



ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal

handed down on 14 november 2014

JUDGEMENT IN CASE N° 76

XXX

v/ Secretary General

Translation (the French version constitutes the authentic text).

JUDGEMENT IN CASE No 76 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Friday 14 November 2014
at 10.00 a.m. in Château de la Muette,
2 rue André-Pascal in Paris

The Administrative Tribunal consisted of:

Mrs. Louise Otis, Chairman,
Mr. Luigi CONDORELLI,
and Mr. James R. Crawford,

with Mr. Nicolas FERRE and M. Jean LE COCGUIC providing Registry services.

The Tribunal heard:

Mrs. XXX

Mr. Nicola Bonucci, Head of the Organisation's Directorate for Legal Affairs, on behalf of the Secretary-General. He was assisted by Mr. Rémi Cèbe.

It handed down the following decision:

Introduction

1. The Applicant submits a "request of annulment of the implied decision of non-renewal of her appointment as Temporary Staff Member" at the Organisation for Economic Co-operation and Development (hereinafter referred to as the Organisation). In the proceedings, the Applicant seeks the annulment of the contested decision, her reintegration in the Organisation and the award of compensatory damages and reimbursement of costs and fees.
2. In his observations, the Secretary-General first denies the merits of the request under the Tribunal's jurisdiction to re-classify labor contracts between the Applicant and private companies, specialized in welcoming services. On the merits, the Secretary-General presents that in the circumstances of this case, appointing the Applicant as a temporary staff member by a temporary contract, does not confer any right to renewal.

The facts

3. From 19 March 2012 until 12 June 2013, the Applicant successively worked for the companies Alizee Hôtesses and Hôtesses de France, two subcontracting firms of the Organisation which handle the preparation of meetings, special events and hosting participants in the conference center. During this period, the Applicant's work was erratic and discontinuous. On average, she worked about 12 full days per month.

4. On 20 June 2013, the Organisation offered the Applicant a temporary appointment letter for a period of 10 working days, running from 24 June 2013 to 7 July 2013. This contract which was accepted by the Applicant, included the following clause: « This appointment does not imply that it will be renewed or converted into another type of appointment, failing its renewal or conversion, it will therefore terminate without further notice on the original expiry date. I should also like to draw your attention to the fact that only the present offer letter constitutes any obligation whatever on the part of the Organisation ».
5. The appointment letter was accepted with its terms by the Applicant, on 20 June 2013.
6. The temporary appointment expired after the agreed upon period has come to an end, that is on 7 July 2013.
7. Following the termination of the temporary contract, the Applicant requested from the Head of the Conference Support Unit, Mrs. X, to be hired again for a few weeks to replace a staff member of the Organisation who was on annual leave. An acknowledgment of receipt was transmitted to the Applicant informing her that a decision of approach will be taken soon depending on general needs of staff reinforcement without promising her any appointment contract.
8. On 12 October 2013 the Applicant informed the Organisation of her intention to take the affair to the French Court to get a conviction for “ illegal subcontracting”.
9. Then, on 4 November 2013, the Applicant denounced to the Secretary-General, in writing, the abusive non-renewal decision of the temporary contract stating that Mrs. X had assured to keep her informed of a possible renewal.
10. Finally, the Applicant filed the request for legal review by the Tribunal.
11. On 18 July 2014, the Paris Labor Relations Court (Conseil de Prud’hommes) decided that: “the succession of service contracts at the OECD, in addition to the fact that Mrs. Y had a badge and an email address, do not requalify her for a temporary contract”. Consequently, the Paris Labor Relations Court dismissed the Applicant's request for reclassification and compensation for reclassification.

Law

12. As a first step, the Tribunal dismisses the reclassification of the contract between the Applicant and the private service companies, specialized in welcoming services. First, if the Applicant has extensively discussed the termination of the sub-contracts with the two private service companies and consequently, the damage that has resulted, the Applicant would have thus expressly eliminated bringing up the subject before the Tribunal. Then she presented no evidence capable of establishing that the 10-day temporary engagement was legally a continuation of the business relationship between private companies and the Organisation. No evidence of concealment or false subcontracting was administered by the Applicant.
13. On the merits, it is necessary to refer to the appointment letter of 20 June 2013, which clearly states that without renewal or conversion, the appointment will end on the specified

date, i.e. on 7 July 2013. This condition of the appointment letter is consistent with Article 1.6/3 of the Regulations, Rules and Instructions applicable to temporary staff members of the Organisation which states:

“ The appointment expires without notice on the date specified in the appointment letter.”

14. However, it is true that this statutory rule may be tempered in the event of a breach of the formal legal framework, including arbitrariness. The procedural demonstration may include contextual factors such as the nature, purpose and duration of contracts, their subsequent renewal for long periods and the circumstances surrounding the non-renewal of the last contract.

15. In the present case, the contract of the Applicant is of short duration, i.e. 10 days. No notice was required. This contract was never renewed by the Organisation. Prior commitments cannot be taken into consideration since they have no immediate legal link with the Organisation. The circumstances surrounding the termination of the contract are regular. No promises were made to the Applicant to offer her a new contract. She could not claim any legitimate expectation of having her single contract of a period of 10 days renewed by the Organisation.

16. In these circumstances, we must recall the discretionary power of the Secretary General for non-renewal:

"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 authority 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."ⁱ

FOR THE ABOVE REASONS

17. The request for annulment of the decision of non-renewal of appointment made by the Applicant is dismissed without compensation.

Paris, 14 November 2014

ⁱ OECDAT Judgment No. 64 (2009), page 3; et Judgment No 30 (1998) page 3, para. 6.