

**ADMINISTRATIVE TRIBUNAL**

Judgment of the Administrative Tribunal

handed down on 24 February 2009

**JUDGMENT IN CASE No. 64**

Mr. F.

v/ Secretary-General

**Translation**

(the French version constitutes the authentic text)

JUDGMENT IN CASE No.°64 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Friday 13 February 2009  
at 2 p.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 Mr. Christophe FAVRE providing Registry services.

In an application (No. 064) dated 19 July and received by the Registry on 23 July 2008, Mr. F., former medical officer of the Organisation, asked the Tribunal to annul the decision of the Secretary-General notified by letter of the Executive Director dated 18 April 2008, refusing the prior written request relating to the non-renewal of the applicant's contract, and to order his reinstatement.

In this application, the applicant notified his intention to submit an expanded statement, which he did on 19 August 2008.

On 13 November 2008, the Secretary-General submitted his comments, requesting the Tribunal to dismiss the application as inadmissible or, alternatively, to dismiss all the submissions contained in the application.

On 12 December 2008, the applicant submitted a reply.

On 15 December 2008, the Staff Association submitted written comments asking the Tribunal to give a favourable hearing to the applicant's submissions.

On 16 January 2009, the Secretary-General submitted his comments in rejoinder.

The Tribunal heard:

Maître Jean-Didier Sicault, barrister at the Cour de Paris, Counsel for the applicant;

Mr. Nicola Bonucci, Head of the Organisation's Directorate for Legal Affairs, on behalf of the Secretary-General;

as well as Mr. B., Adviser to the Executive Director, and Mr. P., Manager of the Staff Service Centre, witnesses cited by the applicant, and Mrs. P., Head of Human Resource Management, a witness cited by the Secretary-General.

It handed down the following decision:

## **The facts**

Dr. F. was employed by the Organisation, first as a consultant working half-day shifts, the number of which increased by less than ten a year over the period from 1 September 1982 to 1 January 1986, to reach fifty-five during the period from 1 January to 30 September 1994. As of that date and until 30 June 2003, he worked, still as a consultant, as a half-time medical adviser with a maximum number of shifts which increased gradually from 2.5 to 6 per week. As of 1 July 2003, he was given contracts as a permanent official, grade A4, still in the capacity of half-time medical adviser. Two successive two-year contracts preceded the contract in question in this case, which was a contract for one year ending on 30 June 2008.

An exchange of e-mails produced by the two parties and dated 17 and 18 December 2007 shows that at a meeting on 14 December 2007, Mr. P., Head of the Staff Service Centre to which the Medical Service was attached, «notified», according to the terms of Dr. F.'s e-mail, Dr. F. that his contract, due to terminate on 30 June 2008, would not be renewed, or «informed him of the decision taken concerning the non-renewal» of his appointment, according to the e-mail of Mr. P.

On 9 January 2008, the Head of Human Resource Management sent Dr. F. a memorandum stating «I confirm that your appointment will terminate, as planned, on 30 June 2008».

On 6 March 2008, Dr. F. asked the Secretary-General to «withdraw or modify the decision of Mrs. P., Head of Human Resource Management, notifying me that my appointment would not be renewed, with a view to giving an indefinite-term contract». In making this request, Dr. F. admitted that «notification of the non-renewal of my contract was given orally during my meeting with Mr. P. on 14 December 2007 and was confirmed to me in writing by means of the disputed decision of 9 January 2008».

On 18 April 2008, the Executive Director replied on behalf of the Secretary-General. In the first place, he stated that since the disputed decision was notified to the applicant on 14 December 2007, the request sent to the Secretary-General on 6 March 2008 did not comply with the two-month time limit laid down by Article 3 a) of the Resolution of the Council on the Statute and Operation of the Administrative Tribunal. He also explained at length the reasons, based on a forthcoming restructuring, which had led the Organisation to decide «that the new structure should offer not only medical skills, principally in the field of occupational medicine, but also benefit from the services of administrative staff with very good managerial skills and a high level of efficiency in relation to occupational medicine procedures» and to consider that «given this perspective» «it was not in its interest to prolong» the employment relationship with Dr. F.

