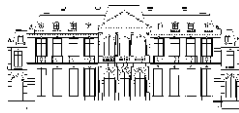


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ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal
handed down on 25 June 1997

JUDGMENT IN CASE No 20

Mr. K.
v/Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 20 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Monday 16 June 1997
at 11 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.

At the end of 1993, after his grade A4 post of principal administrator in the Directorate for Science, Technology and Industry (DSTI) had been suppressed, Mr. K. was transferred to another post in the same Directorate. But in 1995, in the context of the budget for 1996, his new post was also suppressed. In March 1996, he agreed, pursuant to Regulation 11 of the Staff Regulations, to serve a period of probation in a post in the International Energy Agency.

On 10 June 1996, the Head of Personnel informed him that on the basis of his final performance appraisal report, the Organisation did not intend to confirm him in his new functions and asked if he wished to argue his case before the Senior Staff Board for A grade staff.

On 14 June 1996, Mr. K. replied that he did indeed wish to state his case personally before the Board, but that he was unable to do so for the moment, for health reasons. The Board, to which Mr. K. had sent his comments, nevertheless met on 2 July 1996, in his absence, and, after noting he comments sent to it, gave its opinion. Following this opinion, the Head of Personnel informed Mr. K. of the decision taken by the Secretary-General to terminate his appointment under Regulation 11 a) ii) of the Staff Regulations, as from 31 July 1996.

On 20 August 1996, Mr. K. sent an administrative appeal to the Secretary-General requesting compensation for the moral prejudice he claimed to have suffered because two performance appraisal reports, which had played a decisive role in the suppressions of the posts he had held, had not been drawn up in accordance with the regulations. On 18 September 1996, the Secretary-General rejected this appeal.

Mr. K. then filed an application (No. 20), dated 15 October 1996, with the Tribunal, asking it to annul the decision of the Secretary-General of the Organisation of 18 September 1996, and to award him, by way of compensation, an indemnity corresponding to eight months' salary.

On 18 December 1996, the Secretary-General presented his comments asking the Tribunal to reject all the applicant's submissions.

On 10 January 1997, the applicant submitted a reply.

On 15 January 1997, the Staff Association lodged a submission in intervention supporting Mr. K.'s submissions.

On 13 February 1997, the Secretary-General presented his comments in rejoinder.

The Tribunal heard

Professor David Ruzié, of the Faculty of Law, 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. Jean-Marie Strub, on behalf of the Staff Association.

It handed down the following judgment:

Mr. K.'s appointment was terminated as a result of his post's being suppressed on 31 July 1996. He is not asking the Tribunal to annul this decision but to order the Organisation to compensate him for the moral prejudice he claims to have suffered, arguing that the decision was defective. Mr. K. is of the opinion firstly that the decision to suppress his post could have been influenced by the unfavourable report about him drawn up in circumstances he feels not to conform to the regulations, and secondly that the Organisation failed to show good faith as regards finding him an alternative vacant post.

On the possible link between Mr. K.'s appraisal reports and the suppression of his post:

The Tribunal is of the opinion that recourse by the Organisation to the suppression of a post when in fact it is the quality of the official's work which is in question would amount to a misuse of power. Given that in this case the post was suppressed as part of a general measure affecting nearly 50 posts, decided on the basis of general priorities, no such misuse of power has been proved. The suppression of Mr. K.'s post is therefore unconnected with the performance of his duties, and the arguments based on the irregularity of the procedure leading to the establishment of his reports for 1992 and 1993 are therefore not relevant here.

On the connection between the delays in establishing Mr. K.'s reports and the alternative employment offered to him:

The Organisation does not deny that Mr. K.'s reports for the years 1992 and 1993 were late, and contents itself with saying that such delays are common. It is nonetheless necessary that the personal files of officials be kept up to date and that performance appraisal reports and any annotations on them be completed within a reasonable time after the end of the period in question. In the case of an official who, following suppression of his post, must look for a new one, the absence of appraisal reports for the most recent years is necessarily prejudicial. Mr. K. is therefore entitled to compensation on this count.

On the amount of compensation:

Since no prior request for compensation was made with respect to material loss, moral prejudice alone being claimed, the Tribunal feels that an amount corresponding to three months of the applicant's salary would be sufficient compensation.

On the intervention of the Staff Association:

The Tribunal notes the intervention of the Association which stressed the drawbacks associated with the failure to establish appraisal reports in good time.

On costs:

The Tribunal orders the Organisation to pay FF 13.000 to Mr. K. for his legal costs.