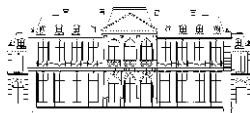


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ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal
handed down on 10 February 1997

JUDGMENT IN CASE No 18

Mrs. S.
v/Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 18 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Friday 7 February 1997
at 9 a.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 8 June 1995, the Head of Personnel informed Mrs. S., a grade B2 official of the OECD, of the Secretary-General's decision, following the conclusions of the Invalidity Board which met on 31 May 1995, to grant her an invalidity pension as from 1 June 1995 but that he was unable to pay her the capital sum referred to in Rule 17/1.11 a) of the Staff Regulations.

On 10 November 1995, Mrs. S., of the opinion that the Invalidity Board had not met in conditions which guaranteed compliance with the principles of law applicable, asked the Secretary-General to annul the procedure under which she had been found to be unfit for service. In a decision notified to Mrs. S. by letter of the Director for General Administration and Personnel of 21 February 1996, the Secretary-General refused this request.

Mrs. S. filed a summary application (No. 18), dated 15 May 1996, asking the Tribunal to annul this last decision of the Secretary-General, with all the consequences in law resulting therefrom.

By letter of 17 June 1996, Maître Sicault, Counsel for the applicant, asked for a month's extension of the time limit for producing the expanded statement, an extension which, in the absence of any objection by the Organisation's Legal Counsel, was granted by the Chairman of the Tribunal.

On 10 July 1996, the applicant submitted an expanded statement asking the Tribunal to accept her submissions as set out in the summary application, and in particular to order that the procedure which led to her being declared unfit for service should be undertaken again, this time in a correct fashion.

On 15 November 1996, the Secretary-General submitted comments asking the Tribunal to reject all of the applicant's submissions.

On 13 December 1996, the Staff Association lodged a submission in intervention supporting Mrs. S.'s submissions.

On 17 December 1996, the applicant submitted a reply.

On 20 January 1997, the Secretary-General submitted comments in rejoinder, again asking the Tribunal to reject all of the applicant's submissions.

The Tribunal heard

Maître 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. Christian Schricke, Legal Counsel, Head of the Legal Directorate of the Organisation, on behalf of the Secretary-General;

And Mr. Jean-Marie Strub, representing the Staff Association.

The Tribunal handed down the following judgment:

As regards the provisions applicable:

Rule 17/1.11 a) of the Staff Regulations provides: "In the event of the total permanent invalidity of an official which occurs during a period of service or non-active status due to sickness, and certified as having incapacitated an official for any form of work, professional or otherwise, the official shall be entitled to payment of a capital sum equal to three years' emoluments at the rate applying on the date when the invalidity is established."

Instructions 117/1.11.1 and 117/1.11.2 provide in addition: "Category II invalidity for the purposes of French Social Security shall be deemed to be total permanent invalidity within the meaning of Rule 17/1.11 a)", and

- a) Findings of total permanent invalidity within the meaning of Rule 17/1.11 a) shall be made by the Medical Board referred to in Instruction 122/4.2 i), in accordance with Instructions 122/4.1 and following.
- b) When the Invalidity Board referred to in Article 13 of the Pension Scheme Rules is convoked in accordance with the Pension Scheme Rules, it may, at the request of the official or the Secretary-General, sit as the Medical Board for the purposes of paragraph a) above."

Finally, Instructions 122/4, 122/4.1, 122/4.2, 122/4.5 and 122/4.6 provide as follows:

122/4: "In all cases where the Secretary-General takes a decision based on a medical opinion and where the official concerned disputes the medical grounds thereof, the latter may, within 15 days from receipt of the written notification of the decision, request that the medical opinion on the basis of which the decision was taken be subject to a specialist medical review procedure."

122/4.1: "When an official disputes a medical opinion, the doctor he designates shall consult with the doctor designated by the Secretary-General with a view to giving a joint opinion to be transmitted to the Secretary-General.

Where the two doctors fail to reach agreement, and at the request of the official concerned, they shall nominate a medical specialist. If the two doctors are unable to agree as to whom the medical specialist shall be, the Secretary-General and the official concerned may request the Chairman of the Administrative Tribunal to nominate this medical specialist: the latter, or a member of the Tribunal whom he will designate, shall select the medical specialist from a list of medical specialists registered with the Court of Appeals of Paris, or -- where appropriate -- from an equivalent list in another Member country when the official concerned is in post in that country or is prevented from being present in metropolitan France. The medical

specialist is selected among specialists in the category of disease in question, as determined by the doctors designated by the parties.

The Chairman, or the member of the Tribunal whom he has designated, informs the parties of the name of the specialist he intends to designate as soon as the latter has accepted such designation. Any objection to such designation would be presented within a week. After consideration of any such objections, the Chairman, or the member of the Tribunal whom he has designated, takes the final decision."

122/4.2: "The medical specialist, assisted as necessary by the doctors designated by the Secretary-General and the official, shall carry out such examinations, analyses and other investigations as he deems necessary. He shall render his opinion with 30 days of his nomination.

