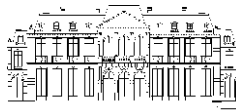


OCDE

ORGANISATION DE COOPÉRATION ET
DE DÉVELOPPEMENT ÉCONOMIQUES



OECD

ORGANISATION FOR ECONOMIC
CO-OPERATION AND DEVELOPMENT

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal

handed down on 15 October 1999

JUDGMENT IN CASE No. 41

Mrs. A.

v/ Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 41 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Friday 8 October 1999
at 9 a.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 Mrs. Christiane GIROUX providing Registry services.

On 22 January 1999, Mrs. A. filed an application (No. 041) requesting the Tribunal to annul the Secretary-General's decision notified to the applicant by a letter of 23 October 1998, with all the legal consequences resulting therefrom.

On 25 March 1999, the Secretary-General submitted his comments asking the Tribunal to dismiss the application.

On 20 April 1999, the Staff Association filed an intervention document in support of the applicant's submissions.

On 10 May 1999, the applicant submitted a reply.

On 11 June 1999, the Secretary-General submitted his comments in rejoinder in which he maintained his submissions rejecting the application.

The Tribunal heard:

Maître Jean-Pierre Cuny, Barrister, Counsel for the applicant;

Mr. David Small, Head of the Legal Directorate of the Organisation, and Mrs. Sylvie Vanston, Special Advisor to the Head of Human Resource Management, on behalf of the Secretary-General;

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

It handed down the following decision:

The facts

Mrs. A. entered the service of the Organisation in 1968 as a permanent staff member, grade B2, step 1. Assigned at the end of 1994 to a post of assistant documentalist, grade B3, in the Division for Remuneration, Social Affaires and Communication, she was informed by the Head of Human Resource Management on 28 February 1997 that her post was to be suppressed in the context of the budget adopted the previous day by the Council. The same letter informed her of the newly adopted provisions regulating dismissal following post suppression, including the introduction of special leave. Lastly, the letter of 28 February 1997 stated that it constituted the beginning of the

10-month notice period introduced by Regulation 11 b) of the Staff Regulations in the event of termination of appointment for reasons of post suppression.

By letter of 25 March 1997 to the Head of Human Resource Management, Mrs. A. said she wished to continue working during the notice period, that she did not renounce the Secretary-General's seeking, during a period of three months following the beginning of the notice, another vacant post commensurate with her qualifications and experience, and that she requested immediately that she be placed on special leave at the end of this period should the search prove unfruitful. By a letter of the same date, she asked the Secretary-General to withdraw his decision to terminate her appointment for reasons of post suppression.

On 6 June 1997, the Head of Human Resource Management informed Mrs. A. that her candidacy for the vacant post for which she had applied had not been successful and that she could be placed on special leave immediately while at the same time continuing to be entitled to apply for any post vacant "for the duration of the special leave and for two years after termination of your appointment". On 9 June Mrs. A. was informed that her candidacy for another vacant post had been rejected.

On 27 June 1997, Mrs. A. informed the Head of Human Resource Management that she could not confirm her request to be placed on special leave without first having received written notification that the Secretary-General had, after the opinion of the competent advisory body, decided -- unless she was placed on special leave -- to terminate her appointment on the basis of Regulation 11 a) ii) of the Staff Regulations.

On 6 August 1997, the Head of Human Resource Management replied to Mrs. A. that if she asked to be placed on special leave, her appointment would not be terminated and there would be no reason to consult the advisory body referred to in Regulation 11 a) of the Staff Regulations. He stated, on the other hand, that he considered that the decision to place Mrs. A. on special leave would be a decision adversely affecting her which could be contested before the Joint Advisory Board and the Administrative Tribunal. This position was confirmed to Mrs. A. in a letter of 8 December 1997, which asked her for a definitive reply by 15 December, failing which her appointment would be terminated.

On 11 December, Mrs. A. asked to be placed on special leave for a period of three years. On 23 January 1998, the Head of Human Resource Management informed her that her request had been granted as from 1 January 1998 until 31 December 2000.

On 23 April 1998, Mrs. A. asked the Secretary-General to convene the Joint Advisory Board, before which she wished to contest the decision of 23 January 1998.

