

## THIRTIETH ORDINARY SESSION

### ***In re* SMITH (No. 2)**

#### **Judgment No. 201**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mr. Horace Arthur Smith on 25 October 1972;

Considering the order made by the President of the Tribunal on 10 November 1972, in accordance with Article 8, paragraph 3, of the Rules of Court, that no further action should be taken on the complaint until the present session of the Tribunal;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

Considering that the complaint may be summarised as follows:

A. In his complaint of 25 October 1972 Mr. Smith asks the Tribunal to quash the Director-General's decision of 2 October 1970, to rule accordingly that his absence from work from 24 to 31 March 1970 was sickness leave and to order the defendant Organization to pay him his salary for the four working days included in that period. He also claims costs amounting to 6,000 Swiss francs.

B. In support of his claims the complainant points out that since 15 May 1972, the date of Judgment No. 189, whereby the Tribunal dismissed his original claim that the decision of 2 October 1970 should be quashed, new facts have come to light which warrant reconsideration of the case. First, he has discovered since then that the WHO'S representative in the earlier proceedings was formerly the Assistant Registrar of the Tribunal, and he considers that the incompatibility of the two functions tainted those proceedings. Secondly, as to the substance, he contends that the Organization's purpose in refusing to treat his absence from 24 to 31 March 1970 as sickness leave was to prevent him from receiving a disability benefit on the grounds of a service-incurred accident which he suffered on 15 January 1968. In support of this he points out that on 31 May 1972 the Secretary of the WHO Staff Pension Committee informed him that the Committee had confirmed its rejection of his claim for a disability benefit in view of the medical Board's finding that "on 31 March 1970 [Mr. Smith] was capable of performing functions reasonably compatible with his abilities and hence Article 34(a) of the Regulations of the United Nations Joint Staff Pension Fund was not applicable to his case". After 15 May 1972, however, the date of Judgment No. 189, the Standing Committee of the Pension Fund, to which he had appealed, awarded him a disability benefit with effect from 31 March 1970. He interprets that decision in his favour as meaning that the Medical Board's findings were mistaken and as showing therefore that he was in fact ill during the four working days (from 24 to 31 March 1970) which form the subject of his claim.

#### CONSIDERATIONS:

In the present complaint Mr. Smith asks the Administrative Tribunal to review Judgment No. 189, dated 15 May 1972, on the grounds that Mr. Gutteridge, the Legal Adviser of the WHO, who signed the observations of the Organization on the case, was formerly Assistant Registrar of the Administrative Tribunal.

There is no provision in the Statute or Rules of Court of the Administrative Tribunal for the revision of its judgments.

Such a complaint could therefore be considered by the Tribunal only in quite exceptional circumstances, in particular if the complainant adduces facts or evidence which he was unable, through no fault of his own, to

produce during the earlier proceedings; it would in any event not provide an opportunity for the parties to repair an omission or correct an error made by them during the original hearing of the case.

In the present case, the sole grounds adduced by Mr. Smith in support of his complaint could have been put forward during the proceedings terminated by Judgment No. 189. His application for a review of the judgment is therefore irreceivable.

In addition, the ground adduced is clearly without foundation.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 14 May 1973.

(Signed)

M. Letourneur  
André Grisel  
Devlin

Roland Morellet