The decision not to renew Dr. F.'s appointment, confirmed by the decision of the Secretary-General of 18 April 2008, is contested by the applicant by means of an application which reached the Registry of the Tribunal on 21 July 2008. Dr. F. also asks the Tribunal to order his reinstatement as from 1 July 2008, failing which, to award him four years of salary by way of compensation for material prejudice together with the consequences as regards pension entitlement, and 100 000 euros in compensation for moral prejudice, plus the reimbursement of his costs.

## **In law**

With regard to the non-renewal of a contract, the Tribunal notes again, as it already did in Judgments Nos. 30 of 27 March 1998 and 55 of 6 June 2002, 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 assessment for that of the Organisation. It will condemn the Secretary-General's decision only if the

decision is issued by a body without authority to do so, is affected by a vice of form or procedure, is based on inaccurate facts or involves an error in law, a misuse of power or a manifest error of appreciation.

The Tribunal sees nothing in the file to indicate such errors, and in particular, it considers that no misuse of power has been established.

But it does not need to enter into the detail of the parties' arguments on these points inasmuch as it considers the application to be inadmissible.

### **Admissibility**

While, in relation to the Secretary-General's decision received on 21 April 2008, the application submitted to the Tribunal on 21 July 2008 complies with the three-month time limit laid down in Article 4 of the Resolution of the Council, the parties argued at length about its admissibility with regard to the provision of Article 3 which first of all requires that a prior written request be addressed to the Secretary-General and then states that this prior request must be given to the Secretary-General «within two months from the date of notification of the contested decision».

On this point, the Tribunal considers that even if Instruction 109/3 a) says only that «Renewal of fixed-term appointments of officials of grades A5 and below shall be decided by the Head of Human Resource Management on the recommendation of the Director or Head of Service concerned» without any requirement as to a particular form for the notification thereof, the case law of international tribunals is that, with a view to ensuring that things are as clear and precise as possible, the non-renewal of a fixed-term contract must be the subject of a decision which has to be communicated to the official and must be based on legally sound reasons which should be made known to the official in time enough for him to be able to exercise his rights. It is not necessary for the reasons to be communicated by the authority which is competent to take the decision.

In this case, the Tribunal has little doubt that, as admitted by Dr. F. himself on several occasions in his pleadings, the applicant was clearly informed at the meeting of 14 December 2007 with Mr. P. that the decision not to renew his contract had been taken even though Mr. P. was not, and did not claim to be, the author of this decision.

While it is true that the reasons for this non-renewal at the time related principally to the criticisms addressed to the applicant regarding a lack of rigour in his budgetary and administrative management, reasons which the Secretary-General today declares to have abandoned in favour of reasons relating to the reorganisation of the Medical Service, while continuing to claim that Dr. F. did not possess the skills required to deal in an autonomous fashion with the administrative and legal issues linked to occupational medicine, the fact remains that already in the e-mail of 18 December 2007, Mr. P. – after having noted in writing that he had indeed informed the applicant of the decision not to renew his contract – further reminded him «that a non-negligible part of our conversation also related to the current thinking about a possible review of the functioning of the medical pavilion».

In these circumstances, the Tribunal considers that the application made by Dr. F., who was in a position to challenge the various reasons for the decision not to renew his appointment at the latest as from the written notification in the e-mail of 18 December 2007 and who did so only more than two months later, is not admissible.

On the comments of the Staff Association

The Tribunal noted the comments of the Staff Association in support of the application by Dr. F.

The Tribunal decides:

- 1) The application is dismissed.
- 2) The request made by Dr. F. for the reimbursement of his costs is dismissed.

Done in Paris, 24 February 2009

The Chairman of the Tribunal:

(signed) Jean Massot

The Deputy Registrar of the Tribunal:

(signed) Christophe Favre