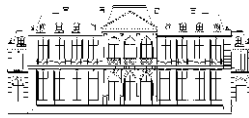


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ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal
handed down on 22 December 1994

JUDGMENT IN CASE No 13

Mrs. L.
v/Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 13 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Thursday 22 December 1994
at 10.30 a.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. Colin McINTOSH providing Registry services.

By letter dated 17 August 1993 addressed to the Secretary-General, Mrs. L., a former official of the OECD, asked the Organisation to remove from her personal file, two notes from her Head of Division in which the applicant's behaviour was criticised. The Organisation refused this request.

On 25 November 1993, Mrs. L. applied to the Joint Advisory Board which concluded that the notes in question should not have been put into her personal file and that they should be removed.

By letter of 14 April 1994, the Secretary-General informed Mrs. L. that he was unable to follow the Board's opinion.

On 10 June 1994, Mrs. L. filed an application (No. 013), asking the Tribunal: a) to annul the decision of 14 April 1994 rejecting her request, with all the consequences in law resulting therefrom, and b) to order the removal from her file of the two notes from Mr. M. dated 12 February and 26 April 1993, as well as payment to her of 8 000 francs by way of reimbursement of her legal costs.

The applicant argues that the decision of the Secretary-General is in breach both of the internal rules of the Organisation and of general principles of law.

On 13 October 1994, the Secretary-General submitted comments rejecting all the submissions in Mrs. L.'s application.

On 26 October 1994, the applicant submitted a reply.

The Staff Association lodged a submission in intervention supporting the applicant's submissions.

On 28 November 1994, the Secretary-General submitted comments in rejoinder.

The Tribunal heard

Professor David Ruzié, Professor at the University of Paris V, Counsel for the applicant;

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

And Mr. Malcolm Gain, representing the Staff Association.

The Tribunal handed down the following judgment:

The facts

Mrs. L. was employed as a grade B3 official in the Library of the Organisation from 1 March 1989 to 31 October 1993.

On 10 February 1993, she sent her colleagues in the Library a memorandum entitled "Allons enfants", in which she complained of the, in her view worrying, situation in the Library, calling into question the management of Mr. M., Head of Division, and invited the addressees of the memorandum to take part in a meeting on Friday 12 February at 2 p.m. in order to discuss what could be done to remedy the situation.

On the morning of 12 February, Mr. M. sent Mrs. L. a note to warn her of the risks she and her colleagues would run if the meeting took place. He told her that she and the other participants would, in this event, expose themselves to an initial warning under Instruction 121/1.1 of Regulation 21 of the Staff Rules, adding that "ceci (était) la répétition d'actions similaires entreprises par (elle) en défiance de l'autorité investie".

A copy of this note was sent by Mr. M. to some twenty persons, including the staff of the Library and Mr. M.'s immediate superiors.

In a note dated 26 April 1993 to Mr. D., Mr. M. described the interview he had had three days earlier with Mrs. L. He said that the applicant had reacted angrily, adding that he had been informed that she was going to refuse to perform her duties at the Library. He said that should she behave in this way, he would be obliged to take disciplinary action against Mrs. L. given that she had already received from him a formal warning "under this chapter".

On 3 May 1993, Mrs. L. asked Personnel Division to remove Mr. M.'s notes of 12 February and 26 April 1993 from her personal file, contesting, in particular, the accuracy of the statements made in the second of these notes. After an interview with Mr. Ramalhete, from Personnel, on 10 May 1993, Mrs. L. again asked, in a memorandum of 17 May, for the notes to be removed.

In a note of 1 June 1993, Mr. Ramalhete replied that he saw no reason to remove these documents and that there were no grounds for criticising the content of the note of 26 April, in which Mr. M. had simply envisaged the possibility of starting formal disciplinary action.

This reply was confirmed by Mr. Thomas Harrington, Head of Personnel, rejecting the appeal made to him by Mrs. L., a refusal communicated to the applicant on 25 June 1993.

On 25 November 1993, Mrs. L. referred her case to the Joint Advisory Board which concluded that the notes in question should not have been put into Mrs. L.'s file and should be removed.

