



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Greffe du Tribunal Administratif

Registry of the Administrative Tribunal

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal

handed down on 17 March 2005

JUDGMENT IN CASE No. 059

Mr. R.

v/ Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 059 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Wednesday 16 March 2005
at 11 a.m. in Annex Monaco of the OECD,
2 rue du Conseiller Collignon, Paris

The Administrative Tribunal consisted of:

Mr. Jean MASSOT, Chairman,
Professor James R. CRAWFORD
and Mr. Justice Dermot KINLEN,

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

By letter of 23 July 2003, Mr. R., a grade L4 official, reviser in the French Section of the Translation Division, was informed by the Head of Human Resource Management that he was being issued with a warning following an altercation between Mr. R. and an employee of the Sécurifrance company, Mr. H.

On 31 March 2004, Mr. R. was asked to come to the police station at La Défense where he was informed, *inter alia*, that a complaint against him had been lodged by Mr. H. on 18 July 2003, a complaint that was subsequently withdrawn.

By letter of 13 May 2004, Mr. R. asked the Secretary-General to annul the decision of 23 July 2003 to issue him with a warning. This request was refused on 15 July 2004.

Mr. R. then filed an application, dated 7 October 2004 and registered as case no. 059, asking the Tribunal to annul the Organisation's decision of 23 July 2003 and to award him certain sums of money by way of compensation.

On 30 November 2004, the Secretary-General submitted his comments asking the Tribunal to hold the application to be clearly inadmissible by reason of the delay in filing it or as being devoid of merit, or alternatively for all the application's submissions to be dismissed.

On 28 December 2004, the applicant submitted a reply.

On 4 February 2005, the Secretary-General submitted his comments in rejoinder.

The Tribunal heard:

Professor Marcel Piquemal, Emeritus Professor, *Agrégé des Facultés*, Counsel for the applicant;

Mr. David Small, Head of the Organisation's Directorate for Legal Affairs, on behalf of the Secretary-General;

As well as Mrs. D., principal administrator in the Staff Association, and Mr. C., reviser in the French Section of the Translation Division, as witnesses called by the applicant.

It handed down the following decision:

The facts

Following an altercation on 9 July 2003 between himself and Mr. H., a fire safety officer employed by the Securifrance company, Mr. R. was, on 23 July following, issued with a warning within the meaning of Instruction 121/1.1 of the Staff Manual. It was stated in this decision that the initial testimony given indicated that Mr. R. had physically pushed Mr. H. to make him leave his office. As a result, the Organisation asked Mr. R. to refrain from such behaviour in future and to apologise to Mr. H. Lastly, it informed him that if Mr. H. took it upon himself to bring criminal proceedings, the Organisation would ensure that the criminal court was in a position to give a ruling.

On 18 July 2003, Mr. H. did indeed file a complaint of minor assault with the police station at La Défense, indicating that "all he wanted was an apology from Mr. R." The Organisation was not informed about this complaint until 26 August 2003.

On 23 July 2003, Mr. R. sent a letter to Mr. H. asking him to accept his apology.

On 28 August 2003, the Organisation replied to Mr. H.'s employer that in view of the apology, the matter could now be considered to be closed.

Without any new event occurring in the meantime, Mr. R. was eventually summoned to the police station at La Défense on 31 March 2004 and seen by a judicial police officer. On 2 April, according to Mr. R. himself, this officer told Mr. R. that Mr. H. had withdrawn his complaint and apologised.

On 13 May 2004, Mr. R. requested the Secretary-General to annul the warning he had been given and to award him a sum equivalent to nine months' salary to compensate the moral prejudice he had suffered.

On 15 July 2004, the Head of Human Resource Management replied on behalf of the Secretary-General that both these requests were refused.

On 7 October 2004, Mr. R. filed an application asking the Tribunal to annul the decision of 23 July 2003 giving him a warning, and to award him financial compensation corresponding to thirteen months' salary as well as the sum of 6.000 euros to cover legal costs.

No need to examine the admissibility of these submissions

As pointed out by the Tribunal in its judgment no. 13 of 22 December 1994, a warning must not be recorded in an official's file. The question of whether it should be withdrawn as from a later date cannot therefore arise. The only question to be answered is whether the Organisation could legally take this decision on 23 July 2003 having regard to the elements at its disposal.

The testimony gathered was at least sufficient to give the administration reason to think that Mr. R. had physically constrained Mr. H. to leave the applicant's office against his will and that Mr. H. intended to lodge a complaint. In these circumstances, the Tribunal considers that the warning given to Mr. R., asking him to apologise, was an appropriate measure which should have brought the incident to a close.

The fact that Mr. H., in spite of the undertaking he had given, did not immediately withdraw his complaint and that the police therefore felt obliged to summon Mr. R., in no way affects the legality of the decision taken earlier. The Tribunal found nothing in the file to support the allegation that the contested measure was motivated by the fact that Mr. R. had served in the Staff Association and that there had therefore been a misuse of power.

The claim of prejudice

The Tribunal finds that Mr. R. has suffered no prejudice through the fault of the Organisation. The latter is not responsible for Mr. H.'s bad faith. The Tribunal notes that the very minor incident at issue here was not publicized in any way and has caused Mr. R. no harm other than having to pay an unnecessary visit to the police station.

Costs

The Tribunal considers that, in the circumstances of the case, Mr. R. should pay his legal costs.

The Tribunal decides

- 1) The application is dismissed
- 2) Mr. R. will pay his legal costs.