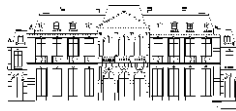


OCDE

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 14 March 2000

JUDGMENT IN CASE No. 38 (continuation)

Mr. F.

v/ Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 38 OF THE ADMINISTRATIVE TRIBUNAL (continuation)

Sitting on Friday 10 March 2000
at 10.30 a.m. in the Château de la Muette,
2 rue André-Pascal, Paris

The Administrative Tribunal consisted of:

Mr. Jean MASSOT, Chairman,
Professor James R. CRAWFORD
and Professor Luigi CONDORELLI,

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

In its first judgment in case no. 038, handed down on 21 June 1999, the Tribunal decided that “a new expert appraisal should be organised to address the question of whether Mr. F. is entitled to the benefit of Rule 17/1.10 a) of the Staff Regulations.” It points out today that this reference was erroneous and that the parties, like the experts, fully understood that the correct reference was Rule 17/1.14 a), relating to occupational disease.

On 4 October 1999, the new Medical Board drew up its expert report, concluding that “Mr. F. is totally prevented from performing the duties attached to an employment in the Organisation (OECD). As such, he should be placed on total and permanent invalidity.”

On 2 December 1999, the applicant submitted comments asking the Tribunal to recognise that he was suffering from total and permanent invalidity, with all the legal consequences thereof, and to award him the sum of 150.000 francs for specific contamination prejudice as well as the sum of 50.000 francs for reimbursement of his costs.

On 3 December 1999, the Secretary-General submitted his comments on the expert medical report prepared at the Tribunal’s request.

On 13 December 1999, the applicant presented a reply to the comments submitted on behalf of the Secretary-General.

On 21 December 1999, the Secretary-General submitted additional comments on the applicant’s comments of 2 and 13 December 1999.

The Tribunal heard:

Maître Jean Paul Teissonnière, Barrister at law, Counsel for the applicant;

Mr. David Small, Head of the Legal Directorate of the Organisation, on behalf of the Secretary-General;

and Mr. Jean-Louis Rossi, on behalf of the Staff Association.

It handed down the following decision:

The scope of the dispute

The Tribunal points out that under its previous rulings of 21 June 1999 it, on the one hand, rejected Mr. F.'s submissions asking for an indemnity in addition to the lump-sum he was awarded for the partial permanent invalidity from which he was recognised to be suffering as a result of an occupational disease and, on the other, ordered an expert report designed to establish whether the ailment from which Mr. F. is suffering gives rise to permanent invalidity rendering him totally incapable of performing the duties attached to his employment in the Organisation.

This means that the Tribunal, by virtue of the authority attaching to its previous judgment, cannot hear submissions asking again for an indemnity over and above the lump-sum compensation provisions, submissions which were expressly rejected in its first judgment of 21 June 1999, and that it has only to rule on the question of permanent invalidity totally preventing Mr. F. from performing the duties attached to his employment in the Organisation.

The question of permanent invalidity

The Medical board appointed following the previous judgment gave its opinion on the basis of documents, communicated to it either directly by the Organisation or at the request of the expert appointed by Mr. F. and with the agreement of the Chairman of the Tribunal, relating to Mr. F.'s duties and to the state of the premises in which he is called upon to work. These are all documents established by the Organisation, in particular its Operations Service. While the Secretary-General submits that one of these documents describes a situation no longer prevailing, he does not dispute that the other one reports on the state of the buildings in 1999 and makes it clear that asbestos has not been fully removed from the premises in which Mr. F. might have to work.

The experts having found, on the basis of these documents, that "Mr. F.'s state of health does not permit him under any circumstances to work as a heating specialist in the premises of the OECD given the presence there of asbestos coating", the Tribunal cannot do otherwise than find that the conditions specified in Rule 17/1.14 a) of the Staff Regulations, according to which "an official affiliated to the Pension Scheme, who is victim of a work accident or who contracts an occupational disease, and is recognised to be suffering from permanent invalidity which totally prevents him from performing the duties attached to his employment in the Organisation, shall be entitled, in accordance with the Pension Scheme Rules, to an invalidity pension", have been met. The decisions of the Secretary-General of 19 May and 1 July 1998, refusing Mr. F. the benefit of such an invalidity pension, must therefore be annulled.

Having regard to the decision taken by the Tribunal in its previous judgment that Mr. F. should be maintained on sick leave until it had ruled on the substance of his application, Mr. F. should benefit from a total permanent invalidity pension as from the date of the present judgment.

The intervention by the Staff Association

The Tribunal notes the intervention of the Staff Association which insisted on the fact that Mr. F. should be able to be re-employed by the Organisation if the premises in which he is called upon to work no longer present any risk to his health.

Costs

The Tribunal considers that in the circumstances of the case the applicant is entitled to reimbursement of the costs he has incurred up to the amount of 30.000 francs.

The Tribunal decides:

1) Mr. F. shall be entitled, as of today's date, to an invalidity pension on the conditions laid down in Rule 17/1.14 a) of the Staff Regulations;

2) The decisions of the Secretary-General of 19 May and 1 July 1998 are annulled;

3) The Organisation shall pay Mr. F. the sum of 30.000 francs towards his costs;

4) Mr. F.'s remaining submissions are rejected.