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

FIFTY-THIRD ORDINARY SESSION

In re ESPINOLA (No. 2)

(Application for review)

Judgment No. 610

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment No. 446 filed by Mrs. Sara Espínola on 30 May 1983, as corrected on 18 August, the reply of the Pan American Health Organization (PAHO) (World Health Organization) of 20 October, the applicant's rejoinder of 29 November and the Organization's surrejoinder of 4 January 1984;

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

Having examined the written evidence;

CONSIDERATIONS:

1. The complainant, who had joined the Pan American Zoonoses Center (CEPANZO) of the PAHO in 1970, applied for the reclassification of her post in 1978. The post, No. 2111, was that of a G.6 statistics assistant, and she sought grading in the Professional category at P.1 as a statistician. The lengthy internal proceedings came to an end in December 1979 and the Director of the PAHO refused her application on the recommendation of the majority of the Board of Inquiry and Appeal. She appealed to the Tribunal, and by Judgment No. 446 of 14 May 1981, which was duly notified to the parties, it dismissed her complaint.

On 30 May 1983 the complainant wrote a letter to the Tribunal asking it to review its decision and on 18 August 1983 she submitted a formal application for review.

2. While the Tribunal proceedings were pending in the original case negotiations took place between the complainant and the PAHO to settle the dispute. In 1980 the Organization proposed an out-of-court settlement whereby she would get her regrading, though only with effect from 1 July 1980, and payment of 2,000 United States dollars towards her costs. But she turned this down, and the proceedings went ahead in the normal way. She contends that the Tribunal ought to have referred to the negotiations, of which it had been informed, and that since it did not it disregarded an essential part of her case.

She also submits an item of evidence she became aware of only after the Tribunal delivered judgment: a description of her post grading it P.1. This text, signed by the Chief of Personnel in May 1980, served as a basis for the terms of settlement offered to her at the time.

The Tribunal was aware of the negotiations that had taken place: paragraphs E and F of the summary of the facts mention the parties' stand on this point. It was not, however, aware of the P.1. post description made in 1980. The application for review rests both on the Tribunal's alleged error in disregarding an essential fact and on discovery of an allegedly material document after judgment had been passed.

3. An application for review is an exceptional procedure and is admissible only in strictly defined circumstances, for example where specific facts have been disregarded or so-called "new" facts discovered. A new fact is a fact or an item of evidence which the applicant did not become aware of in time to be able to rely on it in the original proceedings. Although such omission enables the Tribunal to review its decision, it will not necessarily do so. As it has said many times, it will review a judgment only in quite exceptional circumstances: not only are the admissible pleas for review severely limited but what is required is the finding of an exceptional fact, such as an oversight or some fortuitous circumstance, warranting derogation from the general rule of res judicata in Article VI of the Statute of the Tribunal.

4. The Tribunal did not dismiss the original complaint on the grounds of specific findings of fact. Its competence in this respect is limited, and it may not substitute its own views for those of the competent body in the Organization. That holds good even though the Board of Inquiry and Appeal was split, with two members in favour of regrading and three against. The judgment is clear on this score: "the question is one for a general appreciation by persons who are familiar with the working conditions; it cannot be solved by a meticulous comparison of duties as set down on paper. The majority opinion was to the effect that there was a good deal more of the clerical than the professional about the job, and this was the view which the Director preferred. Unless there is clear evidence, which there is not in this case, of a mistaken approach to the problem, this is the view that must be accepted".

That is the ratio decidendi, and the Tribunal therefore deliberately refrained from making findings on the evidence. A draft settlement which came to nothing was no exception. To allow the complainant's plea would be to countenance objections to the Tribunal's reasoning, and such objections do not constitute an admissible plea.

5. The other plea -- the one based on the item in the defendant's possession at the time of the original proceedings -- is admissible.

But the item must be of a kind which warrants review of the judgment, and it is not.

Although the post description signed by the Chief of Personnel might be a decisive factor, the plea would have succeeded only if the item had come into existence in 1978 at the time when the internal proceedings were continuing and no final decision had yet been taken. For the PAHO not to have revealed the item either to the Board of Inquiry and Appeal or to the Tribunal would have been a wrongful omission and might have warranted review.

As it happens, however, the item did not exist before 1980, when it was designed to serve as the basis for the settlement. By that time the PAHO's legal stance was well-known and categoric, and the item therefore does not carry the same weight as evidence. Obviously no out-of-court settlement could be offered unless the records included some document which served to justify it. In any event they added nothing to the PAHO's actual offer. Both the complainant and the Tribunal were aware of the offer of settlement, which was all that mattered at the time. The failure to disclose the item does not warrant any derogation from the rule that judgments are final, and the application must fail.

6. Since the application fails on the merits the Tribunal need not rule on the PAHO's plea that it is time-barred and therefore irreceivable.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Mr. Héctor Gros Espiell, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 5 June 1984.

(Signed)

André Grisel

Jacques Ducoux

H. Gros Espiell

A.B. Gardner