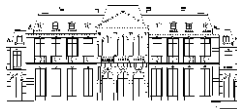


OCDE

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 21 June 1999

JUDGMENT IN CASE No. 39

Mrs. D.

v/ Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 39 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Wednesday 9 June 1999
at 9.30 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 18 March 1998, the applicant, a secretary at the OECD since 1961, sent a letter to the Secretary-General to inform him that she had been exposed to asbestos in the course of her duties since 1969, and to ask him to compensate her for the physical and moral prejudice she claimed to have suffered as a result of a breach by the Organisation of its duty of care for the safety of others.

By letter of 11 June 1998, the Executive Director refused this request. On 6 August 1998, Mrs. D. sent a letter to the Secretary-General appealing against this decision. On 23 October 1998, the Executive Director, on behalf of the Secretary-General, sent the applicant a letter in which he confirmed the refusal of 11 June 1998.

On 25 November 1998, Mrs. D. filed an application (No. 39) requesting the Tribunal to annul the Secretary-General's decision of 23 October 1998, with all the legal consequences resulting therefrom, and to order reimbursement by the defendant to the applicant of costs of an amount to be determined at the end of the procedure.

On 27 January 1999, the Secretary-General submitted his comments rejecting the application in its entirety.

On 17 February 1999, the applicant submitted a reply.

On 26 February 1999, the Staff Association filed an intervention document in support of the applicant's submissions.

On 6 April 1999, the Secretary-General submitted his comments in rejoinder in which he maintained his submissions rejecting the application.

On 10 May 1999, Mr. A. F., an official of the Organisation, submitted an intervention document (received by the Registry on 28 May 1999) under Article 5 a) of the Resolution of the Council of the Organisation on the Statute and Operation of the Administrative Tribunal, claiming that the Organisation had failed in its duty of care towards him, causing him certain injury. He asked the Tribunal to award him compensation for physical and moral prejudice of an amount not less than seven years' salary.

On 4 June 1999, Mr. L., a former official of the Organisation, submitted an intervention document (received by the Registry on 7 June 1999) under Article 5 a) of the Resolution of the Council of the Organisation on the Statute and Operation of the Administrative Tribunal, claiming that the Organisation had failed in its duty of care towards him, causing him certain injury. He asked the

Tribunal to award him compensation for physical and moral prejudice of an amount not less than seven years' salary.

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. David Small, Head of the Legal Directorate of the Organisation, on behalf of the Secretary-General;

and Mrs. Marie-Christine Delcamp, on behalf of the Staff Association.

It handed down the following decision:

The facts

In a letter of 18 March 1998, Mrs. D., a member of staff at the OECD since 1961, asked the Secretary-General to award her fair compensation for the physical and moral prejudice she claimed to have suffered in that, following her exposure to asbestos in the Organisation's premises, she developed a disabling occupational disease within the meaning of the French social security system. She estimated the amount of such compensation at 7 years' salary based on her last gross salary (plus allowances).

On 11 June 1998, the Executive Director replied to Mrs. D. that the existence in the Staff Regulations of a compensation scheme for occupational diseases excluded any additional compensation for prejudice arising from exposure to asbestos at work. He invited Mrs. D. to apply to the competent medical bodies for compensation under the Staff Regulations scheme.

On 6 August 1998, Mrs. D. asked the Secretary-General to revoke the Executive Director's decision.

On 23 October 1998, the Executive Director, on behalf of the Secretary-General, confirmed the decision of 11 June.

On 25 November, Mrs. D. filed the present application.

In support of her application, Mrs. D. produced a medical certificate dated 30 August 1997, in which it is stated that she is suffering from "slight fibro-hyaline shadowing and mainly from calcifications essentially on the diaphragm pleura" as well as a certificate from the Head of Human Resource Management at the Organisation, dated 11 February 1998, that "Mrs. D. has performed secretarial duties since 1969 in premises of the Organisation in which asbestos (amorite and chrysotile) was present. Mrs. D. could have been exposed to such materials when work was being carried out in these premises."

Legal framework of the dispute

The Tribunal has noted that the provisions of the Staff Regulations regarding work accidents and occupational disease, and the Instructions adopted for their implementation, refer on numerous occasions to French social security legislation and indeed to relevant French case-law. It observes, moreover, that until recently, the regime applicable at the OECD was purely and simply that in force in France.

In these circumstances, the Tribunal feels it is possible to transpose to the present dispute, the principles underlying Article L 451.1 of the French Social Security Code which specifies that “subject to the provisions laid down in Articles L 452.1 to L 452.5, L 455.1 L 455.1.1 and L 455.2, no common law action for damages in relation to the accidents and diseases mentioned in this Book (i.e. work accidents and occupational diseases) may be brought by the victim or his heirs”.

Since Mrs. D. is seeking compensation for the prejudice she has suffered by reason of an occupational disease, she must bring her case before the competent bodies set up by the Organisation in order to benefit from the special compensation scheme provided for under the Staff Regulations, before referring any claim to the Tribunal, should she consider such claim founded, that the Organisation was guilty of inexcusable negligence such as to entitle her to additional compensation.

Therefore, in refusing Mrs. D.’ claim on this ground, the Secretary-General did not commit any error in law and the application cannot be admitted.

On the interventions by Mr. A. F. and Mr. L.

The submissions of these interventions, requesting compensation, do not comply with Rule 4 of the Rules of Procedure of the Tribunal which provides that “submissions contained in the intervention document shall not have any other purpose than to support the submissions of either the applicant or the defendant”. They are therefore inadmissible, but this in no way prejudices any rights that Mr. A. F. and Mr. L. may invoke by way of individual applications.

On the intervention of the Staff Association

The Tribunal notes the Staff Association’s intervention which emphasizes the obligations resulting from various international instruments on the safety of workers exposed to asbestos.

On the reimbursement of costs

The Tribunal considers that in the circumstances of the case, Mrs. D. is entitled to reimbursement of her costs up to an amount of FF 10 000.

For these reasons,

The Tribunal decides:

- 1) Mrs. D.’ application is dismissed;
- 2) The interventions of Mr. A. F. and Mr. L. are dismissed;
- 3) The Organisation shall pay the sum of FF 10 000 to Mrs. D. towards reimbursement of her costs.