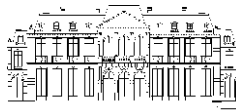


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ORGANISATION DE COOPÉRATION ET
DE DÉVELOPPEMENT ÉCONOMIQUES



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ORGANISATION FOR ECONOMIC
CO-OPERATION AND DEVELOPMENT

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal

handed down on 9 December 1998

JUDGMENT IN CASE No. 33

Mr. C.

v/ Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 33 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Wednesday 2 December 1998
at 2.30 p.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.

By letter of 19 January 1998, the Head of Human Resource Management informed Mr. C., a former official of the Organisation, that having regard to the opinion of the Joint Advisory Board, the Secretary-General did not intend to change his decision to terminate the applicant's appointment.

On 16 April 1998, Mr. C. filed an application (No. 33), followed on 7 May 1998 by an expanded statement, asking the Tribunal to annul this decision of the Secretary-General and, claiming that the Administration had been guilty of several irregularities, to award him compensation for the resulting prejudice.

On 13 July 1998, the Secretary-General submitted his comments rejecting all the applicant's submissions.

On 28 September 1998, the applicant submitted a reply.

On 28 October 1998, the Secretary-General submitted his comments in rejoinder in which he maintained his submissions rejecting the application by Mr. C.

The Tribunal heard:

the applicant, and

Mr. Nicola Bonucci, Legal Counsellor, Legal Directorate of the Organisation, on behalf of the Secretary-General.

It handed down the following decision:

The facts

Mr. C., a grade B4 assistant statistician, was recruited by the Organisation on 18 November 1968 and had had an indefinite-term contract since 1 July 1970. On 3 January 1996, The Organisation informed him that his post was being suppressed but that he could, on the basis of Instruction 111/1.3, ask for a probationary period of three months in a vacant post.

On 14 February 1996, Mr. C. asked for a probationary period in the post of assistant statistician (B4) in the International Migration and Labour Market Policy Division of the Directorate for Education, Employment, Labour and Social Affairs.

On 20 February 1996, the Head of Personnel informed him that he would be assigned to this Directorate as from 26 February 1996 to familiarise himself with the duties of the post, and that the probationary period would start on 4 March 1996 for a period of three months. On the same date, the Head of Personnel sent a letter to Mr. A., Mr. C.'s hierarchical superior, informing him that the length of the probationary period would be increased by the number of computer training days Mr. C. might need in order to perform his duties. In fact, Mr. C. took a three-day training course on the "Microsoft Access" system.

During the first month of his probationary period, Mr. C. was not given direct access to the "Help Desk" service, an aid to persons having difficulty in using the "Microsoft" system, in accordance with the usual practice in this Directorate of centralising requests for computer assistance.

Two monthly intermediary reports were made on Mr. C.'s probationary period, and one final report. These indicated that although showing great willingness to learn and working long hours, the applicant had difficulty in coping with the tasks assigned to him, and constantly needed the help of his colleagues. It was in these circumstances that the third report, dated 31 May 1996, recommended that the Secretary-General not confirm Mr. C. in the post.

On 5 and 6 June 1996, Mr. C. underwent medical examinations at the medical pavilion and was placed on sick leave (7 to 14 June).

By memoranda of 3 June and 8 July 1996, Mr. C. contested the procedure used to assess his probationary period and that used to establish his PARS annual report for the year 1995.

He complained that after duly signing his PARS report on 26 January 1996, his superiors changed the content of the report without signing again, and then required the applicant to sign this new, less favourable version.

On 8 July 1996, the Organisation offered to transfer the applicant to a grade B2 post, an offer accepted by Mr. C., and then informed him, on 11 July, that this post would be suppressed in the course of the year, at which time Mr. C. would receive the indemnities corresponding to grade B2.

On 19 July 1996, the applicant was told he would not be confirmed in his functions. On 16 September, the Staff Board for B grades met and recommended that Mr. C.'s appointment be terminated pursuant to Regulation 11 a) ii). On 18 October 1996, Mr. C. received a memorandum informing him that his appointment would be terminated on 17 February 1997.

On 12 December 1997, Mr. C. told the Organisation that he wished to benefit from the provisions relating to special leave and to convene the Joint Advisory Board.

On 27 February 1997, the Head of Personnel informed the applicant that in the absence of new provisions concerning the conditions for terminating appointments, the provisions in force were applicable.

On 10 March 1997, Mr. C. confirmed that he would like the Joint Advisory Board to meet in order to examine the conditions in which his 1995 PARS report was established, as well as the application of Instruction 111/1.3 of the Staff Regulations.