On 23 October 1998, the Secretary-General informed Mrs. A. that the JAB, which had met on 23 July, had rendered the opinion that the contested decision was not vitiated by misuse of power or insufficient reasons and that the amendment to Regulation 11 of the Staff Regulations had not adversely affected her vested rights. The Secretary-General said he was ready to amend the provisions regulating special leave, as the JAB wished, in order to make it compulsory in future to consult an advisory body. Lastly, he said he could not follow the opinion of the JAB recommending that Mrs. A. be paid compensation of 6 months' salary for the moral prejudice arising from various administrative errors, plus an indemnity of 3 months' salary for the material prejudice arising from the difficulties she claimed to have experienced in consulting the electronic mail showing vacant posts.

On 22 January 1999, Mrs. A. filed an application before the Tribunal against the decision contained in the letter of 23 October 1998.

The dispute

As can be seen from the summary of the facts of the case, Mrs. A. did indeed consider that the letter of 28 February 1997 was a decision adversely affecting her, since in a letter of 25 March 1997, she asked the Secretary-General to withdraw it. The Secretary-General not having replied to this letter within a month, this request must be considered, as provided for in Article 3 of the Council Resolution on the Statute and Operation of the Administrative Tribunal, as having been implicitly rejected. Under Article 4 of the same Resolution, Mrs. A. then had three months in which to contest this decision implicitly rejecting her request. Her application to the Tribunal of 22 January 1999 was therefore no longer admissible. At that date she was, however, still in time to contest the decision of 23 October 1998 taken by the Secretary-General following the opinion of the Joint Advisory Board. The dispute can therefore relate only to the legality of the decision placing Mrs. A. on special leave, not of the decision taken on 28 February 1997 to suppress Mrs. A.'s post. Therefore, the submissions that the decision of 28 February 1997 was vitiated by a misuse of power, insufficient reasons, prejudice to vested rights, breach of procedure or a breach by the Organisation of its obligation of good faith are, in so much as they concern this first decision only, irrelevant for the purposes of the present dispute. What is more, like the Joint Advisory Board, the Tribunal did not find any elements in the file in support of the applicant's arguments regarding the different submissions invoked.

Since no submission specific to the decision to place Mrs. A. on special leave was made, the appeal against the confirmation of this decision by the letter of 23 October 1998 must also be dismissed.

The appeal against the other decisions contained in this same letter, by which the Secretary-General refused Mrs. A. any compensation for the errors committed by the Administration during her special leave is, however, admissible.

The prejudice for which Mrs. A. is requesting compensation

The Tribunal first of all points out that since the decision to suppress her post has not been proved to be illegal, Mrs. A. cannot seek compensation for the resulting prejudice.

In the second place, like the Joint Advisory Board, the Tribunal noted the multiplicity of errors committed in administering Mrs. A.'s special leave and their highly regrettable nature, in particular, those which consisted of depriving her temporarily of her social security cover, of making a mistake in the calculation of her remuneration with regard to her special leave, of withdrawing numerous documents from her file, as if she had retired, and finally, of depriving her of access to any computer which would have enabled her to consult the list of posts vacant between 1 January and 5 February 1998. It notes, however, that these errors were very quickly rectified such that Mrs. A. cannot reasonably argue that they caused her material prejudice of a type entitling her to compensation.

The Tribunal recognises, on the other hand, that these repeated errors, occurring at a difficult time for Mrs. A., could have caused her moral prejudice, fair compensation of which is a sum corresponding to six months of the basic salary she was receiving before being placed on special leave, excluding the household and expatriation allowances.

The Intervention of the Staff Association

The Tribunal notes this intervention asking that Mrs. A. be granted compensation for the material and moral prejudice caused her by the Administration's errors.

Costs

The Tribunal considers that in the circumstances of the case, the Organisation should be ordered to pay Mrs. A. FF 15.000.

The Tribunal decides:

1) The Organisation shall pay Mrs. A., by way of compensation for moral prejudice, a sum corresponding to six months of the basic salary she was receiving before being placed on special leave and an amount of FF 15.000 towards costs.

2) The remaining submissions of the application are dismissed.