However:

- i) in cases where the decision of the Secretary-General:
 - a) places the official on non-active status for medical reasons under Regulation 14 a) i);
 - b) refuses to allow the official to resume work at the end of a period of non-active status for medical reasons;
 - c) refuses payment of the invalidity annuity referred to in Rule 17/1.4;
 - d) refuses payment of a capital sum in the event of permanent total incapacity or invalidity under Rule 17/1.4.1

the opinion shall be rendered by a medical board consisting of the medical specialist, the doctor designated by the Secretary-General and the doctor designated by the official; the board, which shall be convened and chaired by the medical specialist, shall reach its conclusions by majority decision within 45 days of the appointment of the medical specialist;

- ii) the medical specialist may also decide on his own initiative, or at the request of the official, to follow the medical board procedure as provided for under sub-paragraph i) above in cases other than those mentioned therein."

122/4.5: "The conclusions of the medical specialist or of the medical board shall be communicated to the Secretary-General and the official concerned. Such conclusions shall be final, except where there is an obvious material error and subject to the jurisdiction of the Administrative Tribunal. The conclusions of the medical specialist may include, in the form of a separate document, considerations and justifications of a medical nature to be disclosed only to the doctor designated by the Secretary-General and the doctor designated by the official."

122/4.6: "The Secretary-General shall, where appropriate, take a new decision in accordance with the conclusions reached by common agreement by the doctors designated by himself and the official or, in the event of specialist review, in accordance with the conclusions of the medical specialist or medical board, as soon as such conclusions are brought to his attention. Such decision shall be notified forthwith to the official concerned in writing. The new decision shall take effect on the same date as the original decision which it shall cancel and replace. The decision by the Secretary-General confirming his initial decision, or the new decision by the Secretary-General shall be, where appropriate, the decision by which the Secretary-General

has rejected a prior request under the terms of Article 3 of the Resolution of the Council on the operation of the Administrative Tribunal."

In this case, as can be seen from the file, the Head of Personnel informed Mrs. S. on 9 March 1995 that he intended to convoke the Invalidity Board to give its opinion on her situation as regards her entitlement to an invalidity pension and capital sum, the Secretary-General designating Dr. Bourdarias to sit on the Board. On 22 March 1995, Mrs. S. informed the Organisation that she was designating Dr. Ngo Ngoc, and on 12 April 1995, the Head of Personnel told Mrs. S. that the Board would meet on 5 May 1995 at the office of Dr. Reignier, the medical specialist designated by the two other doctors by common agreement. On 3 May 1995, the Head of Personnel informed Mrs. S. that the meeting had been cancelled as Dr. Bourdarias was unable to attend. Finally, on 15 May 1995, Dr. Fouache, replacing Dr. Bourdarias as the doctor designated by the Organisation, informed Dr. Ngo Ngoc that the Board would meet on 31 May 1995. This meeting did indeed take place, the Board sitting both as the Invalidity Board within the meaning of Article 13 of the Pension Scheme Rules, and as the medical board referred to in Instruction 122/4.2, to decide on Mrs. S.'s entitlement to an invalidity pension and capital sum.

As to the submission concerning the replacement of the doctor designated by the Organisation:

The Tribunal notes that it is not disputed that Dr. Bourdarias was unable to attend for medical reasons and that the Organisation did no more than exercise its right to designate a replacement.

As to the submissions arguing that the third medical specialist was not impartial and that the medical file submitted to the Board was incomplete:

The Tribunal notes that the applicant has not produced any proof in support of either allegation, nor did she ask for the production of any document which might assist her in this respect. In these circumstances, her submissions can only be rejected.

As to the submission that the fact of the applicant's being convoked to the meeting of the Board showed that the file was incomplete:

Once again, the Tribunal is obliged to note that no proof whatsoever is submitted in support of the applicant's allegations. It notes, moreover, that such a convocation is in line with general principles of law and with common sense.

As to the submission based on the absence from the 31 May meeting of the doctor designated by the applicant:

The Tribunal finds it regrettable that the applicant only learned of the absence of the doctor she had designated when she appeared before the medical board on 31 May 1995. It feels it would be very desirable, in cases of this type, that measures be taken to ensure that if the board wishes to hear the patient, all its members are present.

Nevertheless, the Tribunal notes that in this case it is not seriously disputed that the doctor designated by Mrs. S. chose not to be present of her own free will or that she sent a report about Mrs. S. to the board before the meeting of 31 May 1995; that this doctor never claimed to have been prevented from attending because of the conditions in which she was convoked, or lastly, that she certified that the signature added to the board's report was indeed hers. The Tribunal notes in addition that Mrs. S. did not cite Dr. Ngo Ngoc to appear as a witness. The Tribunal therefore finds that it has not been proved that the conditions in which the board heard Mrs. S., however controversial, influenced the decision which is the subject of the application.

In these circumstances, the Tribunal can only dismiss Mrs. S.'s application.

As to the intervention by the Staff Association:

The Tribunal takes note of the intervention of the Staff Association.

As to the claim for costs:

The Tribunal orders the Organisation to pay Mrs. S. the sum of FF 10 000.