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ADMINISTRATIVE TRIBUNAL

Judgement of the Administrative Tribunal
handed down on 27 March 1998

JUDGMENT IN CASE No. 30

Mr. M.
v/ Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGEMENT IN CASE No. 30 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Wednesday 18 March 1998
at 11 a.m. in the Château de la Muette,
2 rue André-Pascal, Paris

The Administrative Tribunal consisted 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 23 May 1997, Mr. M., a grade A4 official of the Organisation, submitted a prior request to the Secretary-General asking him to withdraw or modify his decision of 10 April 1997 not to renew the applicant's contract. By letter of 30 June 1997, the applicant was informed that the Secretary-General did not intend to change his decision.

On 10 July 1997, Mr. M. filed an application (No. 30) requesting the Tribunal to annul the Secretary-General's decision of 30 June 1997, with all the legal consequences resulting therefrom, including compensation of the moral prejudice suffered by the applicant, and to order payment, by the defendant to the applicant of costs, of an amount to be determined at the end of the procedure.

On 17 November 1997, the Secretary-General submitted his comments rejecting all the applicant's submissions.

On 12 December 1997, the Staff Association filed an intervention document in support of Mr. M.'s submissions.

On 18 December 1997, the applicant submitted a reply.

On 23 January 1998, the Secretary-General submitted his comments in rejoinder in which he maintained his submissions rejecting Mr. M.'s application.

The Tribunal, sitting *in camera* pursuant to Article 10 a) of the Council Resolution, heard:

Maître Jean-Didier Sicault, lecturer in international civil service law at the Paris I and Paris II Universities, Barrister at the Court of Appeal of Paris, Counsel for the applicant;

Mr. David Small, acting Legal Counsel, and Mr. Joao Viegas, on behalf of the Secretary-General;

Mr. Jean-Marie Strub, on behalf of the Staff Association;

and Mrs. N., Administrator, Human Resource Management, as a witness cited by the applicant.

It handed down the following decision:

The facts

On 10 April 1997, the day on which the disciplinary measure which is the subject of Decision No. 29 was taken against Mr. M., a memorandum from the Head of Human Resource Management informed the applicant that his fixed-term appointment would end at its expiry date, 31 December 1997, since the Secretary-General had decided “in the interests of the Organisation” not to renew his contract.

On 23 May 1997, Mr. M. asked the Secretary-General to withdraw this decision and to grant him an indefinite-term contract or at least a fixed-term contract for three years.

By letter of 30 June 1997, the Executive Director informed Mr. M. that the Secretary-General was maintaining his decision.

The present application, registered on 10 July 1997, is directed against this decision.

Legal context

Although the two decisions concerning Mr. M. were taken on the same date and are obviously materially linked, the Tribunal is of the opinion that the legal context of the two cases is different.

As far as the non-renewal of a contract is concerned, the Tribunal adopts the case law of the Appeals Board as most recently expressed in Decision No. 126 of 12 April 1991, Stern. It is of the opinion, in particular, that the Secretary-General’s decision not to renew a contract falls within his discretionary power and it is not for the Tribunal to substitute its own assessment for that of the Secretary-General. It is, on the other hand, for the Tribunal to censure the Secretary-General’s decision if it is issued by a body not competent to do so, is tainted by illegality as to form or procedure, is based on an error as to fact or is tainted by error of law, misuse of powers or a clear error of judgement.

On the claim that the decision not to renew the contract was based on the same allegations as the disciplinary decision and should consequently be annulled.

The Tribunal referred to the grounds given in the Executive Director’s letter of 30 June 1997. They show that the decision not to renew the applicant’s contract was based on Mr. M.’s behaviour and the bad working atmosphere to which it gave rise, that such behaviour, whatever its rating in disciplinary terms, seriously interfered with the work of his colleagues and affected the functioning of the service, and that lastly, similar difficulties had already led the Secretary-General, in 1990, to invite the applicant to rectify his behaviour vis-à-vis his colleagues.

The Tribunal thus finds that even though the disciplinary procedure begun in 1997 is also referred to in the letter, this does not constitute the sole basis of the decision not to renew the applicant’s contract.

In these circumstances, the Tribunal is of the opinion that the annulment of the disciplinary measure does not automatically lead to the annulment of the decision which is the subject of the present dispute.

On the claim that the decision was based on a clear error of judgement

The Tribunal was conscious that several aspects of the file militate in Mr. M.’s favour, notably the fact that the applicant is an official whose contracts have been renewed without interruption for over twenty years and that he has always been assessed favourably by his superiors.

But the Tribunal also noted that the Secretary-General based his decision on the warning which his predecessor had given to Mr. M. in 1990 to ensure that there was no renewal of incidents arising from

behaviour or remarks which could shock some of his subordinates. It noted that in the adversarial part of the disciplinary procedure of 1997, Mr. M. had not denied certain allegations of this type. It formed the opinion, in these circumstances, that the decision of non-renewal was not tainted by any clear error of judgement.

On the claim that the measure challenged was tainted by a misuse of powers since it constituted a disciplinary measure in disguise

The Tribunal is of the opinion that a decision not to renew the contract of an official whose conduct has twice perturbed the proper functioning of the service for which he is responsible does not constitute a disciplinary measure and that, when taken in the interests of the service, is not tainted by a misuse of powers.

On the intervention by the Staff Association

The Tribunal notes the intervention of the Staff Association in which it alleges that the decision challenged by Mr. M. is tainted by a misuse of powers.

On the reimbursement of costs

The Tribunal decides that in the circumstances of the case, the Organisation shall pay FF 6 000 to Mr. M. towards his legal costs.

For these reasons, the Tribunal

- 1) dismisses Mr. M.'s application
- 2) orders the Organisation to pay Mr. M. FF 6 000 towards his legal costs.