



ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal
handed down on 18 April 2002

JUDGMENT IN CASE No. 054

Mr. G.
v/ Secretary-General

Translation

(the French version constitutes the authentic text)

JUDGMENT IN CASE No. 054 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Friday 22 March 2002
at 9.30 a.m. at 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 Arghyrios A. FATOUROS,

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

In its judgment of 8 March 2001, the Tribunal dismissed the application (No. 049) filed by Mr. G. in which he requested the annulment of the Secretary-General's decision of 28 March 2000 to dismiss him following the suppression of his post. This decision having thus become definitive, Mr. G. asked the Organisation, by letter of 23 April 2001, to reconsider its refusal -- communicated and confirmed during the year 1999 -- to consider as completed service, for the purposes of calculating his indemnities, the notice period following the suppression of his post. By letter of 7 May 2001, this request was refused.

On 16 July 2001, Mr. G. filed an application, registered as No. 054, asking the Tribunal to annul the decision communicated by the letter of 7 May 2001. He suggested that since the facts of the case were not in dispute, the Tribunal should give its ruling without oral debate, in accordance with the provisions of Article 10 d) of the Council Resolution on the Statute and Operation of the Administrative Tribunal.

On 15 November 2001, the Secretary-General presented his comments in which he submitted that the application was inadmissible or alternatively asked for all the applicant's claims to be dismissed. He specified that he had no objections to the Tribunal hearing the case without oral debate.

On 27 November 2001, the Staff Association submitted an intervention document supporting the applicant's submissions.

After deliberation, the Tribunal handed down the following decision :

The facts

In a first application sent to the Tribunal on 26 November 1999, Mr. G. challenged, on procedural grounds, the Secretary-General's decision to terminate his appointment following the suppression of his post, arguing in particular that an error had been made in the calculation of the length of his notice period.

Since Mr. G. indicated in this application that he was at the same time referring his « main substantive claim » regarding the same decision to the Joint Advisory Board, the Chairman of the Tribunal informed him, by letter of 2 December 1999, that « since the same facts were in dispute in both cases », Mr. G. should file his application to the Tribunal within three months of being notified of the decision of the Secretary-General taken after the Board's opinion.

In an application filed on 30 June 2000, Mr. G., in challenging the definitive decision of the Secretary-General of 28 March 2000, used the formal and substantive grounds of complaint previously invoked against the prior decision of 11 June 1999 in the application of 26 November 1999 and in the referral to the Joint Advisory Board. It was on this application that the Tribunal gave its ruling on 8 March 2001. In this judgment, the Tribunal dismissed Mr. G.'s arguments based on a misuse of power, the fact that the notification of the first letter of intent to terminate his appointment was given while he was on sick leave and that the duration of his period of notice should have been prolonged until the end, not only of his statutory sick leave, but of his illness.

By letter of 23 April 2001, Mr. G. asked the Head of Human Resource Management to reconsider his decision of 11 October 1999 not to include the period of notice in the calculation of his service as a permanent official -- a decision based on the ground that he had been excused from serving this period of notice and had received an indemnity taking it into account. The present application is directed against the reply made to him on 7 May 2001 confirming that the duration of his notice period should not be taken into account in calculating his leave entitlement since he had not actually been working.

As to admissibility

Under Article 3 of the Council Resolution on the Statute and Operation of the Administrative Tribunal « ...applications to the Administrative Tribunal shall not be admissible unless the applicant has given the Secretary-General a prior written request for withdrawal or modification of the contested decision... Such prior request shall be given to the Secretary-General within two months from the date of notification of the contested decision in the case of members of staff ...or within four months from the date of such notification in the case of former members of staff... ».

Under Article 4 of the same Resolution, « Applications shall be filed with the Registry of the Tribunal within three months from the date of notification of the rejection by the Secretary-General of the prior request or from the date of the implied refusal of such request ».

As indicated above, the request made by Mr. G. to have the theoretical duration of his notice period taken into account in calculating his paid leave was refused on 11 October 1999. On 29 October 1999, Mr. G. then asked the Head of Human Resource Management if he should include this new dispute in the procedure under way before the Joint Advisory Board or whether it should be the subject of a separate procedure. He was told on 22 November 1999 that it was for him to choose the way in which he presented his claim.

Mr. G. waited for the Tribunal decision of 8 March 2001 before referring this complaint, which he had not mentioned in his previous application, to the Organisation and then the Tribunal. In his new application to the Tribunal, he moreover broadened his submissions by asking that the theoretical duration of his notice period should be taken into account not only in calculating his paid leave but also for the amount of his leaving allowance and pension.

These submissions are not admissible given that the first ones, relating to paid leave, were not submitted within three months of the refusal, on 11 October 1999, of his prior request, and that the second ones had not been the subject of a prior written request asking for them to be withdrawn within two months of the notification of the decision informing Mr. G. of the method of calculating his various indemnities, the decision of 11 June 1999 notified to the applicant who was still at that time an official of the Organisation.

The comments of the Staff Association

The Tribunal noted the comments of the Staff Association in support of Mr. G.'s claim.

The Tribunal decides:

The application of Mr. G. is dismissed.