

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

FIFTY-SEVENTH ORDINARY SESSION

In re VERRON (No. 3)

(Application for review)

Judgment No. 705

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 607 filed by Mr. Michel Verron on 21 December 1984 and corrected on 15 February 1985, the reply of the United Nations Educational, Scientific and Cultural Organization (UNESCO) of 30 April, the applicant's rejoinder of 26 June and the Organization's surrejoinder of 26 July 1985;

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

Having examined the written evidence;

CONSIDERATIONS:

1. Mr. Verron joined the staff of UNESCO in 1970 and served under fixed-term appointments until 31 March 1981, when the last of them expired. There were lengthy administrative proceedings in which his main claim was for a further appointment under a new contract. He also claimed sick leave or the benefit of what is known as "hiatus financing". By a decision of 24 March 1983 the Director-General rejected all his claims as time-barred.

He then submitted a complaint to the Tribunal. In its judgment of 12 April 1984 the Tribunal rejected the Organization's plea of irreceivability but gave the complainant only partial satisfaction. Although the impugned decision was set aside insofar as it refused to grant him sick leave as from 1 April 1981, it rejected on the merits his objections to the decision not to reappoint him or grant him the benefit of hiatus financing.

The complainant has filed an application for review.

2. The Tribunal's judgments carry the authority of *res judicata*. Though subject to review, the Tribunal will review them only in exceptional cases. Such is the rule of all jurisdictions which allow review. For that reason several pleas are inadmissible as grounds for review, such as allegations of error of law or misappraisal of the evidence. Nor does the failure to hear evidence or to rule on pleas submitted by the parties afford admissible grounds for review.

Other pleas, however, may be admissible provided they may have an effect on the Tribunal's decision. Examples are failure to take account of specific facts, material error, i.e. a mistaken finding of fact which does not involve any value judgment and is therefore distinguishable from misappraisal of evidence, failure to rule on a claim and the discovery of some "new fact", i.e. a fact which one of the parties was not able to rely on in the proceedings that culminated in the judgment.

3. The complainant's application relates only to the part of Judgment 607 which deals with UNESCO's decision not to reappoint him. Since the Tribunal dismissed his claim the application is receivable.

The only plea in the application is abuse of authority. The Tribunal explained at length its reasons for rejecting the plea and for concluding that the charges of ill-will and animosity towards him were not proven. It also stated its reasons for disallowing his application for the hearing of witnesses.

In support of his application he pleads the Organization's dilatoriness and its reluctance to execute Judgment 607, and he repeats his application for the hearing of witnesses. His contention is that the new facts he alleges strengthen the mere suspicions the Tribunal has already declared unproven with firm evidence which this time should carry conviction.

The facts he alleges are all subsequent to the date of the judgment and therefore cannot constitute a basis for

review. Even supposing they did demonstrate the Organization's animosity towards the complainant they would not afford any grounds for declaring the impugned decision of 24 March 1984 to be tainted with abuse of authority. As was said in 2 above, the discovery of new facts warrants review only where the facts or evidence existed at the date of the judgment but for some reason beyond his control were unknown to the party who is relying on them.

UNESCO's claim to an award against the complainant for abuse of jurisdiction and costs

4. The Tribunal is empowered under Article II of its Statute to rule upon decisions of international organisations. It will not award compensation to the employer against an official or his successors, and the Organization's claim therefore fails.

DECISION:

For the above reasons,

The complainant's application and the Organization's claim are dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 14 November 1985.

(Signed)

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner