

UNESCO is not of course contending that it was unaware of its own letters. Its argument is that the Tribunal itself raised an issue which the complainant had not argued, so that the Organization was unable to plead irreceivability on the grounds of its earlier notification of the date of expiry of the contract.

The plea fails.

In the original proceedings both parties acknowledged that the complainant's appointment had expired on 31 March 1981, and the Tribunal made a finding to that effect. But the complainant adopted a different approach, his case being that the Organization had failed subsequently to take the decisions it ought to have taken. In his view it was "the conclusion which the Administration drew or rather failed to draw from the expiry of his appointment that is challengeable and that is actually challenged in my complaint". The nub of his case was that the expiry of his appointment did not end his contractual relationship with the Organization. The Tribunal endorsed that view, and it is therefore mistaken to say that the Tribunal itself raised the point. UNESCO could have retorted by producing the two letters had it believed that they refuted the complainant's case.

There was therefore nothing to prevent the Organization from citing the letters in the original proceedings, and their existence does not constitute any "new fact" of the kind indicated in 2 above.

4. There is a further reason for rejecting UNESCO's plea.

Even supposing that its two letters did inform the complainant of its final refusal to give him another appointment, that would have made no difference to the Tribunal's decision in the circumstances.

Since the Tribunal dismissed the complainant's main claim to a further appointment, the application is irreceivable on this point: the party whose case the Tribunal accepts may not challenge its reasons for doing so.

The Tribunal did allow the claim to sick leave. But there was nothing in the letters to preclude that claim, and in any event they constitute no new fact material to the claim.

5. UNESCO has further pleas related to the merits. It observes that the complainant was reinstated in the French civil service as from 1 April 1981, the day after he left UNESCO, and as from that date enjoyed in full the rights and benefits of a French civil servant. In particular he was put on sick leave up to 31 March 1982. UNESCO believes that by leaving itself and the Tribunal in ignorance of those facts the complainant failed in his duty of good faith and secured an unfair advantage.

As the Tribunal said above, an application for review is an exceptional procedure and will be granted only on strictly limited grounds. Not only are the admissible grounds narrowly interpreted, but to warrant review in the particular case there must be some exceptional fact.

The Tribunal finds none in this case. Since he was no longer on UNESCO's payroll it was quite reasonable for the complainant to seek reinstatement in the French civil service while pursuing his claims by various procedures in the Organization and before the Tribunal. The claimant cannot be expected to remain unpaid until he knows whether his claim to reinstatement is successful; the outcome can never be certain in such cases. He could of course have explained his position to UNESCO, but he was not at fault in doing so only much later. There is indeed no evidence which casts any doubt on his integrity. m e financial consequences can be worked out and double payment of the complainant for the same period avoided once UNESCO has granted him his sick leave entitlements. In any event, whatever the complainant's attitude may have been before the Tribunal gave judgment, it cannot constitute valid grounds for review.

6. The Organization shall pay Mr. Verron 5,000 French francs as costs.

DECISION:

For the above reasons,

1. The application is dismissed.

2. UNESCO shall pay Mr. Verron 5,000 French francs as costs.

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 signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 14 November 1985.

(Signed)

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner

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