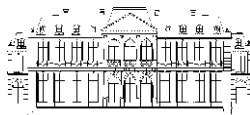


OCDE

ORGANISATION DE COOPÉRATION ET
DE DÉVELOPPEMENT ÉCONOMIQUES



OECD

ORGANISATION FOR ECONOMIC
CO-OPERATION AND DEVELOPMENT

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal
handed down on 7 May 1993

JUDGMENT IN CASE No 3

Mr. S.
v/Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE N° 3 OF THE ADMINISTRATIVE TRIBUNAL

sitting on 7 May 1993
at the Château de la Muette,
2 rue André Pascal, Paris

The Administrative Tribunal was composed of:

Mr. Jean MASSOT, Chairman,
Mrs. Elisabeth PALM
and Professor James R. CRAWFORD,

with Mr. Thierry MONNIER and Mr. Colin McINTOSH providing Secretariat services.

On 14 October 1992, Mr. S., a former official of the Organisation, filed an application requesting the Tribunal a) to annul the decision of 16 July 1992 by which the Secretary-General confirmed his previous decision, of 23 April 1992, to terminate Mr. S.'s appointment as from 30 April 1992, such annulment to be accompanied by all the consequences in law resulting therefrom; b) to order the Organisation to reinstate the applicant as from the date of cessation of his duties and to take all measures, including pecuniary ones, to compensate the material loss he has suffered; c) to award payment of compensation, the amount of which is left to the discretion of the Tribunal, for the moral prejudice suffered by the applicant; and d) to order reimbursement of the applicant's legal expenses estimated by him at FF 78 000, together with any other costs incurred in arguing his case before the Tribunal.

The Secretary-General asked for a one-month extension of the time limit for submitting his comments in writing; Counsel for the applicant did not raise any objection and an extension until 15 January 1993 was granted by the Chairman of the Tribunal in office at the time.

On 15 January 1993, the Secretary-General submitted comments rejecting the application.

On 10 February 1993, the Staff Association lodged a submission in intervention, supporting the applicant's submissions.

By a letter of 12 March 1993, Counsel for the applicant informed the Deputy Registrar of the Tribunal that Mr. S. waived his right to produce a written reply.

The Tribunal heard

Maître Jean-Didier Sicault, lecturer in international civil service law at the Paris I and Paris II Universities, Barrister at the Court of Appeal of Paris, Counsel for the applicant;

Mr. Christian Schricke, Legal Counsel, Head of the Legal Directorate of the Organisation, on behalf of the Secretary-General;

And Mr. Malcolm Gain, representing the Staff Association;

And, as witnesses, Mr. L., computer specialist in the Directorate for Computers and Communications, and Mr. X., formerly Director of Food, Agriculture and Fisheries.

The Tribunal noted a communication sent to the Tribunal by Mr. E., former official of the Organisation.

The Tribunal handed down the following judgment:

The facts

Mr. S. was appointed by the Organisation in May 1964 as an accounting assistant, at grade B2. He worked for ten years in the Budget and Finance Service where he dealt in particular with financial commitments and budgetary expenditure and with the preparation and analysis of financial statistics. From 1978 to 1980, he served in the Personnel Division. In August 1980, he was posted to the Statistics Section of the Directorate for Food, Agriculture and Fisheries where, in 1981, he was promoted to grade B5. In 1984 and again in 1986, he applied, unsuccessfully, for the post of Head of Section. From August to October 1990, Mr. S. worked in the Agricultural Trade Analysis Division. Since, however, Mr. S.'s skills in using microcomputers were found wanting by the Head of this Division, the Director of Agriculture requested Mr. S.'s transfer on the ground that he had not adapted sufficiently to the new information technologies. On 11 September 1991, Mr. S. was informed that he did not have the qualifications required to fill a post the duties attaching to which had changed and that his appointment could be terminated under Article 11 a) ii) of the Staff Regulations, but that he could, in pursuance of Instruction 111/1.3, ask to serve a three-month probation period in another post. On 10 October 1991, Mr. S. was informed that he would serve a period of probation beginning on 25 November 1991 in a B5 post of assistant statistician in the Economic Statistics and National Accounts Division. At the end of this probationary period, Mr. S.'s superior felt that the applicant did not satisfy the requirements of the post and could not be confirmed in it. After Mr. S. had, on 3 April 1992, argued his case before the Advisory Board, he was informed by letter dated 23 April 1992 that the Secretary-General had decided to terminate his appointment as from 30 April 1992, a decision confirmed on 16 July 1992 following an internal appeal by Mr. S. Mr. S. then filed an application with the Administrative Tribunal on 14 October 1992.

