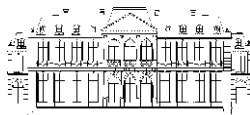


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ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal
handed down on 25 June 1997

JUDGMENT IN CASE No 22

Mrs. J.
v/Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 22 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Monday 16 June 1997
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 and Mrs. Christiane GIROUX providing Registry services.

Mrs. J., an OECD pensioner, had retained a sizeable balance in the Organisation's Provident Fund.

In June 1996, Mrs. J. was placed under the care of a guardian, the court having found that she needed to be represented on a continuous basis with regard to all administrative acts.

The court decided not to appoint Mr. J. as his wife's guardian, designating the members of the family council, who subsequently appointed Maître B. as guardian.

On 5 November 1996, Maître B. lodged an administrative appeal with the Secretary-General of the Organisation, requesting reimbursement of the sum of FF 315 000 which had been withdrawn from Mrs. J.'s account, alleging a breach of the statutory and regulatory provisions, notably, non-compliance with the rules regarding the period of notice and frequency of withdrawal requests.

On 9 December 1996, the Secretary-General rejected this appeal.

On 14 February 1997, Mrs. J., represented by Maître Bondu, filed an application (No. 22) with the Tribunal, asking it to:

- annul the decision of the Secretary-General of 9 December 1996,
- order payment of the sum of FF 315 000, corresponding to the total amount withdrawn from Mrs. J.'s account, with a further sum of FF 50 000 for loss of profit since the withdrawal of this amount,
- order payment of FF 10 000 as compensation for moral prejudice.

Mrs. J. died on 17 March 1997, and the Secretary-General asked the Chairman of the Tribunal for an extension of the time limit for submitting his comments, pending notification that the proceedings were to be continued. The Chairman decided that the Secretary-General should produce his comments within 24 hours of communication to him of any such notification.

On 5 May 1997, Mrs. H., daughter and sole heir of Mrs. J., lodged an application to continue the proceedings, in which she asked the Tribunal to accept the main submissions made on her mother's behalf. However, the sum claimed was first cut in half and then reduced by the amount corresponding to the life-rent of her father, the surviving spouse.

On 6 May 1997, the Secretary-General presented his comments asking the Tribunal to reject the application.

On 12 May 1997, Mrs. H., as Mrs. J.'s heir, submitted a reply.

On 23 May 1997, the Staff Association lodged a submission in intervention supporting the applicant's submissions.

On 9 June 1997, the Secretary-General presented his comments in rejoinder.

The Tribunal heard:

Professor David Ruzié, of the Faculty of Law, Counsel for the applicant;

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

Mr. Jean-Marie Strub, on behalf of the Staff Association, and

Mr. S., Chairman of the Provident Fund Advisory Committee, as a witness cited by the applicant.

It also noted the replies sent by Mr. Bo J., witness cited by the Secretary-General, to the questions put to him in writing by the Secretary-General.

It handed down the following judgment:

The facts:

Mrs. J. joined the OECD in 1949 and left the Organisation in 1985, at which time she had a balance of some FF 800 000 on her Provident Fund account. As from July 1994, she spent several periods in hospital, in the neurology department. In May 1995, Mrs. H., Mrs. J.'s daughter, learned that between 29 August 1994 and 14 March 1995, four withdrawals, totalling FF 315 000, had been made from her mother's account with the Provident Fund.

Mrs. H. referred the matter to the relevant judicial authority which, by an Order of 16 June 1995, made Mrs. J. a ward of court for the duration of the proceedings and, by a second Order the same day, gave Maître B. special powers of agency with regard to the management of Mrs. J.'s estate. In a judgment of 11 June 1996, it found that Mrs. J.'s state of health was such that she required a guardian, held that Mr. J. was not suitable for this task, and gave the family council the task of appointing a guardian.

On 5 November 1996, Mrs. J., represented by her special agent, asked the Secretary-General to reimburse the FF 315 000 she considered had been improperly withdrawn from her account by her husband who, she claimed, had imitated her signature. The Secretary-General rejected this request on 9 December 1996, and Mrs. J. asked the Tribunal to annul this decision and to order the Organisation to pay her the said sum of FF 315 000 together with a further FF 50 000 for loss of profit and FF 10 000 for moral prejudice. Following the death of her mother, on 17 March 1997, Mrs. H. announced she would continue the proceedings, reducing her claim, however, in line with her share of her mother's estate.

On the jurisdiction of the Tribunal:

Although the origin of the case lies in a private dispute between the heirs of Mrs. J., the Tribunal considers it has jurisdiction to decide whether any fault, which could engage the Organisation's liability, has been committed in the management of the Provident Fund for staff who took up their duties before 1 July 1974.

On the liability of the Organisation:

Under Rule 12 of Annex VI to the Staff Regulations, "Rules and Instructions of the Staff Provident Fund of the Organisation", officials who, upon leaving the Organisation, have asked that payment of their benefits be deferred, and whose request has been granted, "may withdraw, at six-monthly intervals, and subject to four months' notice, all or part of the amount standing to their individual accounts."

Mrs. H. argues first of all that the Fund acted improperly in paying out the four amounts in question on 29 August, 23 October and 6 December 1994, and on 14 March 1995, without complying either with the four months' notice or the six months' interval laid down in Rule 12. The Tribunal is of the opinion that the sole purpose of the provisions concerning notice and intervals is to protect the Fund from the risks that would be involved if requests for several withdrawals or for too large a withdrawal were made simultaneously, and notes that it seems always to have been recognised that the Fund could, if it were able to do so, satisfy requests which did not comply with these limits, and that in the interests of the staff themselves.

Mrs. H. argues, in the second place, that her father's imitation of her mother's signature should have been detected by the Fund's staff. The Tribunal can only note that no evidence was submitted as to what Mrs. J.'s normal signature looked like. It therefore considers that in the circumstances of this particular case, any fraud which Mr. J. might have committed, as to which it is not up to this Tribunal to decide, could not reasonably have been detected by the services of the Provident Fund. What is more, under the J.s' marriage contract, Mr. J. was authorised to carry out administrative acts concerning the couple's joint estate, and there must be a presumption that he used the money he withdrew in the best interests of that estate. The situation is therefore not comparable to a case where payments had been made to an unauthorised third party.

Thus, the Provident Fund committed no fault which could engage the Organisation's liability, and Mrs. H.'s application must be dismissed.

On the intervention by the Staff Association:

The Tribunal notes the intervention of the Staff Association.

On costs:

The Organisation shall pay Mrs. H. FF 10 000 towards her legal costs.