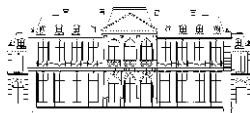


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ORGANISATION DE COOPÉRATION ET
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CO-OPERATION AND DEVELOPMENT

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal
handed down on 10 February 1997

JUDGMENT IN CASE No 19

Mr. R.
v/Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 19 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Friday 7 February 1997
at 9 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 and Mrs. Christiane GIROUX providing Registry services.

In early 1995, Mr. R., a grade L3 official of the OECD, applied for a post of Reviser/Principal Translator, grade L4, in the French Section of the Translation Division. On 16 June 1995, the Human Resource Management Division informed him that his application had not been successful and that another candidate had been appointed. On 7 July 1995, Mr. R. submitted an administrative appeal against this appointment and asked for the Joint Advisory Board to be convened. The Board met on 6 December 1995 and gave its opinion to the Secretary-General on 5 February 1996.

On 6 March 1996, the Secretary-General notified Mr. R. of his decision, taken the previous day, in which he confirmed that he did not intend to review his decision to appoint another candidate to the post for which Mr. R. had applied. Since the Joint Advisory Board had, however, reiterated with force that it found the Secretary-General's refusal on principle to communicate to it the opinions of selection panels highly regrettable, Mr. R., on 30 April 1996, asked for production of the opinion of the selection panel concerning him. He argued that the absence of this opinion meant that the examination of his case by the Joint Advisory Board had not been conducted in a regular fashion.

He therefore asked the Secretary-General to annul the decision notified by the Director for General Administration and Personnel on 6 March 1996, with all the legal consequences resulting therefrom, both as regards his initial appeal and compensation for the moral prejudice suffered. On 29 May 1996, the Secretary-General rejected this appeal.

Mr. R. submitted a summary application (No. 19), dated 6 June 1996, asking the Tribunal to annul the decision of rejection by the Secretary-General of the Organisation of 5 March 1996, with all the legal consequences resulting therefrom, and to award him, as compensation for the moral prejudice suffered, the symbolic sum of 1 franc.

On 13 June 1996, the applicant lodged an expanded statement with the same submissions.

On 14 October 1996, the Secretary-General presented his comments, asking the Tribunal to reject all of the applicant's submissions.

On 18 October 1996, the applicant submitted a reply.

On 5 November 1996, the Staff Association lodged a submission in intervention supporting Mr. R.'s submissions.

On 21 December 1996, the Secretary-General submitted comments in rejoinder in which he argued that if the Tribunal held that the procedure followed in examining Mr. R.'s appeal before the Joint Advisory Board was irregular, the sole consequence should be that this procedure should be started over again without the need to annul the decision appointing the official who had in fact been promoted.

The Tribunal heard

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

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

and Mr. Jean-Marie Strub, representing the Staff Association.

It handed down the following judgment:

Regulation 22 of the Staff Regulations provides that "a) The Secretary-General shall establish an Advisory Board comprising a Chairman from outside the Organisation, and six other members, three of whom shall be nominated by the Staff Association. This Board shall advise the Secretary-General, at the request of the official concerned, on any individual dispute arising from a decision of the Secretary-General and which an official, former official or the duly qualified claimants to their rights consider inequitable to themselves or contrary to the terms of the appointment or to the provisions of these Regulations or of applicable Rules."

And Instruction 122/1.3 provides that "If an official, a former official or a duly qualified claimant to the rights of an official or former official requests that a dispute be referred to the Joint Advisory Board, he shall indicate what decision by the Secretary-General he is questioning, the main reasons for requesting the opinion of the Joint Advisory Board and the main points on which he wishes the opinion to bear."

It is clear from these provisions that the Joint Advisory Board is an advisory body to which an official may, if he wishes, refer his dispute.

The only complaint submitted by Mr. R. concerns the regularity of the procedure followed before the Joint Advisory Board before the contested decision was taken.

The Tribunal can only note that the Board, while deeply regretting the Secretary-General's refusal to communicate to it the opinions of the selection panels, nevertheless issued the opinion that "the complaints submitted to it and the evidence brought to its attention are not such as to establish that Mr. R. has been the victim of wrongful conduct on the part of the Organisation". In these circumstances and given, moreover, that the production of the selection panel's opinion has not been requested by Mr. R. before the Tribunal, the application must be refused.

As to the intervention by the Staff Association:

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

As to the costs:

The Tribunal orders the Organisation to pay Mr. R. FF 7 000.