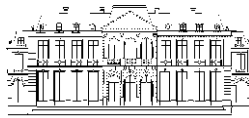


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ORGANISATION DE COOPÉRATION ET
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ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal
handed down on 18 March 1999

JUDGMENT IN CASE No 34

Mr. K.
v/Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 34 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Monday 15 March 1999
at 10.30 a.m. in 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 Luigi CONDORELLI,

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

Mr. K. filed an application (No. 34), dated 4 June 1998, asking the Tribunal to annul the decision of the Secretary-General notified to the applicant by a letter of 12 March 1998 from the Executive Director.

On 8 October 1998, the Secretary-General presented his comments asking the Tribunal to reject the applicant's request.

On 28 October 1998, the Staff Association lodged a submission in intervention supporting Mr. K.'s submissions.

On 9 November 1998, the applicant submitted a reply.

On 14 December 1998, the Secretary-General presented his comments in rejoinder.

The Tribunal heard:

Maitre 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;

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

and Mr. Malcolm Gain, on behalf of the Staff Association.

It handed down the following decision:

The facts

Mr. K.'s appointment was terminated as a result of his post's being suppressed on 31 July 1996. He did not ask the Tribunal to annul this decision but to award compensation for the prejudice he claimed to have suffered both because the decision to suppress his post could have been influenced by the unfavourable report about him drawn up in circumstances he felt did not conform to the regulations, and because these irregularities made it difficult for him to find another job. After a hearing on 16 June 1997, the Tribunal held, in its judgment of 25 June 1997, that there was no link between the irregularities surrounding the report on Mr. K. and the suppression of his post, but that the delay in establishing his reports for 1992 and 1993 could

have reduced his chances of redeployment. The Organisation was ordered to pay Mr. K., by way of compensation, a sum equivalent to three months' salary.

Mr. K. was engaged by the German Ministry of Finance, from 1 April to 15 June 1997, to write a report for a European conference to be held in Bonn on 6 and 8 July 1997 on the activities of international organisations in the fields of the Internet and electronic commerce. On 18 June 1997, Mr. D., Head of the Information, Computer and Communications Policy Division of the OECD Directorate for Science, Technology and Industry, sent the German Delegation to the OECD a note which, after saying that Mr. K. had not contacted the relevant services of the Organisation, contained the following passage :

« You are doubtless aware that there is currently some dispute between Mr. K. and the OECD concerning his employment as an OECD staff member. I am wondering about the content of the treatment of the OECD in the paper which will go to an extremely important high level conference. »

Mr. D. therefore asked to see the draft report so that the OECD representatives at the Bonn conference, or he himself, might offer comment on it.

On 23 October 1997, Mr. K., claiming that as a result of this note the German Finance Ministry had told him that he would be offered no further contracts in the future, asked the Secretary-General to compensate this prejudice by :

- sending him a letter of apology,
- awarding him a sum equivalent to two years' salary for material loss,
- awarding him a sum equivalent to one year's salary for moral prejudice.

By letter of 8 December 1997, The Executive Director refused all of these requests. On 2 February 1998, Mr. K. asked the Secretary-General to review this decision. On 12 March 1998, the Executive Director informed Mr. K. that the Secretary-General maintained his position. On 4 June 1998, Mr. K. referred the matter to the Tribunal, repeating all his requests.

The alleged fault on the part of the Organisation

The Tribunal notes first of all that Mr. D.'s reminding the German Delegation of the existence of a dispute between Mr. K. and the Organisation does not amount to divulging confidential information since the letter in question was dated after the public hearing at which the Tribunal examined Mr. K.'s application.

It notes, on the other hand that, as was admitted by the representative of the Secretary-General during the oral procedure, the presence of this reminder in a letter which also contained criticism of the method used by Mr. K. to prepare his report as regards the OECD, was not necessary in order to defend the interests for which Mr. D. was responsible, and its juxtaposition with the expression of doubt as to the quality of the report being prepared could not do otherwise than call Mr. K.'s objectivity into question. The Tribunal concludes from this that it could have been inspired by a desire to prejudice Mr. K.. This being so, and even if no confidential information was divulged, it is not proper behaviour on the part of an official of the Organisation.

The causal link between this fault and the prejudice claimed by Mr. K.

The Tribunal finds that none of the documents produced by the applicant establishes that such a link exists. In the first place, the complete translation of the exchange of correspondence between Mr. K. and the German Finance Ministry shows that the Ministry had not undertaken any commitment to call on Mr. K.'s

services after the contract relating to the preparation of the July 1997 conference. Furthermore, there is nothing to say that had there been any chance of the Ministry's offering further work, it would have been dissuaded from doing so by the offending passage in Mr. D.'s letter rather than by the fact, which is not contested, that Mr. K. had not made all the contacts needed for the drafting of that part of his report relating to the OECD.

In these circumstances, the Tribunal considers that no causal link between the offending passage in Mr. D.'s letter and the prejudice alleged by Mr. K. has been proved, and that the applicant's claims must be dismissed.

The intervention of the Staff Association

The Tribunal notes the intervention of the Association which emphasised the prejudicial nature of the calling into question of Mr. K.'s objectivity in Mr. D.'s letter.

As to costs

The tribunal considers that in the circumstances of the case, the Organisation should be ordered to pay FF 10.000 to Mr. K.

Consequently, the Tribunal decides :

- 1) Mr. K.'s application is dismissed;
- 2) The Organisation shall pay Mr. K. the sum of FF 10.000.