



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 18 April 2002

JUDGMENT IN CASE No. 053

Mrs. S.
v/ Secretary-General

Translation

(the French version constitutes the authentic text)

JUDGMENT IN CASE No. 053 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Friday 22 March 2002
at 10 a.m. at the Château 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 23 November 2000, Mrs. S., administrator in the Budget and Finance Service, was informed of a decision to transfer her to another service of the Organisation, the Information Technology and Network Services (ITN). Having refused to take up her duties in this new service, Mrs. S. was informed, on 13 February 2001, that the Secretary-General had decided to apply to her the disciplinary sanction of dismissal, and that her appointment would therefore terminate with immediate effect, without notice or indemnities. By letter of 20 March 2001, Mrs. S. asked for this decision to be withdrawn, a request which was refused on 9 May 2001.

On 11 July 2001, Mrs. S. filed an application, registered as No. 053, asking the Tribunal to annul the decision of dismissal taken by the Secretary-General on 13 February 2001 and to order her reinstatement as Head of Project in the Budget and Finance Service.

On 12 November 2001, the Secretary-General presented his comments requesting that the applicant's submissions be rejected in their entirety.

On 6 December 2001, the applicant presented comments in reply.

On 10 January 2002, the Secretary-General presented his comments in rejoinder.

The Tribunal heard :

Maître Roland Rappaport, Barrister, Counsel for the applicant;

Mr. David Small, Director of Legal Affairs of the Organisation, on behalf of the Secretary-General;

And Mr. M., former official of the Organisation and former superior of Mrs. S., as a witness cited by the applicant, and at the request of the representative of the Secretary-General, Mr. L., Head of Division in the Information Technology and Network Services (ITN).

It handed down the following decision:

The facts

Mrs. S.'s fixed-term appointment was renewed on 21 November 2000 for the period from 1 January to 31 December 2001. The previous 24 October, Mrs. S. had been informed that she would probably be transferred from the Budget and Finance Service (FIN) to the Information Technology and Network Services (ITN). This transfer which, according to the Administration, formed part of a general reorganisation and in no way implied a negative assessment of the manner in which Mrs. S. carried out her duties, was formally notified to her on 23 November. The very next day, invoking a reduction in her responsibilities, she protested against this decision to those in charge of Human Resource Management. It was then confirmed to her that the transfer would take effect as from 1 January 2001.

In view of her refusal to take up her new duties, the acting Head of Human Resource Management informed her on 4 January 2001, confirming an e-mail of 12 December 2000, that such behaviour amounted to serious misconduct and that he was starting a disciplinary procedure against her, recommending application of the sanction of dismissal. After obtaining the opinion of the Senior Staff Board, the Secretary-General, on 13 February 2001, applied the sanction of dismissal against Mrs. S. In response to an appeal by the applicant, he confirmed this decision on 9 May 2001.

By an application dated 4 July 2001, Mrs. S. asked for this decision to be annulled. At the hearing on 22 March 2002, her Counsel said that she was also attacking the decision of 23 November 2001 announcing her transfer.

On the submissions directed against the decision of 23 November 2000 announcing Mrs. S.'s transfer

The Tribunal can only note that these submissions are inadmissible since, contrary to the requirements of Article 3 of the Council Resolution on the Statute and Operation of the Administrative Tribunal, they were not preceded by a prior written request addressed to the Secretary-General.

On the submissions directed against the decision of 1 February 2001 announcing Mrs. S.'s dismissal

The Tribunal notes that Mrs. S. invokes, by way of exception, the illegality of the decision of 23 November 2000. In this regard, it draws attention to the principle of all hierarchical organisations according to which a refusal to obey cannot be the normal method of contesting decisions taken by an official's superiors unless the order given by such superiors is manifestly illegal and such as to seriously compromise a public interest. It is clear that the arguments invoked by Mrs. S. with regard to the decision announcing her transfer and which concern the author of the decision alone and its scope as far as it deals with the definition of his responsibilities, does not fall into the category of those which excuse an official from his obligation to obey. Mrs. S. should have contested the decision announcing her transfer by the normal legal channels, beginning by referring the matter to the Secretary-General, which she failed to do. The Tribunal therefore considers that the arguments based on the illegality of the transfer decision cannot be admitted. It also feels that the prolonged refusal to obey this decision was, contrary to what is claimed by Mrs. S., such as to justify a sanction in relation to which, moreover, she contests only the procedure and not the seriousness.

As far as the disciplinary procedure is concerned, the Tribunal has found no irregularity in the fact that it was started by Mr. P., acting Head of Human Resource Management, nor in the fact that the memorandum recommending the sanction to be applied was communicated to a Deputy Secretary-General and not to the Secretary-General. It considers that in the absence of the Head of Human Resource Management and of the Secretary-General -- which is not disputed -- their Deputies were entitled to act on their behalf without, given that this concerned simple elements of procedure and not the final decision, there being any need to investigate whether these Deputies had been given an express delegation of power.

The Tribunal therefore concludes that Mrs. S.'s application must be rejected.

Reimbursement of costs

The Tribunal considers that, in the circumstances of the case, the applicant is entitled to reimbursement of the costs she has incurred up to the sum of 1 500 Euros.

The Tribunal decides:

- 1) The application is dismissed
- 2) The Organisation shall pay Mrs. S. the sum of 1 500 Euros towards reimbursement of her costs.