

SIXTY-EIGHTH SESSION

***In re* VERDRAGER (No. 8)**

(Application for review)

Judgment 1015

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 325 filed by Mr. Jacques Verdrager on 30 January 1989, the reply of 6 April of the World Health Organization (WHO), the complainant's rejoinder of 27 May and the WHO's surrejoinder of 9 June 1989;

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

Having examined the written evidence:

CONSIDERATIONS:

1. The complainant has again applied for review of Judgment 325, which the Tribunal delivered on 21 November 1977.

In his submissions he addresses issues that were raised in his original complaint and in his later applications for review, and on which the Tribunal has already ruled. But he is now relying on a note signed by a former Director of the African Regional Office (AFRO) of the World Health Organization on 21 September 1988 which affirms that the complainant was offered a career appointment on the completion of his assignment in Mauritius and that it was then "understood that on no account would he be transferred without his prior consent".

2. The Tribunal's judgments carry the authority of *res judicata* and may be reviewed only in exceptional circumstances such as failure to take an essential fact into account. There will be such failure where, for example, there is some new fact that the complainant first had notice of after the original proceedings and so was unable to rely on in those proceedings.

3. There is nothing new about the fact which the former Regional Director's note cites since the original complaint mentioned it and the Tribunal considered it. What is new is the note itself, which bears out an allegation the complainant made in his first application for review.

The note is adduced as further evidence of a fact already relied on and ruled on. But it carries no weight in law because the unsupported allegation it contains cannot warrant breach of the WHO's Staff Regulations and Staff Rules, which lay a duty on staff to accept transfer if the Organization's interests so require.

What is more, the Regional Director's private note to the complainant, written years after the material time, is at odds with an official text headed "Recommendation for Career-Service Appointment" which was written twenty-five years ago and which the Regional Director also signed. It reads: "This recommendation has been discussed with Dr. Verdrager and he understands that the granting of a Career-Service Appointment carries with it the obligation of service wherever the Organization may require".

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. Héctor Gros Espiell, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan

Gardner, Registrar.

Delivered in public sitting in Geneva on 23 January 1990.

(Signed)

Jacques Ducoux
Mohamed Suffian
H. Gros Espiell
A.B. Gardner

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