

EIGHTY-SIXTH SESSION

In re Visanji (No.2)

(Application for review)

Judgment 1822

The Administrative Tribunal,

Considering the application filed by Miss Marcia Visanji on 29 November 1997 for the review of Judgment 1656;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions and disallowed the complainant's application for hearings;

CONSIDERATIONS

1. This is an application for the review of Judgment 1656. The facts of Miss Visanji's original complaint are set out in that judgment. In reply the European Molecular Biology Laboratory (EMBL) pleaded irreceivability on the grounds that she had failed to exhaust her internal remedies. The decision she was impugning was what she saw as the implied rejection of claims which she said she had put to the Laboratory in a letter of 26 August 1996. The Tribunal observed in 8 that she had not supplied a copy of those claims with her complaint and, even though the Laboratory's reply to the complaint said that it had never received them, she had not supplied the text with her rejoinder either. The conclusion was that she had failed to establish that she had made the claims and her complaint was therefore irreceivable.

2. Her first argument in support of her application is that her complaint failed because she had missed the internal time limit for filing her claims, but that she had not.

3. The Tribunal made no such ruling. The third sentence of 8 began with the words "Even assuming that those claims were not by then time-barred". So the reason for the dismissal of her complaint was not that she had missed any time limit.

4. The reason was her failure to prove that the Laboratory had received the claims in her letter of 26 August 1996. It is in that context that she makes her second plea, and she cites a letter that the Administrative Director of the Laboratory wrote her on 7 January 1997 acknowledging receipt of "copies of your letters of 13 May and 26 August 1996". That shows, she submits, that she did notify her claims in the letter of 26 August.

5. Her plea fails. The letter of 7 January 1997 went on:

"We had already received your formal complaint to the Administrative Tribunal ... and our response to [the Tribunal] had already been sent today, some hours before receiving the copy letters from you. The matter now falls to be dealt with by [the Tribunal] and you should receive a copy of our response to them shortly."

The Director's letter of 7 January 1997 does not prove that the Laboratory had got her letter of 26 August 1996 in the days that followed. She made her complaint on the assumption that it had and that, when she got no reply, there was implied rejection of the claims in it. Her sending a copy of her letter after filing her complaint, and even after the filing of the Laboratory's reply, did not remedy the lack of evidence to bear out her contention that the Laboratory had got her letter at the time. Yet such is the only evidence she offers in this application to support her argument. Indeed there is still no evidence to show receipt of her letter at the time. The Director's letter of 7 January 1997 is not a "new fact".

6. In her present application she asks that the following corrections of fact be made:

"I was dismissed without pay and later dismissed with pay. The judgement refers only to health matters whereas there were a number of points that the correspondence between the defendant, EMBL and myself highlights, harassment, destruction of private property and personal belongings left with the defendants, bribing, refusal to

supply information vital and necessary for the medical board and internal review."

7. None of those issues, however, is relevant to review of Judgment 1656, which dismissed the complaint as irreceivable and did not go into the merits. Since the Tribunal made no findings of fact on the merits, her allegations of fact on that score are not material. Nor has she shown any mistaken finding of fact that affects the issue of receivability.

8. Since her application is clearly devoid of merit, it must be summarily dismissed under Article 7 of the Tribunal's Rules.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 13 November 1998, Mr. Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

Michel Gentot

Mella carroll

James K. Hugessen

A.B. Gardner