By letter of 14 April 1994, the Secretary-General informed Mrs. L. that he was not in a position to follow the opinion of the Board.

On 10 June 1994, Mrs. L. filed an application asking the Tribunal: a) to annul the decision of 14 April 1994 rejecting her request, with all the consequences in law resulting therefrom, and b) to order the removal from her file of the two notes from Mr. M. dated 12 February and 26 April 1993, as well as payment to her of 8 000 francs by way of reimbursement of her legal costs.

The request for annulment of the Secretary-General's decision

As to the first argument, alleging failure to apply the relevant internal provisions:

The Regulations, Rules and Instructions applicable to the officials of the Organisation contain no general provisions determining the content of the files of members of staff. This question is governed by Office Circular AGP/P(88)11 of 22 July 1988, which provides that:

"2. A staff member's personal file will from now on be in two parts, namely the administrative file and the career file.

1) Administrative File (known as the "red" file)

3. This file contains documents concerning a staff member's appointment, civil status and administrative situation and notices of action issued with respect to him or her. It also contains the papers relating to the official's Social Security affiliation, sick leave, supplementary insurance where applicable, pension and/or Provident Fund rights as well as any application forms for other positions in the Organisation.

2) Career File (known as the "green" file)

4. This file contains material relating to the staff member's career and posts he has held within the Organisation (curriculum vitae, job descriptions and/or job vacancies for posts occupied, training received during service), regular or ad hoc performance reports along with any comments thereon by the staff member ("personal contribution" forms and/or specific memoranda). The file also contains a summary record of the career history."

This Circular contains no indication as to what documents relating to formal disciplinary action may be included in a staff member's file. However, the Instructions relating to the procedure for disciplinary cases make a distinction based on whether the official's misconduct is or is not considered by his superior to be serious enough to warrant formal disciplinary action. In the latter case, as provided in Instruction 121/1.1, the superior "shall discuss the matter with the official, first to help the official mend the situation, and second to give due warning that failure to mend the situation will lead to disciplinary action". In other cases, when formal disciplinary action is taken, Instructions 121/2.1 and 121/2.2 expressly provide that a copy of the reprimand or of the notification of suspension without salary shall be put into the personal file of the official concerned.

The Tribunal is of the opinion, as the representative of the Secretary-General conceded before the Joint Advisory Board and before the Tribunal itself, that the provisions governing the two types of disciplinary fault should be interpreted as meaning that the due warning provided for under Instruction 121/1.1 should not be put into the file of the staff member in question.

In the present case, no doubt the first note sent by Mr. M. to the applicant did not constitute an initial warning within the meaning of Instruction 121/1.1 since it did no more than envisage the possibility of such a warning. But Mr. M. himself described it as such in his second note, stating that Mrs. L. had already received "a formal warning under this chapter". Consequently, forming as they did part of a formal disciplinary action, the two notes should not have been put into Mrs. L.'s file.

The Tribunal is of the opinion that such notes cannot be considered as ad hoc performance reports within the meaning of the above-mentioned Office Circular of 22 July 1988 either, since they contain the threat of disciplinary action.

Since the application is granted on the basis of this first argument, the Tribunal does not find it necessary to give a ruling on the second one.

The request that the Tribunal order the removal of the two documents from Mrs. L.'s file

Under Regulation 22 c) of the Staff Rules, the Tribunal has the power to annul decisions of the Secretary-General and to order the Organisation to redress the damage resulting from any irregularity committed by the Secretary-General. No provision exists, however, under which the Tribunal may order the Secretary-General to take the measures implied by an annulment decision.

The intervention by the Staff Association

The Association emphasised the importance, in its view, of complying with the rules concerning the keeping of staff files. It fully endorsed the opinion of the Joint Advisory Board and supported the applicant's submissions. The Tribunal takes note of the intervention of the Staff Association.

The claim for costs

In the circumstances of the case, the Tribunal considers that legal costs up to a maximum of 8 000 francs should be reimbursed.

For these reasons, the Tribunal

1. Annuls the decision of the Secretary-General;
2. Awards Mrs. L. reimbursement of her legal costs up to a maximum of 8 000 francs;
3. Rejects Mrs. L.'s remaining submissions.