The Board met for the first time on 29 April 1997 and decided that it was unable to give an opinion since it had not received the opinion of the Staff Board for B grades. After receiving this document, it met again, on 7 November 1997, and found that the dismissal of Mr. C. was not illegal and that while there was a lack of transparency concerning the use of the Help Desk during his

probationary period and his 1995 PARS report had been changed in an irregular fashion, these two anomalies had not caused Mr. C. sufficient prejudice to entitle him to compensation.

By letter of 19 January 1998, the Head of Human Resource Management informed Mr. C. that having regard to this opinion, the Secretary-General did not intend to change his decision to terminate the applicant's appointment. This is the decision that Mr. C. is asking the Tribunal to annul.

The validity of the suppression of Mr. C.'s post

The Tribunal notes that, as Mr. C. himself acknowledges, his post was suppressed in the much wider context of the difficulties being experienced by the Organisation. Mr. C. complains that the suppression of his post made it possible to keep other posts within his service, but choices of this type fall within the Organisation's discretionary powers which the Tribunal has no jurisdiction to review unless there is something to suggest a misuse of powers or a manifest error of judgment.

The validity of Mr. C.'s probationary period

Mr. C. complains first of all about the conditions in which he had, or rather did not have, access to the Help Desk service. The Tribunal notes, as did the Staff Board for B grades and the Joint Advisory Board, that Mr. C. did not, in this respect, suffer discriminatory treatment. It may indeed be a matter of regret that members of staff in Mr. C.'s position are not given more help in understanding the conditions in which this service may be used, but the Tribunal notes that, having regard to the nature of the difficulties encountered by Mr. C., this circumstance, which is not, in any event, contrary to the rules in force in the Organisation, is not sufficient to invalidate the Secretary-General's decision.

Mr. C. complains in the second place that the final assessment report of his probationary period, which concluded that he should not be confirmed in the post, was established on 31 May 1996 whereas, having regard to an extension because of a training course, the official date of the end of his probationary period was not until 7 June. The Tribunal is not, on this point, convinced by the argument of the Secretary-General to the effect that the length of probationary periods laid down in the provisions in force is not necessarily three months, but a "maximum" of three months. It is not contested that in this case, the probationary period offered to Mr. C. was indeed for three months. However, the Tribunal notes that the shortcomings noted in this final assessment report were such that the author of the report could conclude that Mr. C. could not overcome them in the few days remaining. This irregularity did not, therefore, in this case, have any influence on the Secretary-General's decision.

The validity of the report for 1995

Mr. C. complains that after a first version of his appraisal report (PARS) for 1995 had been signed by his immediate superior and by himself in January 1996, a second version was submitted to him for signature on 31 May 1996. The Tribunal, which has already had occasion to criticise the practices of the Organisation as regards the establishment of appraisal reports, can only reiterate its criticisms and express the firm hope that such practices will cease in future. Clearly, one and the same year cannot be the subject of two different reports established by the same persons.

However, like the Joint Advisory Board, the Tribunal finds that this irregularity did not in this particular case cause prejudice to the applicant of a kind that would justify acceding to his requests for annulment and compensation.

In the first place, the substitution of the words “the quantity and quality of the work completed were satisfactory under the division of labour which has been worked out and with quite close supervision” for the original “the quantity and quality of work completed were fully satisfactory” does not have the importance attributed to it by the applicant, and in no way implies that the “close supervision” referred to has any connection with Mr. C.’s state of health.

In the second place, the Tribunal notes that Mr. C. signed this new version while contesting the suppression of his post in written comments which show that he was able to express himself without constraint. He did not, in his observations, at all contest the change described above, of which he had been duly informed.

Lastly, the fact that Mr. C.’s superior did not sign the report a second time, although irregular, did not in any way prejudice the applicant’s right to be informed of his latest appraisal report, which he in fact was.

The other alleged irregularities

Mr. C. complains of the circumstances in which the Joint Advisory Board gave its opinion. The Tribunal notes that while the procedure was needlessly prolonged by the Organisation’s refusal to communicate immediately the report of the Staff Board for B grades, the procedure was in the end satisfactory.

Mr. C. objects that the Secretary-General did not, in his letter of 19 January 1998, reply to all his complaints. The Tribunal notes that the adversarial principle is satisfied simply by the Secretary-General duly noting these complaints as well as the opinion of the Joint Advisory Board, without his being required to refute all the applicant’s arguments.

Lastly, Mr. C. invokes various promises that he alleges were made to him, and refers to the provisions of a document written by the Organisation for multinational enterprises. The Tribunal, however, can only note that these are not sources of law with which it is empowered to enforce compliance.

Consequently,

The Tribunal decides:

the application is dismissed.