

Greffe du Tribunal Administratif  
Registry of the Administrative Tribunal

**ADMINISTRATIVE TRIBUNAL**

Judgment of the Administrative Tribunal

handed down on 18 April 2002

**JUDGMENT IN CASE No. 52**

Mrs. G.-M.  
v/ Secretary-General

## JUDGMENT IN CASE No 052 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Friday 22 March 2002  
at 11.30 a.m. at the Chateau de la Muette  
2, rue André Pascal, Paris

The Administrative Tribunal was composed of:

Mr. Jean MASSOT, Chairman,  
Professor James R. CRAWFORD  
and Professor Arghyrios A. FATOUROS,

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

On 18 July 2000, Mrs. G.-M. was informed of the Secretary-General's intention to terminate her employment as a consequence of a restructuring of the Human Resource Management services where the applicant worked. Subsequently, by a letter dated 9 February 2001, she was informed of the Secretary-General's decision to terminate her appointment. The applicant contested that decision and it was confirmed by a letter dated 14 May 2001.

On 25 June 2001, Mrs. G.-M. filed this application, registered as No. 052, and requested that the Tribunal annul the decision to terminate her appointment or, in the alternative, grant her certain financial compensations.

On 5 November 2001, the Secretary-General presented his comments and requested that the submissions of the application be rejected in their entirety.

On 17 December 2001, the applicant presented comments in reply.

On 21 January 2002, the Secretary-General presented his comments in rejoinder.

The Tribunal heard:

Maitre Jeanne Tilhet-Pretnar, Emeritus Professor, Counsel for the applicant;

and Mr. Nicolas Bonucci, Deputy Director of Legal Affairs of the Organisation, on behalf of the Secretary-General.

It handed down the following decision:

### **The facts**

Mrs. G.-M. has been in the service of the Organisation since 1987, as a B-grade employee in Human Resource Management. Starting in 1997, the restructuring of the Service led to her assuming a number of new posts; the situation was complicated by her state of health after a bad fall in late 1997. In early 2000 she became assistant to the Personnel Adviser. As a consequence of further restructuring of the Human Resource Management services, she was informed, at least orally, on 18 July 2000 that the nature of her post was being changed, that it no longer fitted her qualifications and it was possible that her employment would be terminated. From 19 July 2000 onwards, she was on sick leave. On 3 August 2000, a letter from the Manager of the Staff Service Centre confirmed that the restructuring would have negative effects on her employment. As noted above, she was eventually informed, by a letter dated 9 February

2001, of the Secretary-General's decision to terminate her appointment and, after she contested that decision, a letter dated 14 May 2001 confirmed the termination. This is the decision being challenged.

### **The legality of the decision to terminate Mrs. G.-M.'s appointment**

#### As regards substance

The main ground on which the annulment of the decision to terminate the appointment is sought is that the applicant did indeed possess, or could easily acquire, the new and additional qualifications provided for, after the restructuring, in the job description of the post she occupied at the time. It is clear, however, that the restructuring had materially changed the contents of the job description, in particular by placing emphasis on skills relating to the electronic treatment of personnel and pay data and the use of informatics systems. The applicant's skills, as she herself has described them, were of a different order; indeed, she repeatedly expressed her dislike of "dealing with figures." The decision cannot therefore be annulled on this ground.

#### As regards procedure

The decision to terminate the applicant's employment was preceded by the formalities required under the Staff Regulations: prior notice and an effort to offer her other posts in the Organisation. Moreover, the decision to terminate was issued only after consultation with the Advisory Board on B-grade Staff. However, the applicant claims, as regards the first two points, that the proper procedure was not followed.

#### *Notification of intention to dismiss*

The issue most persistently contested was that of the exact date at which the applicant was informed in writing of the Secretary-General's intention to terminate her employment.

It is not contested that she was informed of that intention on July 18, 2000. What is disputed is whether there was a written notification. According to the Organisation, the Manager of the Staff Service Centre, Mr. P., orally informed Mrs. G.-M. of the Secretary-General's intention and also handed her the pertinent letter but she refused to sign a receipt for it. Some written evidence was offered to this effect. There is no record, however, of any further effort at the time to secure acknowledgment on her part of receipt of the letter and the next formal notification was by the letter dated August 3. In Mrs. G.-M.'s initial application, on the other hand, no letter of July 18 is mentioned; and in subsequent submissions as well as in the oral proceedings, Mrs. G.-M. expressly said that she did not receive any letter on that date.

