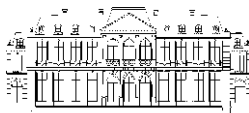


OCDE

ORGANISATION DE COOPÉRATION ET
DE DÉVELOPPEMENT ÉCONOMIQUES



OECD

ORGANISATION FOR ECONOMIC
CO-OPERATION AND DEVELOPMENT

ADMINISTRATIVE TRIBUNAL

Judgement of the Administrative Tribunal
handed down on 27 March 1998

JUDGMENT IN CASE No. 29

Mr. M.
v/ Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGEMENT IN CASE No. 29 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Wednesday 18 March 1998
at 11 a.m. in the Château de la Muette,
2 rue André-Pascal, Paris

The Administrative Tribunal consisted 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 10 July 1997, Mr. M., a grade A4 official of the Organisation, filed an application (No. 29) requesting the Tribunal to annul the Secretary-General's decision of 10 April 1997 to suspend him without salary, with all the legal consequences resulting therefrom, including compensation of the moral prejudice suffered by the applicant, and to order payment, by the defendant to the applicant of costs, of an amount to be determined at the end of the procedure.

On 17 November 1997, the Secretary-General submitted his comments rejecting Mr. M.'s application.

On 12 December 1997, the Staff Association filed an intervention document in support of the applicant's submissions.

On 18 December 1997, the applicant submitted a reply.

On 23 January 1998, the Secretary-General submitted his comments in rejoinder in which he maintained his submissions rejecting Mr. M.'s application.

The Tribunal, sitting *in camera* pursuant to Article 10 a) of the Council Resolution, 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. David Small, acting Legal Counsel, and Mr. Joao Viegas, on behalf of the Secretary-General;

Mr. Jean-Marie Strub, on behalf of the Staff Association;

and Mrs. N., Administrator, Human Resource Management, as a witness cited by the applicant.

It handed down the following decision:

The facts

Mr. M. was recruited by the OECD as a consultant in October 1977, then as an administrator, in December 1978. He was given successive fixed-term contracts and promotions, the latest in 1995. At the time the present dispute began, he was a principal administrator, grade A4, and his contract had been renewed for three years as from 31 December 1994.

By a memorandum from Mr. Hallén, Head of Human Resource Management, of 24 January 1997, Mr. M. was informed that a disciplinary procedure which could lead to his dismissal had been started, that an additional inquiry had been ordered into the allegations made against him, that he was immediately suspended from duty with salary and that he was asked to “refrain from discussing the present case with the staff in your Division or from contacting them on this matter”.

The inquiry was conducted by Mrs. N., Head of Human Resource Management Unit No. 3, between 29 January and 4 February 1997. Mrs. N. interviewed all the members of the RTR Division (Road Transport Research) in which Mr. M. worked. A meeting was held on 5 February 1997 in Mr. Hallén’s office between Mr. Hallén, Mrs. N. and Mr. M., during which Mr. Hallén and Mrs. N. informed Mr. M. of the various allegations made by those interviewed, allegations to which Mr. M. gave his reaction.

On 7 February, Mr. Hallén sent Mr. M. a further memorandum listing these different allegations and informing him that he had decided to propose his dismissal to the Secretary-General, that he could submit his comments within eight days or ask for the Joint Advisory Board to be convened, that the decision to suspend him was maintained, but that he was entitled to consult his file.

On 18 February, Mr. M. asked for the Joint Advisory Board to be convened and contested the ban on his contacting the members of his Division.

On 24 February, Mr. Hallén informed Mr. M. that the Board would meet on 6 March and that, in the meanwhile, the ban on his entering into contact with members of staff was lifted.

After meeting on 6 March 1997, the Joint Advisory Board felt that it was not for it to say whether the procedure had been properly followed and that, as to substance, “the sanction of dismissal would be clearly disproportionate to the complaints made about Mr. M. although some of those complaints, if the facts were more clearly established, could justify a less severe sanction”. In view of its recommendation, the Board did not judge it necessary to accede to Mr. M.’s request for thirteen witnesses to be heard, limiting itself to hearing three.

On 10 April 1997, the Secretary-General “having noted the Board’s comments as to the severity of the sanction proposed” informed Mr. M. that he had decided to impose upon him “the disciplinary measure lower than dismissal in the order of sanctions, i.e. suspension without salary” as from 1 May and until the end of his appointment, namely 31 December 1997.

The present application, registered on 10 July 1997, is directed against this decision.

On the claim that the procedure was improperly applied

The Tribunal is of the opinion that the correctness of the procedure followed in disciplinary matters must be assessed in the light of general legal principles, and first and foremost the adversarial principle as pointed out in particular in Decision No. 44 of the Appeals Board of 10 October 1974 Espinay-St. Luc, and of the provisions of the staff regulations which apply these principles. The period

during which such principles must be complied with extends naturally until the final decision of the Secretary-General.

In this case, the file shows that the Secretary-General's decision of 10 April 1997 was based on "the numerous concordant statements about Mr. M.'s behaviour" and in particular on additional testimony given by one of the witnesses after being heard by the Joint Advisory Board. While this evidence was indeed put into Mr. M.'s file, thus making it possible for him to read it, this is formally established only as at 14 April. Even though Mr. M. could, prior to the decision of 10 April, have found out by other means about testimony dated 14 March, this was materially impossible for the testimony dated 10 April.

The Tribunal cannot agree with the Secretary-General's assertion that the testimony given after the Joint Advisory Board meeting simply "confirmed certain points already mentioned in the testimony of the official concerned". It appears, on the contrary, from the minutes of the meeting of 10 April between Mrs. N., Mr. Viegas and the witness, that the latter gave new evidence that she had not provided previously because she was too embarrassed to do so and could not back up her assertions with any other elements of proof. But the new testimony claiming that Mr. M. tried to obtain sexual favours from the witness when the two were on mission abroad together was more serious in nature and much more detailed than the previous allegations made by the same witness. Moreover, it was so deemed by Mrs. N., as confirmed by her to the Tribunal.

In these circumstances, the Tribunal is of the opinion that the decision punishing Mr. M. should not have been taken on the same day as this testimony was received without giving him a chance to learn about and discuss it. Given that there was, therefore, a breach of the adversarial principle, the Tribunal does not judge it necessary to rule on Mr. M.'s other submissions as to whether the procedure was applied properly or the disproportion between the sanction and the allegations made against him.

On the intervention by the Staff Association

The Tribunal notes the intervention of the Staff Association in support of Mr. M.'s application, in which it drew particular attention to the failure to respect the adversarial nature of the procedure and pointed out that Mr. M.'s professional conduct had always been highly praised by his superiors.

On the claim for compensation

The Tribunal is of the opinion that the prejudice suffered by the applicant is sufficiently compensated by the annulment of the decision pronouncing his suspension without salary and by the measures the Secretary-General will have to take in consequence thereof, unless he asks the Tribunal to pronounce compensation in his place.

On the reimbursement of costs

The Tribunal decides that in the circumstances of the case, the Organisation shall pay FF 12,000 to Mr. M. towards his legal costs.

For these reasons, the Tribunal

- 1) annuls the Secretary-General's decision of 10 April 1997 inflicting on Mr. M. the sanction of suspension without salary from 1 May to 31 December 1997.

- 2) orders the Organisation to pay FF 12,000 to Mr. M. towards his legal costs.
- 3) dismisses the remaining submissions of application No. 29.