

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 25 June 1997

**JUDGMENT IN CASE No 21**

Mr. L.  
v/Secretary-General

**Translation**

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 21 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.

On 27 December 1994, Mr. L., a grade A2/A3 official in the Directorate for Information and Communications, was informed that his post was to be suppressed but that the Organisation would endeavour, between 1 January and 31 March 1995, to find a solution to this problem by means of a transfer. On 8 July 1996, in the absence of any such solution and given the applicant's state of health, the Administration informed Mr. L. that it had decided to submit his case to a medical board with a view to granting him an invalidity pension and capital sum.

On 2 September 1996, the medical board, acting in the capacity of an invalidity board, found that Mr. L. was suffering from permanent invalidity making him totally unfit to carry out the functions corresponding to his post at the OECD, but that this invalidity was not equal to or more than two thirds, within the meaning of the French social security legislation, and did not result from the performance of his duties or from an occupational disease.

On 4 September 1996, the Organisation informed the applicant that, on the basis of this opinion, an invalidity pension would be paid to him as from 1 October 1996, but that he would not receive any capital sum.

On 11 October 1996, the applicant submitted an administrative appeal, arguing that the decision to suppress his post, which he claimed had led to his health problems, had not been taken in a regular fashion.

Since no reply was made to this appeal, Mr. L. filed an application (No. 21), dated 15 January 1997, with the Tribunal, asking it to annul the implicit decision of refusal resulting from the Secretary-General's silence with regard to his administrative appeal of 11 October 1996, to order the Secretary-General to send a letter of apology and to award, as compensation for the moral prejudice suffered by the applicant, the sum of FF 45 000.

On 17 January 1997, having just received notification that his administrative appeal had been rejected, the applicant filed a supplementary memorandum in which he repeated the submissions of his application.

On 21 March 1997, the Secretary-General presented his comments asking the Tribunal to reject all the applicant's submissions.

On 7 April 1997, the applicant submitted a reply.

On 18 April 1997, the Staff Association lodged a submission in intervention supporting Mr. L.'s submissions.

On 9 May 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:

On the submission asking the Tribunal to order the sending of a letter of apology:

No provision of the Staff Regulations, of the Resolution of the Council on the Statute and Operation of the Administrative Tribunal or of the latter's Rules of Procedure gives the Tribunal jurisdiction to rule on such a submission, which can only therefore be rejected. Should the Tribunal conclude that the Organisation had committed some fault which nonetheless did not require the award of damages, the Tribunal's finding to that effect would, moreover, constitute sufficient reparation, and there would be no need for a formal apology from the Organisation.

On the request for compensation:

The submissions relating to compensation for the prejudice suffered by Mr. L. can be accepted only if there is a direct and certain causal link between the moral prejudice the applicant claims to have suffered and the action complained of taken by the Organisation.

As regards the alleged link between Mr. L.'s duties as a staff representative and the suppression of his post:

The Tribunal is of the opinion that there is nothing in the case file which corroborates the allegation made by Mr. L. of a link between the decision to suppress his post and his position as a staff representative.

As regards the alleged link between Mr. L.'s state of health and the suppression of his post:

The Tribunal can only note, in this respect, that at its meeting of 2 September 1996, the invalidity/medical board found that Mr. L. was suffering from permanent invalidity making him totally unfit to carry out the duties corresponding to his post at the OECD, but that this invalidity did not result from the exercise of his functions. The applicant did not challenge any aspect of the procedure followed by the board, nor its findings. The Tribunal notes in addition that the applicant did not bring

any proof to show that his state of health deteriorated following the announcement of the possible suppression of his post.

As regards the alleged link between the circumstances of Mr. L.'s possible redeployment and the establishment of his appraisal reports:

The Tribunal is of the opinion that the short delay in establishing certain documents relating to the appraisal of Mr. L.'s work (however regrettable this delay, for the reasons pointed out by the Tribunal in its Judgment No. 20 of today's date), did not in this case have any influence on the circumstances in which he could have been offered redeployment, since the favourable comments in these documents were brought to the attention of the services concerned.

Consequently, the Tribunal rejects Mr. L.'s application.

On the intervention by the Staff Association:

The Tribunal notes the intervention by the Staff Association which supported Mr. L.'s claim for an indemnity.

On costs:

The Tribunal orders the Organisation to pay Mr. L. the sum of FF 12 000 towards his costs.