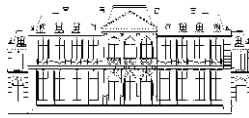


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ORGANISATION DE COOPÉRATION ET
DE DÉVELOPPEMENT ÉCONOMIQUES



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ORGANISATION FOR ECONOMIC
CO-OPERATION AND DEVELOPMENT

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal
handed down on 12 December 1997

JUDGMENT IN CASE No 28

Mrs. L.
v/Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 28 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Wednesday 10 December 1997
at 11 a.m. in the Château de la Muette,
2 rue André-Pascal, Paris

The Administrative Tribunal consisted of:

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

With Mr. Colin McINTOSH and Mrs. Christiane GIROUX providing Registry services.

On 25 March 1997, Mrs. L., a grade B5 official of the Organisation, lodged an administrative appeal asking the Secretary-General to re-examine her situation as regards the amount of her indemnity for loss of employment. This appeal was rejected by decision of 16 April 1997.

On 9 June 1997, Mrs. L. filed an application (No. 28) requesting the Tribunal a) to annul the decision of 16 April 1997 rejecting her appeal, and b) to rule that the ceiling on her indemnity for loss of employment should be raised in order to allow her to receive in total a sum (payment in lieu of notice plus indemnity for loss of employment) at least equivalent to the sum she would have received under the previous statutory and regulatory provisions, as well as payment of the sum of FF 12 000 for her legal costs.

On 10 October 1997, the Secretary-General submitted his comments rejecting the applicant's submissions and asking the Tribunal, having regard to the case's lack of complexity, to award a modest sum only, in reimbursement of her legal costs.

On 23 October 1997, the applicant submitted a reply.

The Staff Association filed an intervention document in support of the applicant's submissions.

On 20 November 1997, the Secretary-General submitted his comments in rejoinder, in which he admitted that an error had been committed in the calculation of the applicant's indemnity for loss of employment. He therefore asked the Tribunal to note that he recognised the applicant's right to an additional sum of FF 25 228.53 for her indemnity for loss of employment, but to reject the remainder of the submissions asking for the annulment of the contested decision.

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;

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

It handed down the following decision:

The facts

In the month of March 1996, Mrs. L., who started work with the Organisation on 25 January 1960, asked to benefit from the provisions of Regulation 11 a) v) of the Staff Regulations under which the Secretary-General may [...] terminate the appointment of an official if such action would be in the interest of staff policy and the good administration of the Organisation provided that the action is not contested by the staff member concerned and provided the staff member has not less than ten consecutive years of service with one or more of the Co-ordinated Organisations. This request was not granted and, on 27 March 1997, Mrs L. was notified of a decision to terminate her contract on the basis of Regulation 11 a) ii) of the Staff Regulations which deals with post suppressions.

The rules governing terminations of contracts were changed significantly by a decision of the Council of 27 February 1997. It was these new rules which were applied to Mrs. L., who complains that they are less advantageous to her than the previous ones. While the amendment to Regulation 11 benefits her by extending the period of notice from 4 to 10 months, the change to Rule 17/7.3 means that her indemnity for loss of employment is less than she could have hoped for under the previous system: henceforth, the amount of this indemnity, when added to the total pension to be received under the pension scheme until the age of 65, cannot exceed the emoluments she would have received had she remained in employment with the Organisation until such age.

On the claim of lack of good faith, and of a breach of legitimate trust and acquired rights

The Tribunal cannot find any proof of such claims in the file submitted to it. In particular, the fact that the Secretary-General did not immediately accede to Mrs. L.'s request, even though she had received a favourable opinion from her immediate superiors, is not proof of such claims given that Regulation 11, invoked by Mrs. L., deals only with terminations at the Secretary-General's initiative and that the indemnity for loss of employment applies, under Rule 17/7, to some only of the possible cases of such termination. Mrs. L. was not entitled to an indemnity for loss of employment if the termination of her contract was at her own initiative.

On the claim of a breach of the principle of equal treatment

The Tribunal is of the opinion that there has been no breach of this principle when the same rule is applied to all officials whose posts were suppressed on the same date. It notes that expatriate officials, with whom Mrs. L. compares her indemnities, are not in the same situation as officials resident in France. It notes that the Administration recognises that it made a mistake in failing to take account of the household allowance when calculating Mrs. L.'s pension rights and emoluments and that it says it is ready to pay her an additional FF 25 228.53. Apart from this rectification, the Tribunal considers that Mrs. L.'s claims cannot be accepted.

On the claim that Mrs. L.'s tax situation was not taken into account

The Tribunal considers that this submission is irrelevant to the question whether or not the Organisation's decision concerning the calculation of the statutory indemnity for loss of employment was legal.

On the intervention by the Staff Association

The Tribunal notes the intervention by the Staff Association which pointed out that the Director of Budget and Finance had agreed to the termination of Mrs. L.'s contract by mutual consent in March 1996.

On costs

The Tribunal decides that in the circumstances of the case, the Organisation shall pay FF 6 000 to Mrs. L. towards her legal costs.