

SEVENTY-SEVENTH SESSION

***In re* LOUIS (No. 4)**

(Application for review)

Judgment 1353

THE ADMINISTRATIVE TRIBUNAL,

Considering the application filed by Mr. Frantz Marceau Louis on 20 December 1993, and corrected on 5 February 1994, for review of Judgment 1263;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Article 8, paragraph 3, of the Rules of Court as in force up to 30 April 1994 and Article 7 of the Rules of the Tribunal as in force since 1 May 1994;

Having examined the written submissions;

CONSIDERATIONS:

1. Judgment 1263 of 14 July 1993 dismissed the complainant's third complaint. In that complaint he was challenging a decision that the United Nations Educational, Scientific and Cultural Organization (UNESCO) had taken on 15 June 1992 to reject his claims dated 27 April 1992 on the grounds that the Tribunal had already entertained them and the matter was *res judicata*. He now seeks review of that judgment.
2. The Tribunal has often stated its approach to applications of that kind. As it observed, for example in Judgments 442 (*in re de Villegas* No. 4) and 1309 (*in re Ahmad* No. 3), its judgments carry the authority of *res judicata* and are subject to review only in exceptional circumstances. Several pleas afford inadmissible grounds for review, such as allegations of errors of law or misappraisal of evidence; other pleas may be admissible provided they may have an effect on the Tribunal's decision, examples being failure to take account of some specific fact and a material error, i.e. a mistaken finding of fact that involves no value judgment and is therefore distinguishable from misappraisal of evidence.
3. The complainant alleges that certain facts "may have escaped the Tribunal's attention" and that the judgment therefore shows material errors.
4. His first plea is such error in a ruling in the judgment under 6. The Tribunal held that his claim to damages for UNESCO's failure to distribute circular 1474 was made for the first time, had not formed the subject of any prior appeal to the Director-General, and was therefore irreceivable because he had not exhausted the internal means of redress.
5. He does not say that he did lodge any such prior appeal. Instead he merely says that the Organization had not told him of the decision to apply the circular in 1986 and 1988. There is no call to determine in the context of review whether the circular was ever brought to his notice. All that need be said is that since he never lodged a prior appeal with the Director-General there is no material error.
6. Secondly, he challenges the statement in Judgment 1263 under 5 that the Tribunal had already taken up his claim to the quashing of his dismissal in Judgment 1131 of 3 July 1991 on his first complaint and the matter is therefore *res judicata*.
7. Again there is no mistake of fact. The plea fails because the main claim in his first complaint - the quashing of his dismissal - was allowed and the decision was set aside.
8. His next objection is to the finding in Judgment 1263 under 3 that he had failed to lodge a prior appeal claiming payment of three months' pay in lieu of notice. He cites several items of evidence which he says show such a prior

claim and submits that the Tribunal overlooked a material fact.

9. This plea too fails. Judgment 1263 observed that he was not denying failure to file an internal appeal but just asserting that the refusal to grant him the three months' pay in lieu of notice was discriminatory and unlawful. Moreover, the submissions on his third complaint show that in his internal appeal against dismissal he was objecting to lack of notice, whereas the claim in that complaint was to an amount corresponding to the three months. That is a claim that never formed part of any prior appeal.

10. He objects, lastly, to the statement in Judgment 1263 under 5 that claims it numbered (2) and (3) in reference to his complaint of 28 September 1992 are the same as claims 11.5 and 11.13(v) in his first complaint.

11. Even if he were right the plea would amount to a mistake of law, and that is not an admissible plea for review.

12. The conclusion is that all his claims must be rejected as "clearly irreceivable" both under Article 8(3) of the Rules of Court that were in force when he filed his complaint and under Article 7 of the Rules in force since 1 May 1994.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Pierre Pescatore, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 13 July 1994.

(Signed)

José Maria Ruda
E. Razafindralambo
P. Pescatore
A.B. Gardner