

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 9 May 1994

JUDGMENT IN CASE No 12

Secretary-General
v/Mr. R. F.
Mr. M. F.
Mrs. M. M.-B.
Mrs. J. M.

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE NO. 12 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Monday 9 May 1994
at 11 a.m. in 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. Colin McINTOSH providing Registry services.

On 16 March 1994, the Secretary General filed an appeal -- registered as No. 12 -- for rectification of an error ("erreur matérielle"), asking the Tribunal a) to rectify its Judgment No. 4 by holding that the result of the 254th Report of the CCG is that unemployment insurance contributions should be deducted when calculating the net remuneration of French employees; b) to rectify accordingly the first paragraph of the operative part of its judgment and to dismiss Applications Nos. 004, 005, 006 and 007 filed by Mr. R. F., Mr. M. F., Mrs. M. M.-B. and Mrs. J. M. (hereinafter referred to as "the defendants"), respectively; and c) to declare the appeal admissible and well-founded.

On 22 March 1994, the defendants submitted joint comments rejecting the appeal and asking for interest for late payment at the rate of 8 per cent per annum to run from the date of Judgment No. 4 until payment of the sums due, as well as reimbursement of their costs amounting to FF 4 000.

On 7 April 1994, the Secretary-General submitted a reply.

By letter of 9 April 1994, Counsel for the defendants informed the Registrar of the Tribunal that his clients waived their right to submit written comments in rejoinder.

The Tribunal heard

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

Professor David Ruzié, Professor at the University of Paris V, Counsel for the defendants;

And Mr. Jean-Louis Rossi, representing the Staff Association.

The Tribunal handed down the following judgment:

As to the submissions of the appeal:

Article 12 of the Resolution of the Council on the Statute and Operation of the Administrative Tribunal provides that: "b) Judgments shall not be subject to appeal except for purposes of rectification of error ("erreur matérielle"), revision or interpretation."

Rule 10 of the Rules of Procedure of the Administrative Tribunal provides that: "When a judgment is vitiated owing to a mistake ("erreur matérielle") or an error relating to the submissions in

the application, and this error or mistake may have decisively influenced the decision of the case, one of the parties may file an appeal for rectification with the Tribunal, within three months from the date of notification of the judgment."

The Tribunal notes that the Secretary-General's appeal contests the way in which Judgment No. 4 replied to certain of the pleas submitted in defence and complains that the ground on which the Tribunal's decision was based was not raised until the actual hearing.

As held by the Appeals Board in its Decision No. 58, complaints of this type, which amount to a challenging of the legal reasoning adopted by the Tribunal, do not constitute an appeal for rectification of error within the meaning of the above-mentioned provision, and are therefore inadmissible.

As to the counter-claims:

The Tribunal notes that under Article 12 c) of the Council Resolution, the Secretary-General has one month from the date of notification of the annulment of one of his decisions by the Tribunal in which, rather than taking certain steps which such annulment would imply, he may instead request the Tribunal to fix an amount of compensation to be paid to the applicant.

It therefore considers that when the Secretary-General does not make use of this provision, the sums due directly in terms of a judgment must begin to bear interest after this period of one month which constitutes a reasonable time limit within which to comply with a judgment.

The rate of 8 per cent requested by the applicants, lower than the statutory rate applicable in France, does not seem excessive.

As to the defendants' costs:

The Tribunal considers that the defendants should be awarded the sum of FF 4 000 as requested.

Having taken note of the views expressed during the hearing by the Staff Association in support of the defendants, the Tribunal hands down the following judgment:

- 1) The Secretary-General's appeal is dismissed.
- 2) The Organisation will pay Mr. R. F., Mr. M. F., Mrs. M. M.-B. and Mrs. J. M. interest at the rate of 8 per cent for the period starting one month after notification of the Judgment to the Secretary-General until the actual payment of the sums due to them in pursuance of Judgment No. 4.
- 3) The Organisation will pay Mr. R. F., Mr. M. F., Mrs. M. M.-B. and Mrs. J. M. a total of FF 4 000 by way of costs.