



ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal

handed down on 6 June 2002

JUDGMENT IN CASE No. 055

Mr. B.

v/ Secretary-General

Translation

(the French version constitutes authentic text)

JUDGMENT IN CASE No. 055 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Wednesday 29 May 2002
at 10.30 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 Dr. Carl Otto LENZ,

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

By memorandum of 4 July 2001 from the Head of Human Resource Management, Mr. B., Head of the Enterprise Development Unit of the Directorate for Financial, Fiscal, and Enterprise Affairs, was informed of the Organisation's decision not to renew his contract on the ground that a series of incidents, related to his style of management, had seriously affected the work atmosphere within his Unit. By letter of 2 October 2001, Mr. B. was informed by the Executive Director that the Secretary-General refused his prior written request relating to the non-renewal of his contract.

Mr. B. then filed an application, dated 25 October 2001 and registered as case No. 055, asking the Tribunal to annul the decision communicated by the letter of 2 October 2001, with all the legal consequences resulting therefrom.

On 21 January 2002, the Secretary-General submitted his comments asking for all the applicant's claims to be dismissed.

On 19 February 2002, the applicant submitted a reply.

On 21 March 2002, the Secretary-General submitted his comments in rejoinder.

The Tribunal heard:

Maître Jean-Didier Sicault, Lecturer in International Civil Service Law at the Paris I and Paris II Universities, Barrister at the Court of Appeal of Paris, Counsel for the applicant;

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

It handed down the following decision:

The facts

Mr. B. was recruited by the Organisation as a consultant from 5 October 1992, under successive contracts which took effect up until 1 June 1994, the date on which he was given contracts as a grade A3 and then A4 official, generally for periods of 12 or 13 months. The latest renewal related to the period from 1 August 2000 to 31 July 2001.

On 28 May 2001, Mr. B. was called to a meeting with the Head of Human Resource Management who told him that his contract might not be renewed. A memorandum from the same Head on 1 June 2001 confirmed to Mr. B. the Organisation's intention not to renew his contract beyond 31 July 2001. This memorandum described various incidents which had allegedly been the subject of complaints by the staff of his service and which were said to have been mentioned at the meeting of 28 May. Mr. B. was invited to comment on those incidents within ten days. On 7 June, the applicant asked for communication of the complaints about him, and on 12 June, he sent the Head of Human Resource Management a first series of comments about these complaints.

On 21 June, the Head of Human Resource Management sent Mr. B. a series of documents relating to these complaints, giving him a new time limit for replying to them, expiring on 28 June, a time limit extended to 29 June following a request from the applicant who explained that his lawyer was unavailable. Mr. B. submitted his comments on that date.

On 4 July, the Head of Human Resource Management informed Mr. B. of the Organisation's decision not to renew his contract beyond 31 July because of the deterioration in the work atmosphere in his service due to the incidents referred to during the above-mentioned procedure. The Organisation concluded from these incidents that it was not in its interest to continue to employ Mr. B..

The same memorandum informed Mr. B. that having regard to the unavailability of his lawyer, a new time limit -- until 13 July -- was given to him in order to produce his comments, and it detailed Mr. B.'s rights as regards notice and indemnity for loss of employment, leaving allowance and reimbursement of his contributions to the pension scheme. Mr. B. immediately replied that he would make no further comments.

On 1 September, Mr. B. asked the Secretary-General to withdraw the decision of 4 July, and for payment of compensation of €300 000.

On 2 October, the Executive Director informed Mr. B. that the Secretary-General was maintaining the decision taken on 4 July and refusing the request for compensation.

On 25 October, Mr. B. filed an application before the Tribunal, containing the same submissions as those made to the Secretary-General.

Substance

Since the case involves the non-renewal of a contract, the Tribunal, as it did already in its Judgment No. 30 of 27 March 1998 (M.), adopts the case law of the Appeals Board arising in particular from Decision No. 126 of 12 April 1991 (S.). It considers in particular that a decision by the Secretary-General not to renew a contract falls within his discretionary power and that it is not for the Tribunal to substitute its own assessment for that of the Secretary-General. It is, on the other hand, for the Tribunal to censure the Secretary-General's decision if it is issued by a body not competent to do so, is tainted by illegality as to form or procedure, is based on an error as to fact or is tainted by error of law, misuse of powers or a clear error of judgment.

In this case, the Tribunal notes firstly that the only procedural obligation of the Organisation, since it intended to base its decision not to renew Mr. B.'s contract on grounds relating to the applicant's behaviour, was to respect the adversarial principle. The multiple exchanges of documents described above, even though taking place within the short space of time between the incidents complained of and the expiry of Mr. B.'s contract, allowed the applicant to exercise fully his right to defend himself.

Secondly, in the absence of any dispute about the existence of the electronic messages sent by the applicant to certain members of his staff, the Tribunal has not been convinced by either the exchange of documents during the procedure prior to the decision, the applicant's written productions or his oral observations, that in considering that the incidents referred to at the meeting of 28 May had led to a deterioration in the working atmosphere in the service for which Mr. B. was responsible, the Organisation based its decision on materially inaccurate facts or committed a clear error of judgment.

In the absence of any other ground of complaint, the Tribunal can only conclude that the use made by the Secretary-General of his discretionary power not to renew Mr. B.'s contract is not tainted by any illegality and cannot confer entitlement to any compensation.

On the reimbursement of costs

The Tribunal considers that in the circumstances of the case, the applicant is entitled to reimbursement of his costs up to an amount of €1 000.

The Tribunal decides:

- 1) The application is dismissed
- 2) The Organisation shall pay Mr. B. the sum of €1 000 towards his costs.