SEVENTY-FOURTH SESSION

In re DAHLQVIST (No. 2)

(Application for review)

Judgment 1218

THE ADMINISTRATIVE TRIBUNAL,

Considering the application filed by Mr. Nils Dahlqvist on 14 January 1992 for review of Judgment 1108;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 8, paragraph 3, of the Rules of Court;

Having examined the written submissions;

CONSIDERATIONS:

1. By Judgment 1108 of 3 July 1991 the Tribunal dismissed the complaint which Mr. Dahlqvist had filed against the World Health Organization on 10 August 1990. It ruled that he was not entitled to payment of a daily subsistence allowance during his employment by the Organization as a consultant from 17 July to 17 October 1989. It did so on the grounds that the contract arising out of the Organization's offer of employment and his acceptance of it had expressly excluded any right to such allowance. It held that the Organization had been empowered to make such an offer and that his acceptance had made it binding. By the present application he seeks review of the judgment.

2. The Tribunal follows the principles it set forth in Judgment 442 (in re de Villegas No. 4), among others, in entertaining applications for review.

The complainant accuses the Organization of bad faith, negligence and irregularities in the handling of his case.

First, as to his charge of bad faith, the Tribunal ruled in Judgment 1108 that the offer which the WHO made him was lawful. There was no concealment of any essential term of the contract and the Organization was dealing with someone who had already had many years of service in the Professional category of staff and who, according to him, had experience in personnel management.

Secondly, there is no evidence whatever of negligence in the Personnel Division. The offer was made in exactly the terms intended and it was for the complainant to accept or reject them in whole or in part.

Thirdly, as to the charge of "irregularities", the offer stated that the allowance would not be paid. Whether or not that was in line with general practice, it was not an "irregularity". The complainant entered into the contract freely and in full knowledge of its terms; he later came to the view that it was to his disadvantage and he claimed the rewriting of it. But that is not the function of the Tribunal, which rules on rights and duties arising under binding contracts between staff members and the international organisations over which it has jurisdiction.

3. Summing up his own pleas, the complainant submits:

"The Tribunal has failed to take into account the very particular fact that the WHO Personnel unit is consistently attempting to mislead non-local staff into signing Offers of Appointment on arrival in Geneva, thus depriving them of the non-local status and its concomitant per diem and travelling expenses which they are by definition entitled to.

In this context, the Tribunal has made the material error of not taking into account in its Considerations the basic rule of good faith, inherent in any situation where two parties sign a contract.

The Tribunal has further made a material error in its judicial procedures in failing to establish a credible and correct basis for its judgment, including in particular the error in not reviewing the facts behind the origin and processing of the document under dispute, thus failing to note and consider the issue of negligence and bad faith."

Those are in substance mere allegations of mistakes in appraisal of the issues of fact. According to the principles set forth in Judgment 442 such allegations do not afford admissible grounds for review.

4. The complainant alleges misrepresentation of the terms of his contract. What he is relying on here is not, as he makes out, failure by the Tribunal to take account of material facts but a mistake of law. Again, such a plea cannot constitute admissible grounds for review.

5. His further charge that the Tribunal showed lack of "careful consideration" is, again, tantamount to an allegation of misappraisal of the evidence and as such an inadmissible plea in support of an application for review.

6. Since none of the other points raised in his application may be construed as constituting admissible grounds for review, it is "clearly irreceivable" within the meaning of Article 8(3) of the Rules of Court.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 February 1993.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner

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