



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Greffe du Tribunal Administratif

Registry of the Administrative Tribunal

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal

handed down on 21 April 2002

JUDGMENT IN CASE No. 51

Mr. F.

v/ Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 51 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Friday 14 December 2001
at 10 a.m. at the Château de la Muette,
2 rue André-Pascal, Paris

The Administrative Tribunal consisted of:

Mr. Jean MASSOT, Chairman,
Professor Luigi CONDORELLI
and Mr. Justice Dermot KINLEN

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

On 13 October 2000, following a dispute with his hierarchical superiors, Mr. F. resigned from his post of administrator in the Development Co-operation Directorate of the OECD, with effect from 1 April 2001. After the Secretary-General had informed him, in a letter of 30 March 2001, that he refused to change his previous decision concerning this dispute, Mr. F., on 11 April, filed an application with the Tribunal, registered as case number 051, asking for: the withdrawal of the reprimand and correction of the letter sent to him on 15 March 2000 by Mr. C., his Head of Directorate; an apology from Mr. C., from Mr. V., the latter's direct superior, and from Mrs. B., a colleague; as well as an indemnity equal to 18 months' salary in compensation for the prejudice suffered.

On 20 June 2001, the Secretary-General submitted his comments asking for all the applicant's claims to be dismissed.

On 4 July 2001, the Staff Association filed an intervention document in support of the applicant.

On 11 September 2001, the applicant submitted a reply.

On 17 October 2001, the Secretary-General submitted his comments in rejoinder.

The Tribunal heard:

The applicant;

Mr. David Small, Head of the Organisation's Directorate for Legal Affairs, on behalf of the Secretary-General.

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

As well as Mrs. N., administrator in the DCD, a witness called by the applicant, and Mr. C., Deputy Director of the DCD, a witness called by the Secretary-General.

It handed down the following decision:

The facts

On 15 March 2000, the applicant, Mr. F., received a letter from the Deputy Director of his directorate, Mr. C., in which Mr. C. reprimanded him for behaviour deemed highly reprehensible, and asked him formally to endeavour to improve his behaviour in the future, otherwise the renewal of his contract would be jeopardised. The criticism related first to an attitude described as "aggressive" in Mr. F.'s relations with his colleagues at the

OECD (an attitude for which the applicant had, moreover, already been reprimanded at a previous interview on 12 March, as well as on 15 March), and secondly -- and above all -- Mr. C.'s letter complained about the unacceptable nature of a heated verbal exchange which had taken place at a meeting the same day, between Mr. F. and a representative of the French Ministry of Foreign Affairs, Miss D. This confrontation was described subsequently by the person concerned as having caused "real indignation" (Annex 20 to the application), and provoked her to make a strong protest. In the same letter, Mr. C. also said that both a verbal and a written apology had been made to Miss D., and noted that Mr. F. had agreed to apologise to her too (which he in fact did, by telephone, and was told that the "matter was closed": Annex no. 15), and also to seek help and advice from the Human Resource Division about ways to improve his behaviour. In his reply to a precise question on this point from the Tribunal at the hearing, Mr. F. did not dispute having undertaken (and carried through) these two commitments.

From the time he learned about the precise content of the said letter, Mr. F. did everything he could, using all the means available, to have the criticisms and the reprimand contained in the said letter, as well as the apologies and expressions of regret, withdrawn, on the grounds that: i) the allegations about his aggressive attitude were without foundation and based on no evidence, whereas many of his colleagues had on the contrary testified, and were willing to testify again, to the high quality of his work and to how agreeable and cordial he was in his dealings with others; ii) the incident on 15 March 2000 with Miss D. had in fact been of a minor nature, the confrontation having consisted of heated verbal response by Mr. F. to statements made by Miss D. which the applicant felt had called into question his intellectual and professional probity. The applicant complained, and continues to complain in particular that senior members of the French Administration had been informed of the incident (having received a copy of the letter of apology sent on 15 March 2000 by Mr. C. to Miss D. as well as - in some cases at least -- other messages on the same subject, originating always from Mr. C.).

None of Mr. F.'s superiors, to whom he appealed, accepted the applicant's point of view (which the OECD Staff Association, on the other hand, fully supported, as it stated clearly before the Tribunal). Attempts to mediate having failed, Mr. F. decided on 13 October 2000 to resign, with effect from the date on which his contract with the OECD expired (1 April 2001), a resignation which has to be interpreted as reflecting the applicant's decision not to seek the renewal of his contract in order to escape from an environment he felt had become hostile and to be able, in positive circumstances, to return to work for his previous employer, the French Development Agency. This is in fact what happened, even though Mr. F. complains that he was not reinstated at the level which -- having regard to his experience, qualities and skills -- should normally have been the case.

Following this series of events, the applicant, on 16 October 2000, formally requested the Head of Human Resource Management at the OECD to ensure that the above-mentioned letter of 15 March 2000 was withdrawn, and the necessary corrections made. Moreover, Mr. F., who considers that he had been the victim of a sort of prolonged emotional harassment on the part of his superiors, which finally led to his resigning, and who alleges having suffered considerable prejudice to his health and career as a result, asked for compensation equivalent to six months' salary. The Tribunal notes that later in the procedure, the amount of compensation requested increased threefold (18 months' salary). In any event, his request having been refused (by letter of 10 November 2000), Mr. F. decided to refer the dispute first (on 17 November 2000) to the Joint Advisory Board. Although the Board's opinion, given on 26 January 2001, was to some extent in his favour, Mr. F. was not satisfied with it and after the Secretary-General's decision of 30 March 2001 confirming his rejection of the applicant's requests, Mr. F. referred the case to the Tribunal on 11 April 2001.

