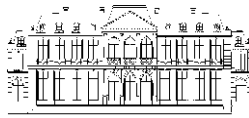


OCDE

ORGANISATION DE COOPÉRATION ET
DE DÉVELOPPEMENT ÉCONOMIQUES



OECD

ORGANISATION FOR ECONOMIC
CO-OPERATION AND DEVELOPMENT

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal
handed down on 20 December 1993

JUDGMENT IN CASE No 8

Staff Association
v/Secretary-General

JUDGMENT IN CASE No. 8 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Tuesday 14 December 1993
at 4 p.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. Thierry MONNIER and Mr. Colin McINTOSH providing Secretariat services.

The OECD Staff Association, by letter to the Secretary-General of 5 November 1991, asked the Organisation as a matter of principle to reimburse certain costs incurred by the Association in the defence of interests of members of the staff and their families. The Organisation agreed to reimburse FF 20 000 (less than half the expenses then incurred).

The Association took the matter up again on 19 October 1992, and on 13 January 1993 referred it to the Joint Consultative Committee. Eventually the Secretary-General agreed to reimburse two-thirds of the expenses.

On 13 May 1993, the Association asked the Secretary-General to re-examine this decision and on 15 June 1993 the Secretary-General declined to do so.

The Association filed an application before the Tribunal claiming that the Secretary-General's decision of 15 June 1993 was not well-founded in law, and requesting the Tribunal to order the reimbursement of a further amount of FF 28 125 of expenses incurred.

The Tribunal heard:

Professor David Ruzié, Counsel for the Staff Association;

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

And, as witnesses, Mrs. D., reviser in the Translation Division, and Mrs. N., Statistical Assistant in the Economics Department.

It gives the following decision:

The facts

The Staff Association of the OECD has for a number of years been engaged in defending the interests of the families of certain of its members whose partners have been faced with the cessation of the payment of French family allowances, and also with demands for the repayment of allowances said to have been wrongly paid.

These disputes arose in 1987, when certain Family Allowance Funds revised the existing interpretation of the Agreement of 5 March 1959 (JORF 25 October 1959) relating to Social Security between the Organisation and France. Under Article 1-1 of the Agreement, "Established members of the staff of the Organisation... shall be subject to French social security legislation, with the exception of that relating to family allowances...". This had previously been interpreted not to exclude the partners of officials of the Organisation from the benefits of French family allowances if they were otherwise qualified to receive them under French law.

The position taken by the Association was in substance the same as that taken by the Organisation in its representations to the French authorities, both in the context of individual cases and in discussions for a new agreement to replace the Agreement of 1959.

A new Agreement on Social Security was signed on 24 September 1991 and entered into force on 1 January 1993. The Agreement of 1991 made new provisions for, inter alia, family allowances. In the course of its negotiations, the French delegation undertook to take steps to obtain the withdrawal by the Funds of demands for repayment, and in some cases this was achieved. Other cases, however, remain pending. On 16 March 1993 the Organisation offered to act on behalf of the aggrieved persons, in place of the Association, and it has in fact done so.

In 1991, the Association expressed the view that the costs reasonably incurred by it in taking up and defending the various cases should be met by the Organisation on the ground that this was to the financial benefit of the Organisation and also supported the due implementation of the Agreement of 1959 between the Organisation and France. Eventually the Secretary-General agreed to reimburse two-thirds of the expenses, stating that "it would seem normal for the Organisation in principle to assume the financial consequences of this dispute of an exceptional nature". But he refused to reimburse all the costs incurred, since the Association had voluntarily got involved in the cases in 1987, but had only in 1991 raised the issue of reimbursement and had only in 1992 formulated this issue in terms of an entitlement.

Jurisdiction and Admissibility of the Application

It was not disputed that the Tribunal had jurisdiction over the application under Article 1 b) of the Statute of the Tribunal since the decision challenged was said to have affected the Association or directly prejudiced its rights.

First Submission: Regulation 5

Regulation 5 of the Organisation's Staff Regulations provides that "Officials shall be entitled to protection by the Organisation when carrying out their functions". The Association argued that the Organisation had failed in its duty, by not sufficiently challenging the conduct of the Funds, and by failing to ensure, by representations to the French Department of Social Security, compliance with the Agreement of 1959. The Association was therefore compelled to make good the Organisation's failure to act, and should be indemnified for the costs of doing so.

However the Organisation did take up the issue both as a matter of principle, in the context of individual cases, and in the course of negotiating the Agreement of 1991. Its limited success was not due to failure on its part but to the attitude of the Funds, and to the fact that disputes as to the interpretation and application of the Agreement could only be resolved by negotiations. In the circumstances the Tribunal is not satisfied that there was any failure to act or fault on the part of the Organisation.

Second Submission: Regulation 23

Under Regulation 23 of the Staff Regulations, as by Instruction 123, the Association has the task of defending the professional interests and material conditions of the staff. The Association argued that in fulfilling this task in the present case it was also directly furthering the interests and helping to ensure respect for the rights of the Organisation. The Tribunal acknowledges that in the circumstances this was so, and indeed this was accepted by the Secretary-General in the decision complained of. However, despite the valuable work carried out by the Association in the defence of its members' interests, the Tribunal cannot interpret Regulation 23 or the Instruction as conferring on the Association a *right* to be indemnified in those cases where its action directly furthers the interests of the Organisation as such. Moreover it notes that the Association could have sought the direct involvement of the Organisation at an earlier date.

For these reasons the Tribunal rejects the application.