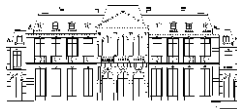


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ORGANISATION DE COOPÉRATION ET
DE DÉVELOPPEMENT ÉCONOMIQUES



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ORGANISATION FOR ECONOMIC
CO-OPERATION AND DEVELOPMENT

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal

handed down on 21 June 1999

JUDGMENT IN CASE No. 36

Mr. M.

v/ Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 36 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Wednesday 9 June 1999
at 9.30 a.m. in the Château de la Muette,
2 rue André-Pascal, Paris

The Administrative Tribunal consisted of:

Mr. Jean MASSOT, Chairman,
Professor James R. CRAWFORD
and Professor Luigi CONDORELLI,

with Mr. Colin McINTOSH and Mrs. Christiane GIROUX providing Registry services.

On 28 August 1997, the applicant, an administrator in the DSTI, sent a letter to the Secretary-General informing him that he had been exposed to asbestos in the course of his duties since 18 July 1973, the date on which he began work with the Organisation, and requesting compensation for the moral prejudice he claimed to have suffered as a result of a breach by the Organisation of its duty of care for the safety of others.

By letter of 12 November 1997, the Executive Director refused this request. He considered that, amongst other things, Mr. M.'s exposure had been very low and, in light of current scientific knowledge, without danger to his health. On 12 January 1998, the applicant sent a letter to the Secretary-General, appealing against this decision. On 21 April 1998, the Secretary-General notified the applicant that he confirmed the Executive Director's decision of 12 November 1997.

On 21 July 1998, Mr. M. filed an application (No. 36) requesting the Tribunal to annul the Secretary-General's decision of 21 April 1998, with all the legal consequences resulting therefrom, and to order reimbursement by the defendant to the applicant of costs of an amount to be determined at the end of the procedure.

On 30 November 1998, the Secretary-General submitted his comments rejecting all the applicant's submissions.

On 28 January 1999, the Staff Association filed an intervention document in support of the applicant's submissions.

On 2 February 1999, the applicant submitted a reply.

On 6 April 1999, the Secretary-General submitted his comments in rejoinder in which he maintained his submissions rejecting Mr. M.'s application.

On 10 May 1999, Mr. A. F., an official of the Organisation, submitted an intervention document (received by the Registry on 28 May 1999) under Article 5 a) of the Resolution of the Council of the Organisation on the Statute and Operation of the Administrative Tribunal, claiming that the Organisation had failed in its duty of care towards him, causing him certain injury. He asked the Tribunal to award him compensation for physical and moral prejudice of an amount not less than seven years' salary.

On 4 June 1999, Mr. L., a former official of the Organisation, submitted an intervention document (received by the Registry on 7 June 1999) under Article 5 a) of the Resolution of the Council

of the Organisation on the Statute and Operation of the Administrative Tribunal, claiming that the Organisation had failed in its duty of care towards him, causing him certain injury. He asked the Tribunal to award him compensation for physical and moral prejudice of an amount not less than seven years' salary.

The Tribunal 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 and the intervening parties;

Mr. David Small, Head of the Legal Directorate of the Organisation, on behalf of the Secretary-General;

and Mrs. Marie-Christine Delcamp, on behalf of the Staff Association.

It handed down the following decision:

Mr. M. does not claim any physical prejudice and, moreover, has not asked to benefit from the provisions of the flat-rate compensation regime for occupational diseases. The moral prejudice of which he complains, caused by his apprehension, shared by the rest of the staff, about the presence of asbestos in the materials used in the construction of OECD buildings, has no characteristics specific enough to entitle him to compensation. In these circumstances, the Secretary-General has committed no error of law in refusing his request.

On the interventions by Mr. A. F. and Mr. L.

The submissions of these interventions, requesting compensation, do not comply with Rule 4 of the Rules of Procedure of the Tribunal which provides that "submissions contained in the intervention document shall not have any other purpose than to support the submissions of either the applicant or the defendant". They are therefore inadmissible, but this in no way prejudices any rights that Mr. A. F. and Mr. L. may invoke by way of individual applications.

On the intervention of the Staff Association

The Tribunal notes the Staff Association's intervention which emphasises the obligations resulting from various international instruments on the safety of workers exposed to asbestos.

On the reimbursement of costs

The Tribunal considers that in the circumstances of the case, Mr. M. is not entitled to any reimbursement.

For these reasons,

The Tribunal decides:

- 1) Mr. M.'s application is dismissed;
- 2) The interventions of Mr. A. F. and Mr. L. are dismissed.