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ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal
handed down on 9 February 1996

JUDGMENT IN CASE No 17

Mrs. R.
v/Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 17 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Wednesday 31 January 1996
at 2 p.m. in the Château de la Muette
2 rue André Pascal, Paris

The Administrative Tribunal was composed of:

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

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

Mrs. R., a grade B3 official of the OECD, filed an application (No. 17), dated 3 July 1995, asking the Tribunal to annul the Secretary-General's decision notified to the applicant by letter of 4 April 1995, inasmuch as her request for the expatriation allowance was refused.

On 6 November 1995, the Secretary-General submitted comments asking the Tribunal to reject the applicant's request that his decision of 4 April 1995 be annulled.

On 14 December 1995, the Staff Association lodged a submission in intervention supporting the applicant's submissions.

On 18 December 1995, the applicant submitted a reply.

On 10 January 1996, the Secretary-General submitted comments in rejoinder, again asking the Tribunal to reject the application inasmuch as it requested that his decision of 4 April 1995 be annulled.

In his comments in rejoinder, the Secretary-General stated his opinion that an oral hearing was not necessary in this case and asked for Article 10 d) of the Council Resolution on the Statute and Operation of the Administrative Tribunal to be applied.

By letter of 16 January 1996, Maître J-D Sicault, Counsel for the applicant, informed the Chairman of the Tribunal that he had no objection to the Tribunal's examination of the application proceeding without an oral hearing.

After due deliberation, the Tribunal handed down the following judgment:

The facts

Mrs. R., a French national, lived in various African countries from September 1964 to 1977, and in the United States of America between 1977 and 1993. She studied in France from September 1984 to December 1987, before returning to the United States where she worked from September 1989 to April 1993 for the UNDP. In December 1990, she married an American citizen who, in March 1993, came to work in France where he was joined by the applicant in May 1993. From May to November 1993, she worked, by virtue of successive contracts, for UNESCO. On 29 November 1993, she was recruited as an auxiliary,

category IO/02, to carry out the duties of secretary/assistant. On 22 December 1994, she accepted recruitment as a grade B3 secretary/assistant to the Head of the External Relations Division "subject to examination of [her] entitlement to the expatriation allowance". Her entitlement to this allowance was contested in a memorandum from the Human Resources Division dated 20 January 1995. Mrs. R. appealed to the Secretary-General on 23 February and, on 4 April 1995, the Director of General Administration and Personnel informed her that the Secretary-General rejected her appeal. On 3 July 1995, Mrs. R. filed an application before the Tribunal.

The law

Rule 16/3.2 of the OECD Staff Regulations provides that "Officials in category A, L or B who, at the time of their appointment, were nationals of the country where they carry out their duties shall be entitled to the expatriation allowance at the rates fixed in Rule 16/3.1 provided that at that time they had been continuously resident outside that country for at least ten years, no account being taken of previous service in the administration of the said country or in other international organisations".

Instruction 116/3.0 provides that "In the case of successive appointments, the expression "appointment" for the purposes of Rules 16/3 and 16/3.2 shall mean the first appointment of the official, as an auxiliary staff member, consultant, employee or official".

The relevant date, when considering whether Mrs. R. had been continuously resident outside France for at least ten years, is therefore 29 November 1993.

In claiming that she had been, Mrs. R. first of all invokes the exception under Rule 16/3.2 which provides "... no account being taken of previous service ... in other international organisations". She concludes from this that the time she spent working for UNESCO, from May to November 1993, should not be considered as having interrupted her residence outside France for the ten years preceding her recruitment.

The Tribunal does not share this interpretation of the Staff Regulations. It is of the opinion that "previous service in the administration of the ... country [of which the official is a national] or in other international organisations" can only be interpreted, for a French national recruited at the headquarters of the OECD in Paris, as referring to service completed outside France and as meaning that such service is not counted as residence outside France.

Since Mrs. R. does not claim to have retained New York as the centre of her family, professional and economic interests between May and November 1993, the period she spent in Paris working for UNESCO during this time did indeed interrupt her residence outside France, and she cannot claim entitlement to the expatriation allowance.

In these circumstances, the Tribunal is of the opinion that it serves no useful purpose to consider whether the time Mrs. R. spent working for UNDP constitutes "service in [another] international organisation" which also interrupted her period of residence abroad, an argument which was not, moreover, used by the Secretary-General.

Similarly, given that the interruption of May to November 1993 is enough to deprive Mrs. R. of entitlement to the expatriation allowance, there seems little point in considering whether, as claimed by the Organisation, Mrs. R.'s period of study in France, from 1984 to 1987, must also be held to have interrupted her residence outside France.

Having regard to her departure from New York in April 1993 and then to her stay and her work in France during the five months preceding her recruitment by the OECD, the Tribunal cannot consider Mrs. R. as having been continuously resident outside France for ten years at the date of 29 November 1993.

Consequently, Mrs. R.'s application is rejected.

The intervention by the Staff Association

The Tribunal takes note of the intervention of the Staff Association.

The claim for legal costs

In the circumstances, the Tribunal orders the Organisation to pay Mrs. R. the sum of FF 25.000.