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

FIFTY-FIRST ORDINARY SESSION

In re de VILLEGAS (No. 6)

Judgment No. 586

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Labour Organisation (ILO) by Mrs. Maria Adriana de Villegas on 2 March 1981 and brought into conformity with the Rules of Court on 1 June, and the ILO's reply of 14 August 1981;

Considering the provisional order issued by the President of the Tribunal on 24 September 1981 suspending the written proceedings until the hearing of the ninth complaint;

Considering the complainant's rejoinder of 29 January 1983 and the ILO's surrejoinder of 27 May 1983;

Considering Articles II, paragraph 1, and VII of the Statute of the Tribunal and Articles 4.2 and 11.3, 5, 6, 15 and 17 of the Staff Regulations of the International Labour Office;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

Considering that the material facts of the case are as follows:

A. The complainant's career in the International Labour Office and her main disputes with the ILO are recounted in Judgment No. 404 under A to D. On 3 October 1980 she wrote to the Director-General observing that with the return of the United States to membership the ILO's financial difficulties were over and she should be given first priority for re-employment. On 30 December she wrote asking the Director-General to submit her application for employment to the Administrative Committee of the Office, the Joint Committee or any other competent body and claiming the right to a hearing. By a letter of 24 February 1981, which is the impugned decision, a representative of the Director-General replied that Judgment No. 404 had "put an end to discussion of the ILO's obligations' towards her but that like anyone else she might apply for any vacancy she felt qualified for.

B. The complainant claims priority for re-employment under Article 4.2(g) of the ILO Staff Regulations: "In filling any vacancy account shall be taken, in the following order, of -- (1) applications from former officials whose appointments were terminated in accordance with the provisions of Article 11.5 (Termination on Reduction of Staff)..." Since the United States' withdrawal from membership led to her termination, its return made it only reasonable to re-employ her. She construes a letter of 12 January 1979 from the Chief of the Personnel Policy Branch as making a formal commitment towards her. Her experience would make her immediately employable and the ILO ought to employ a greater number of qualified and experienced women from developing countries, like herself. She has an acquired right to continued employment by virtue of her contract, which was without limit of time. The ILO was in breach of its own Termination of Employment Recommendation (No. 119), under which it should have given her priority for re-employment. She describes her present financial difficulties. In brief, she asks the Tribunal to order the ILO to make full and accurate personnel records for her, to make serious efforts to find her employment in the ILO or elsewhere, to bring about her professional reinstatement and for that purpose give her a proper certificate of service, and to provide for the payment of pension contributions for her benefit from October 1978. She seeks compensation equivalent to the amount of her salary, plus increments, from 4 October 1980 until the age of retirement or the date of her re-employment; and damages for professional and moral injury, which she estimates at three years' salary. Subsidiarily, she asks the Tribunal to order the ILO to arrange with the pension fund for the continuous payment of contributions for her benefit.

C. The ILO replies that for various reasons the complaint is irreceivable. In particular, in so far as it rests on an alleged right under the Staff Regulations it is time-barred, since this was refused by the Chief of the Personnel Policy Branch in his letter of 12 January 1979. The complaint is, besides, devoid of merit. The agreement with the

ILO (see Judgment No. 404, B), which the Tribunal has upheld, was concluded, as clause 9 stated, in "settlement of all matters pending". In signing it she waived all claims under her contract, including rights under the Staff Regulations and any of decisive importance to her in accepting appointment which the IL0 might not withdraw unilaterally -- in other words, her acquired rights. In any event she would have no right under the Staff Regulations since Article 11.5(a), as restated in 4.2(g), limits to two years the period of priority for re-employment. The United States did not return until February 1980, and recruitment resumed after that. There was no commitment towards her in the letter of 12 January 1979, as the wording makes clear. Lastly, the ILO may not, on compassionate grounds -- which, in any event, it took account of -- evade its duty to determine whether an applicant is properly qualified for employment.

D. The complainant rejoins that her complaint is not time-barred because what she claims is not reinstatement, but re-appointment, which Article 11.3 allows up to the age of 65. Under clause 9 the agreement disposed only of "matters pending", not of future claims. She disagrees that she surrendered her acquired rights, or her rights under the regulations: she has since been paid repatriation benefit under Article 11.15, and indemnity for reduction of staff under 11.6, and she received a certificate of service under 11.17. Likewise she still has a right to re-employment under 4.2 independent of any she may enjoy under 11.15. She develops her arguments and presses her claims.