First submission: procedural irregularity

Mr. S. alleges that during his three-month probationary period starting on 25 November 1991, no monthly assessment reports were made of his performance. Given that reports were made for the first two months and that the general report prepared at the end of the period dealt with all three months, this submission is unfounded on fact.

Second submission: breach of the Organisation's obligation to make every endeavour to find another post for an official with 28 years' seniority

Mr. S. refers to Decision No. 128 of the Appeals Board in which the Board held that in the event of the suppression or transfer of a post, the Secretary-General has an obligation actively, of his own accord and in good faith to try to find a post suited to the qualifications of the official concerned, and alleges that this obligation was breached in his case. It is, on the contrary, clear from the case file that the Organisation began to look actively and of its own accord for such a post as from 1990, when Mr. S.'s difficulties in adapting to the changing needs of his job became apparent, in particular by permitting him to serve probationary periods in two other posts corresponding to his qualifications. The Administration was not obliged, in addition, to suggest to Mr. S. posts requiring different qualifications or to investigate whether, having regard to his training or the duties he performed ten years previously in the Personnel Division, he could have adapted to such posts.

Third submission: breach by the Organisation of its obligation to treat staff fairly and in good faith

Mr. S. first of all claims that he was promised a promotion to grade A2 and that this promise was not kept. This claim is not relevant to the case submitted to the Tribunal.

In the second place, Mr. S. complains that he was not appointed Head of a Section which he had directed on an interim basis for some months in 1986-1987. This matter is also irrelevant to the dispute arising from the decision taken in 1992.

Mr. S. complains lastly of having been left without work from November 1990 to September 1991 and refers, on this point, to the rule laid down by the ILO Tribunal in its Rudin judgment of 5 December 1984 according to which an Organisation must provide its members of staff with a proper administrative position. The Organisation did not, in this case, fail to comply with this obligation by leaving Mr. S. without work for ten months between two unsuccessful probationary periods while continuing, during these ten months, its efforts to find Mr. S. a suitable post.

Fourth submission: the conclusions drawn from the file were manifestly wrong

Mr. S. claims that his professional problems were due solely to the friction between his new Head of Section and himself as from May 1987. It can be seen from the preliminary procedure that these problems were not due solely to difficulties in personal relations but were also technical in nature and that they arose with all Mr. S.'s superiors as from the time when the applicant was obliged to use new technologies which he was unable to master.

Fifth submission: misuse of procedure

Mr. S. invokes the principle laid down in Decision No. 119 of the Appeals Board that for a decision to be regular, it must reflect the real intention and reasons of the Organisation.

It appears from the preliminary procedure that the contested decision really was taken on the grounds of Mr. S.'s inability to adapt to the changes in his job and not because of friction in personal relations or of any failure to fulfil his professional obligations.

Intervention of the Staff Association

The Tribunal takes note of the intervention of the Staff Association.

Legal costs

In the circumstances of the case, Mr. S. should be reimbursed his legal costs up to a maximum amount of FF 20 000.

For all these reasons, the Tribunal

- 1) dismisses Mr. S.'s application;
- 2) orders reimbursement of Mr. S.'s legal costs up to a maximum amount of FF 20 000.