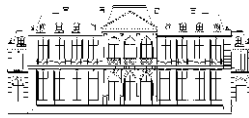


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ORGANISATION DE COOPÉRATION ET
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ORGANISATION FOR ECONOMIC
CO-OPERATION AND DEVELOPMENT

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal
handed down on 25 June 1997

JUDGMENT IN CASE No 23

Mrs. S.
v/Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 23 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.

Mrs. S., a British national, started work at the Organisation on 10 October 1994 as an auxiliary. At that time, she had been living in France since September 1992, i.e. for less than three years. Her contract expired on 12 February 1995. She was then offered a new appointment of the same type from 3 April 1995 to 28 July 1996, and again from 12 August 1996 to 30 September 1996.

At that date, the Organisation offered her a fixed-term contract (of two years). Since 1 October 1996, therefore, she has been an established grade B2 official.

On 14 November 1996, Mrs. S. was informed of the employment conditions offered to her. Having found that the Organisation was not going to pay her the expatriation allowance despite the fact that on 10 October 1994, the date of her first appointment, she had been living in France for less than three years, the applicant submitted an administrative appeal on 23 January 1997.

This appeal was rejected by decision of 3 February 1997.

On 19 February 1997, Mrs. S. filed an application (No. 23) with the Tribunal, asking it to annul the decision of the Secretary-General of the Organisation of 3 February 1997 and to find that she was entitled to the expatriation allowance.

On 18 April 1997, the Secretary-General presented his comments asking the Tribunal to reject the applicant's submissions.

On 22 April 1997, Mrs. B., an official of the Organisation, submitted an intervention under Article 5 a) of the Resolution of the Council of the Organisation on the Statute and Operation of the Administrative Tribunal, claiming that her situation as regards the expatriation allowance was the same as that of the applicant. She asked the Tribunal to decide that her intervention was admissible and, should the principal application be held to be well-founded, to give to her, {mutatis mutandis}, the same rights as Mrs. S..

On 30 April 1997, the applicant submitted a reply.

On 5 May 1997, the Staff Association lodged a submission in intervention supporting Mrs. S.' submissions.

On 13 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:

In order to determine Mrs. S.' entitlement to the expatriation allowance, the rules regulating which were amended with effect from 1 January 1996, it has to be decided whether, under Rule 16/3 of the Staff Regulations, she is subject to the provisions of Rule 16/3.5, which apply to "officials appointed before 1 January 1996", or to those of Rule 16/3.8, which concern "officials appointed after 31 December 1995". It therefore has to be determined whether Mrs. S. meets the conditions laid down in Rule 16/3.5, namely that she had not, at the time of her appointment, been resident in France for at least three years, or those laid down in Rule 16/3.8, which reduces this period to one year.

Instruction 116/3.0 provides: "In order to determine whether the conditions of nationality and residence are met, in the case of successive appointments, the expression 'appointment', for the purposes of Rules 16/3.5, 16/3.7 and 16/3.8, shall mean the first appointment of an official as an auxiliary, salaried consultant, employee or official." In the case of Mrs. S., the relevant date is therefore 10 October 1994 and it is clear that at that date, Mrs. S., in France since September 1992, had been resident there for more than one year but less than three years.

Mrs. S. is of the opinion that as far as the application of Rule 16/3 is concerned, her appointment must be considered to have taken effect on 10 October 1994.

The Tribunal considers, in the light of the new Instruction 116/3.0, that the applicant's argument must be rejected. For it is only with regard to the application of the conditions of nationality and residence, as defined in Rules 16/3.5, 16/3.7 and 16/3.8, that the appointment to be taken into account is the first appointment, in whatever capacity. This exception to the rule that the Regulations, Rules and Instructions governing officials are not applicable to auxiliaries or consultants, must be interpreted restrictively. In the absence of any express provision, it cannot therefore apply to Rule 16/3 of the Regulations, which makes a distinction between officials depending on whether they were appointed before 31 December 1995 or after 1 January 1996. The appointment to be taken into account for the application of this latter provision, can only be appointment as an official which, in the case of Mrs. S., was 1 October 1996, thus bringing her within the scope of Rule 16/3.8. Mrs. S. is therefore not entitled to the expatriation allowance, and her application must fail.

On the intervention by Mrs. B.:

The Tribunal holds that this intervention is admissible.

On the intervention by the Staff Association:

The Tribunal notes the intervention by the Staff Association which is of the opinion that Instruction 116/3.0 did not need to refer expressly to Rule 16/3 which constitutes merely a rule heading.

On costs:

The Tribunal orders the Organisation to pay Mrs. S. FF 10 000 towards her legal costs.