E. In its surrejoinder the ILO retorts that the complainant has not answered its arguments. It reaffirms that under the agreement she waived any rights she might have had to reappointment. She is relying either on her old contention that the agreement was invalid, which the Tribunal rejected in Judgment No. 404, or else on arguments turning on clause 9, which it dismissed in Judgment No. 536. That parts of the Staff Regulations have since been applied to her is immaterial: the agreement actually provided for it, and she kept her service entitlements, such as a certificate of service, in any event. Even in the absence of clause 9 the right to reappointment under Articles 4.2(a) and 11.5(a) would be irrelevant since she was not terminated under 11.5. She was paid an indemnity, not under the regulations, but under the agreement. Besides, any right to reappointment she might have had has expired. First, Article 11.3 sets the age of retirement at 60, she has passed it, and employment thereafter is at the Director-General's discretion, not a right. Secondly, the right under 11.5(a) expires two years after termination, and in her case no suitable vacancy occurred in that period.

CONSIDERATIONS:

Receivability

1. The ILO pleads that the complaint, which challenges the decision of 24 February 1981, is irreceivable Its argument is that the decision did no more than confirm the one taken on 12 January 1979 and the complainant failed to challenge the latter before the Tribunal within the time limit of ninety days from the date on which it was notified to her.

2. The question is whether the claim which was rejected by the letter of 12 January 1979 had not only the same purpose -- reinstatement -- but also the same legal basis as the one rejected by the impugned decision of 24 February 1981.

The complainant's first claim was for appointment to any vacancy at headquarters or in the field and she based it on Articles 4.2(g)(i) and 11.5(a) of the Staff Regulations. The Chief of the Personnel Policy Branch answered in his letter of 12 January 1979 that since she had had notice on 13 May 1977 of the abolition of her post and had chosen not to appeal against that decision under Article 11.5(e) of the Staff Regulations, but had preferred a settlement, she could not now rely on Article 11.5.

The second claim, that of 3 October 1980, was also based on Article 4.2(g). What she asked was that her candidacy for employment should be given priority. The purpose of a further claim she submitted on 30 December 1980 was to exhaust the internal means of redress. The ILO's reply of 24 February 1981 referred to the judgment by the Tribunal ruling on the settlement, and to the binding force of the agreement of 22 July 1977, which had brought an end to discussion of the ILO's obligations towards her.

3. From this there remains no doubt that the impugned decision, though not in the same terms as that of 12 January 1979, had the same meaning and purport: it merely confirmed the ILO's view that it was under no obligation beyond those arising under the agreement concluded on 22 July 1977 and endorsed by the Tribunal in Judgment

No. 404. In other words, the defendant rejected the complainant's claim under both 4.2(g)(i) and 11.5.

4 The complainant's plea that the priority prescribed under 4.2(g)(i) is something separate from 11.5(a) is mistaken. Her argument is that her first claim was confined to application of 11.5(a) and was therefore not quite the same as the later one. The Tribunal does not accept this. In fact she herself based her first claim on a combined reading of the two provisions. Moreover, 4.2(g)(i) expressly covers "applications from former officials whose appointments were terminated in accordance with the provisions of Article 11.5 (Termination on Reduction of Staff)". In rejecting the claim of 2 January 1979 the letter of 12 January -- the implication is unavoidable -- treated 4.2(g)(i) as in any event not applicable in the present case.

It is therefore plain that the impugned decision was no more than confirmation and gave rise to no new time limit.

5. In support of her further claim of 3 October 1980 the complainant did give several reasons why in her view her application should be given priority in accordance with 4.2(g). But they were mere allegations or arguments of no relevance and did not have any material effect on the legal basis of her claim.

Challenging as it does the confirmatory decision of 24 February 1981, the complaint is irreceivable, having been filed on 2 March 1981, long after the time limit in Article VII of the Statute of the Tribunal had expired.

Whether the complaint is irreceivable on other grounds need not be decided since it is in any event irreceivable under Article VII(2) of the Statute.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, the Right Honourable Lord Devlin, Judge, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 20 December 1983.

(Signed)

André Grisel

Devlin

E. Razafindralambo

A.B. Gardner

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