The substance of the dispute

The Tribunal notes, and wishes to emphasize, that throughout the various phases of the dispute submitted to it, no-one has ever contested Mr. F.'s considerable qualities, devotion to his work and remarkable professional efficiency. The criticism of him in fact relates exclusively to the style and manner of his conduct which his superiors at the OECD considered might compromise good working relations and as being at times inappropriate for an international civil servant. Indeed, as was noted in the opinion of the Joint Advisory Board after a detailed and impartial analysis of the facts, the applicant may be described as someone who "... has little hesitation in

expressing his opinion in caustic terms and broadcasting it without taking any particular account of the need for discretion”, an opinion well supported moreover by the written statements and other documents submitted to the Tribunal by Mr. F. It is neither abnormal, excessive nor unreasonable for senior members of an administration to be worried about behaviour of this nature, when it gives rise to friction and tension, and for them therefore to take steps to have it stopped. What is more, such measures can be said to be even more justified, or indeed necessary, in the case of an international organisation such as the OECD, when the attitude of a member of staff risks creating difficulties and dissension in its dealings with representatives of Member countries.

In light of these principles, the Tribunal considers that it cannot accede to the request made by Mr. F. to have the letter Mr. C. sent him on 15 March 2000 withdrawn. In the circumstances of the case, the sending of this letter cannot be held to be excessive or unreasonable since it was a reprimand directed specifically at Mr. F. and made known solely to the applicant’s direct superior (Mr. V.), and to Mr. C.’s advisor (Mr. M.) who had taken part in the previous discussions with Mr. F. The Tribunal is greatly influenced, in this regard, by the assurance given by the Head of Human Resource Management to Mr. F. on 10 November 2000, that the said letter had never been put into the applicant’s personal file.

The same applies *mutatis mutandis* to the letter of apology sent on 15 March 2000 by Mr. C. to Miss D., and indeed the applicant, in his pleadings, no longer asks for it to be withdrawn (though he had done so earlier), claiming only that he is entitled to have it corrected and to an apology. The Tribunal notes in this regard that the decision to offer an apology to the representative of the French Ministry of Foreign Affairs could not, in the circumstances, be held to be *ultra vires*, the more so in that the principle of offering an apology had in substance been accepted by Mr. F., as mentioned above.

However, the Tribunal finds that this affair, which could and should have been dealt with without so many harmful consequences, was given excessive publicity, out of all proportion to the relative lack of seriousness of the actual events, by OECD managers. If account had been taken of the above-mentioned merits of Mr. F., recognised by one and all, and of the fact that he could genuinely have felt hurt by statements which he interpreted (no doubt due to his over-sensitiveness) as questioning his professional probity, information about the apology made to Miss D. should not have been given to so many highly-ranked officials in the French Administration. Although, for the reasons explained by the Tribunal above, the said apology was in the circumstances perfectly justified, the wide publicity given to it was not. This is all the more true in that the conduct for which Mr. F. was reproached was described in severe terms: it was said to be “totally inappropriate” and described as having given rise to “total disapproval” and “deep regret” (letter from Mr. C. to Miss D. of 15 March 2000, a copy of which was sent to four senior French civil servants), and even as “shocking” (message on the same day sent to Mr. F.V. by Mr. C.). The Tribunal finds that this publicity caused Mr. F. an unjustified prejudice vis-à-vis the French Administration, to which he was to return after his secondment to the OECD.

Lastly, the applicant requests the Tribunal to treat his resignation from the OECD as being equivalent to an unfair dismissal. The Tribunal cannot give serious consideration to this request, Mr. F. having submitted no proof that he was obliged to resign, nor any proof whatsoever that his health had suffered (because of what he describes as “harassment” by his superiors) to the point where he was obliged to leave his post. Moreover, the Tribunal has already noted that Mr. F.’s decision to resign, but only as from the date at which his contract was due to expire anyway, amounts in fact to a decision not to ask for his contract to be renewed. Had he asked, and been refused, Mr. F. could perhaps have tried to claim that such a decision was abusive and illegal. But since he preferred not to give the Secretary-General the chance to refuse a renewal, the applicant cannot now complain about a decision which might well have been taken, but for which there had been no need since he himself had wanted to avoid the need for it.

In view of these findings, the Tribunal decides that the OECD caused Mr. F. an unjustified prejudice, but only because of the excessive publicity given to the letters which were sent to him and to Miss D., and that this prejudice should be compensated by the Secretary-General of the OECD by means of a payment to Mr. F. of an amount equal to three months’ salary, calculated with reference to the last salary paid to him by the OECD when he was working there.

There is no need to rule on legal costs, since Mr. F. (who did not use the services of a lawyer) did not ask for any.

The intervention of the Staff Association

The Tribunal notes the intervention of the Staff Association in support of Mr. F.'s submissions.

The Tribunal decides:

The Organisation shall pay Mr. F. an amount equal to three months of the last salary he was receiving when he was working there, in compensation for the unjustified prejudice caused to him by the Organisation.