The Tribunal finds that it does not have to decide this issue of fact as such. It prefers to address the issue on a different plane. While the Staff Regulations require that the employee be notified of the Secretary-General's intention to dismiss, they do not in terms require written notification and therefore are silent on the need for a signed receipt for such a letter. The practice of the Organisation, however, appears to have gone beyond the Regulations and to have generally relied on written notification. A recent internal Manual of administrative procedures provides for written notice of intention to dismiss and for a signed receipt. Because of its limited use and dissemination, this Manual cannot be considered at present as a rule of law. Yet it does set a standard of proper practice, reflecting the Organisation's special duty as an employer to keep matters as clear and well-defined as possible, especially in the case of a dismissal, the action that most seriously affects an employee's situation. The Secretary-General's insistence in the present case on the actual presence of a written notification of his intention to dismiss reflects awareness of this duty.

The Tribunal finds therefore that, in allowing a certain lack of clarity in this instance and in reacting passively to the applicant's refusal to acknowledge receipt (two weeks passed before the next official letter was sent), the Organisation must assume the consequences of not being able to show that the employee received notification on 18 July 2000. In the event, this results in further delaying the date of the beginning of the notice period in view of the fact that, by 6 August, Mrs. G.-M. was already on sick leave and that according to the Staff Regulations (Article 11 f), when an employee is on sick leave when notified of the intention to terminate his or her appointment, the notice period is increased by the number of the days he or she is on sick leave.

This does not mean that the termination of the appointment was illegal, only that the notice period has to be recalculated.

#### *Notification of vacancies*

The applicant claims that very few (in fact, only two) announcements of vacant posts were sent to her in compliance with the Organisation's duty to try to find another appropriate post for an employee dismissed because of change or suppression of a post. The Organisation responds that there were no posts corresponding to her qualifications (indeed, this was true even of the two posts actually notified to her). Out of a listing of over a dozen posts that became vacant during the relevant period, presented during the oral hearing, it would seem that only one or two might fit the applicant's qualifications. While it does appear that the administration acted with a certain lack of diligence, or at least, with indifference, in the matter, it is not possible to draw any conclusions relating either to serious procedural error or to any actual harm to the applicant.

#### Misuse of powers

In her reply, as well as in a letter submitted to the Advisory Board, the applicant raises in rather unclear terms a claim of harassment, in the context of bad faith conduct towards her by the Organisation and individual officers since the 1997 restructuring. The claim is not clearly argued or documented. Hearing witnesses from the applicant's previous posts would not have helped.

Three other claims appear to have been withdrawn during the proceedings. First, a claim for reimbursement to the applicant of the daily allowances due to her during her illness and paid to the Organisation by the French Social Security authorities, in accordance with Instruction 117/1.19.3 of the Staff Regulations. In acknowledgment of the fact that such "reimbursement" would involve paying the applicant twice, since she had been regularly paid by the Organisation during the relevant period, the claim appears to have been dropped. Secondly, a claim for payment of differences in salary and indemnities because of promotion to a higher rank is now without an object, since the Organisation did acknowledge its mistake and took care of the payments. Thirdly, a claim for parking space fees paid during the applicant's illness also appears to have been withdrawn, in view of the fact that it was clearly up to the applicant to ask for the reservation of the parking space to be stopped and she did not take the trouble to do it. To the extent these claims may not have been fully and expressly withdrawn, they are hereby rejected.

#### Costs

The Tribunal decides that, in the circumstances of the case, the Organisation shall pay to Mrs. G.-M. 2000 euros towards her legal costs.

The Tribunal decides:

1. The application to annul the decision of the Secretary-General dated 9 February 2001 terminating Mrs. G.-M.'s appointment is dismissed.

2. The effective date on which the applicant was notified in writing of the Secretary-General's intention to terminate her appointment is 6 August 2000 and it is from that date that the period of notice would normally start. It will be for the Organisation to determine the financial consequences of this decision, subject to a final determination by the Tribunal in the event of a disagreement between the parties.

3. The Organisation shall pay Mrs. G.-M. the sum of 2000 euros towards her costs.