

## SIXTY-FIFTH SESSION

### *In re* LOROCH (No. 6)

#### (Application for review)

#### Judgment 950

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 620 filed by Mr. Kim Joseph Lorocho on 14 July 1988 and corrected on 21 July, the reply of the Food and Agriculture Organization of the United Nations (FAO) of 22 August, the applicant's rejoinder of 22 September and the FAO's surrejoinder of 18 October 1988;

Considering Article II, paragraph 5, of the Statute of the Tribunal and FAO Manual provisions 342.71 and .72;

Having examined the written evidence;

#### CONSIDERATIONS:

1. The complainant is applying for review of Judgment 620, which the Tribunal delivered on 5 June 1984. In effect what he wants is that the Tribunal reverse its finding that the stress he suffered was not service-incurred and its refusal to award compensation therefor.

He was employed by the FAO from 11 October 1969 to 10 October 1974 as Chief of the Transport Branch of the World Food Programme. He had a heart attack in March 1974. On 30 September 1974 he wrote saying that he had contracted angina pectoris because of stress of work and claiming compensation for service-incurred illness. The Director-General rejected his claim.

On 1 October 1976 he asked that a medical board be convened to examine the medical aspects of his claim. The board was set up: it consisted of three New York doctors. On the strength of the board's report the Advisory Committee on Compensation Claims, to which his case had been referred, recommended upholding the original decision. The Director-

General did so. An appeal to the Director-General was referred to the Appeals Committee, which also recommended upholding the original decision, and again the Director-General did so.

The matter then came before the Tribunal. The FAO in its reply submitted that there was no merit in the claim. Among other things, it said that there was no evidence of any link between his illness and his service with the FAO. The medical board had considered his case carefully and there was no irregularity in its proceedings. No specific rules in Manual provisions 342.71 and .72 required the board members to meet or examine the complainant. They consulted each other by telephone, as was customary in New York. They had complete records of his case history and agreed that, his medical diagnosis being clear, his attendance was unnecessary.

2. In Judgment 620 the Tribunal upheld the complainant's submission that the three doctors should have met together, and it awarded him 20,000 United States dollars in damages. But at the same time the Tribunal dismissed his contention that his illness was service-incurred and his claim to compensation therefor. The Tribunal declined to substitute its own views for those of the medical experts, or to entertain the complainant's plea that their findings were superficial, illogical or at variance with up-to-date medical opinion. The material issue was whether correct procedure had been observed in consulting them.

3. The Tribunal's judgments have the force of *res judicata* and may not ordinarily be challenged. In exceptional cases they are subject to review on such grounds as failure to take account of essential facts, a material error involving no value judgment, failure to rule on a claim, or the discovery of an essential fact the parties were unable to rely on in the original pleadings. To justify review, there must be evidence of some exceptional circumstance, such as accident or inadvertence, cogent enough to displace the principle of finality of judgment.

Here there are no such circumstances. In essence what the complainant is asking is that the Tribunal substitute a

different medical opinion for that of the medical board. That cannot constitute admissible grounds for review.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 8 December 1988.

(Signed)

Jacques Ducoux  
Mohamed Suffian  
Mella Carroll  
A.B. Gardner