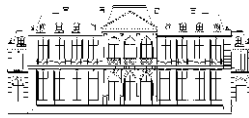


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ORGANISATION DE COOPÉRATION ET
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ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal
handed down on 17 November 1995

JUDGMENT IN CASE No 15

Miss A.
v/Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 15 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Thursday 16 November 1995
at 2 p.m. in the Château de la Muette
2 rue André-Pascal, Paris

The Administrative Tribunal was composed of:

Mr. Jean MASSOT, Chairman,
Mrs. Elisabeth PALM
and Professor James R. CRAWFORD,

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

On 20 February 1994, Miss A., an official of the OECD on non-active status, asked to be reinstated in the Organisation. On 27 April 1994, the Secretary-General decided that in the absence of a vacant post, Miss A.'s appointment would be terminated on 28 April 1994.

On 2 September 1994, Miss A. applied to the Joint Advisory Board which communicated its opinion to the Secretary-General on 16 December 1994.

By letter of 21 December 1994, the Secretary-General confirmed to Miss A. his decision to terminate her appointment in accordance with the provisions of Regulation 11 a) vi) of the Staff Regulations.

Miss A. then filed an application (No. 015), dated 17 March 1995, asking the Tribunal to declare null and void the Secretary-General's decision of 27 April 1994 by which her appointment was terminated, as well as the confirmation of this decision, dated 21 December 1994, with a view to her reinstatement.

On 29 May 1995, the Secretary-General submitted comments inviting the Tribunal to reject all the submissions in the application.

In her reply of 29 June 1995, Miss A. asked the Tribunal to order her reinstatement and to award compensation for moral and financial prejudice.

On 3 October 1995, the Secretary-General submitted comments in rejoinder again inviting the Tribunal to reject all the submissions in the application and the reply.

The Tribunal heard

The applicant; and

Mrs. Josée Fecteau, Legal Counsellor, Legal Directorate of the Organisation, on behalf of the Secretary-General.

The Tribunal handed down the following judgment.

The facts

Miss A. was recruited on 7 September 1982 as an auxiliary bilingual telex operator in the General Services Division of the Directorate for General Administration and Personnel. By virtue of a letter of appointment of 27 April 1984 and with effect from 1 May 1984, she was appointed for an indefinite period, with the same duties, at grade B2 step 2. From 15 June 1985, she was assigned to the Data Processing and Statistical Services Directorate, promoted on 9 March 1987 to grade B3 step 1, then transferred again from 1 December 1992 to the Directorate for General Administration and Personnel. However, after exhausting her entitlement to sick leave, she was placed on non-active status as from 29 December 1992, pursuant to Regulation 14 a) i) of the Staff Regulations. By a letter of 4 January 1993, Miss A. was informed of the conditions on which this non-active status, granted for a maximum period of three years with full pay, could in fact be terminated before the end of this three-year period.

After Miss A. was placed on non-active status, the post she had been occupying was once again transferred, on 1 July 1993.

On 20 February 1994, Miss A. sent the Head of Personnel a request for reinstatement together with a medical certificate to the effect that her state of health permitted her to start work again. On 18 March 1994, she was examined by the Organisation's medical officer. On 22 March 1994, the Head of Personnel informed the applicant that the medical officer had given a favourable opinion but that since no post corresponding to Miss A.'s aptitudes was vacant, her appointment would be terminated as from 1 April 1994 on the basis of Regulation 14 c) of the Staff Regulations and on the conditions provided for under Regulation 11 a) vi) of the Regulations, i.e. with payment of an indemnity in lieu of notice, an indemnity for loss of employment and a leaving allowance under the pension scheme. It was stated in the same letter that Miss A. would be entitled to apply for a new grade B3 post on an equal footing with serving staff. On 27 April 1994, this decision was confirmed by the Secretary-General with effect from 28 April 1994. On 2 September 1994, Miss A. asked for the Joint Advisory Board to be convened. Following a meeting of this Board on 3 November 1994 and the communication to the Secretary-General of its opinion on 16 December 1994, the Secretary-General, by letter of 21 December 1994, confirmed his decision. In her application of 17 March 1995, Miss A. asked the Tribunal to annul the decisions of 27 April and 21 December 1994.

The submission that Regulation 11 a) vi) of the Staff Regulations was not applicable to the case of Miss A.

The Tribunal notes with regret that the Staff Regulations do not contain any provision regulating in a satisfactory fashion the case of an official in Miss A.'s situation. On the one hand, Regulation 11 a) vi) provides that "The Secretary-General may, after consultation with an advisory body, terminate the appointment of an official [...] if the post occupied by an official is transferred and if the Secretary-General considers that the official does not have the qualifications necessary to carry out the duties required in that post or in any post that may be or may become vacant"; Miss A. rightly argues that since her post was transferred after she had been placed on non-active status, there was no transfer of a post "occupied by an official" within the meaning of Regulation 11 a) vi).

On the other hand, Regulation 14 c) provides that "An official placed on non-active status [...] shall be entitled to reinstatement in his category and grade, if a post corresponding to his qualifications and aptitude should fall vacant", while Instruction 114/4 adds that "Where an official placed on non-active status is unable to or does not return to the service of the Organisation upon the expiry of the period of non-activity specified in Regulation 14, his appointment shall terminate without notice".

It was stated in the letter of 4 January 1993, in which the Organisation informed Miss A. of the conditions of her period of non-activity, that this period could be extended only on the basis of medical certificates submitted at regular intervals and that when her doctor was able to advise her to start work again, Miss A. could ask to be reinstated, a request which would be examined in the light of the opinion of the

Organisation's medical officer and of the situation with respect to vacant posts corresponding to her qualifications and aptitude.

Thus, the Organisation would have been entitled, on the basis of the provisions of the above-mentioned Regulation 14 c) and Instruction 114/4, to consider that since, at the end of Miss A.'s period of non-activity, there were no vacant posts corresponding to her qualifications and aptitude, she should be regarded as an official unable to return to the service of the Organisation, and one whose appointment could therefore be terminated without notice. The consequence of this would have been that Miss A. would not have been entitled to an indemnity for loss of employment either, since Rule 17/7 of the Staff Regulations makes no provision for payment of such an indemnity to persons in respect of whom a measure based on Instruction 114/4 has been taken. The Tribunal notes, once again with regret, that no provision is made for a reasonable period during which the Organisation is obliged to propose vacant posts to an official who requests reinstatement.

The Tribunal is therefore of the opinion, as was said earlier, that the applicant is right in saying that Regulation 11 a) vi) was not strictly speaking applicable to her case. One result of this is that because the post was transferred while the applicant was on non-active status, she cannot benefit from Instruction 111/1.3, which provides that "In the case of suppression or transfer of his post, an official shall, if he expressly so requests, serve during a period of probation of a maximum of three months in the post which has been transferred or in any other post that may be or may become vacant". But the Tribunal is of the opinion that the Secretary-General, who could have made the same decision on the basis of Regulation 14, did not deprive the applicant of any right and that the request for annulment of the decision must be rejected.

This, however, still leaves an uncertainty as to the duration of the period during which, if she applies for vacant posts, Miss A. should be treated "on an equal footing with serving staff". The Tribunal considers that in limiting this period to the years 1994 and 1995, the Secretary-General's decision was not inequitable.

The request for compensation

The Tribunal is of the opinion that, for the reasons given above, this request must be rejected, without there being any need to decide on its admissibility.

For these reasons, the Tribunal dismisses the application by Miss A.