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ORGANISATION FOR ECONOMIC
CO-OPERATION AND DEVELOPMENT

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal

handed down on 9 December 1998

JUDGMENT IN CASE No. 37

Mr. D.

v/ Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 37 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Wednesday 2 December 1998
at 11.00 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.

In its judgment of 18 June 1998 (in case No. 32), the Administrative Tribunal, at the request of Mr. D., annulled the Secretary-General's decision to terminate his appointment.

On 17 July 1998, the Secretary-General explained that since he considered this to be an exceptional case within the meaning of Article 12 c) of the Resolution of the Council on the Statute and Operation of the Administrative Tribunal, he did not intend to reinstate Mr. D., and therefore submitted a request to the Tribunal to fix instead an amount of compensation to be paid to the applicant as redress for any injury incurred.

On 13 August 1998, after asking that the case be discussed before the Tribunal, the applicant submitted an application in which he requested the Tribunal to fix the amount of compensation to be paid to him by the Organisation at FF 6 978 960, corresponding to 15 years' basic monthly salary at the time of dismissal. He also asked the Tribunal to award him legal costs of FF 30 000.

On 16 September 1998, the Staff Association submitted comments in support of the applicant, asking the Tribunal in particular to accede in full to the applicant's request for legal costs since the case had been initiated by the Secretary-General's refusal to reinstate Mr. D..

On 21 September 1998, the Secretary-General submitted comments in which he asked the Tribunal to fix compensation for the prejudice suffered by the applicant not at 15 years' salary but at a symbolic amount to be decided by the Tribunal, and to refuse the applicant's request for the reimbursement of his costs.

The Tribunal heard:

Maître Roland Rappaport, Barrister, Counsel for the applicant;

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

and Mr. Patrice Billaud, on behalf of the Staff Association.

It handed down the following decision:

Article 12 c) of the Resolution of the Council on the Statute and Operation of the Administrative Tribunal provides that "Within one month from the date of notification of the annulment by the Tribunal of a decision of the Secretary-General, the Secretary-General may, in exceptional cases, where he deems it impossible or inadvisable to take the steps which such annulment

would imply, request the Tribunal to fix instead an amount of compensation to be paid to the applicant as redress for any injury incurred.”

As the Appeals Board of the Organisation held in its decision No. 120 of 27 June 1990, Mr. D. is entitled to compensation for the entire prejudice suffered by him as a result of his dismissal being maintained because of the position adopted on 17 July 1998 by the Secretary-General in light of the Tribunal’s judgment in case No. 32, without deduction of the amounts duly paid to him by the Organisation at the time of his dismissal. These amounts would only have had to be repaid by Mr. D. if, after the annulment of his dismissal, the Organisation had reinstated him in pursuance of the Tribunal’s judgment of 18 June 1998. Given that at this date of 18 June 1998, Mr. D. was aged 46 and had accumulated 224 months of pension entitlement with the Organisation, and having regard to the employment situation in those countries in which Mr. D. can reasonably hope to find work, and lastly to the deterioration in job stability within the OECD, the Tribunal considers that the material prejudice suffered by Mr. D. can fairly be assessed at four years’ salary as from 18 June 1998. In the circumstances of the case, Mr. D. cannot, on the other hand, be said to have suffered moral prejudice since the difficulties encountered by the Organisation clearly show that the decisions to suppress his post and to maintain his dismissal were not based on complaints about his personal behaviour.

Lastly, the Tribunal considers, as did the Appeals Board in case No. 120, that the prejudice thus compensated retains an uncertain character in view of the possible occurrence of various events in the four years to come; that, to eliminate this uncertainty, the payments should be made in instalments at intervals to be decided by the Organisation but which cannot be less than once a month; that these payments will be conditional upon proof that the applicant is still living; that any income that Mr. D. earns from a new professional activity will be deducted from them, Mr. D. being responsible for establishing such income by any means possible, notably through tax returns; that it is for Mr. D. to produce such evidence at least once a year; and that, lastly, the payments made by the Organisation will, by assimilation to the rules governing the indemnity for loss of employment in Article 4.1/1 v) of Annex X “Pension Scheme”, give rise to contributions and entitlement to pension rights.

On the intervention by the Staff Association

The Tribunal notes the intervention of the Staff Association drawing attention to the precedent set by Decision no. 120 of the Appeals Board of the OECD.

As to costs

The Tribunal decides that in the circumstances of the case, the Organisation will pay FF 15 000 to Mr. D.

The Tribunal decides:

- 1) The Organisation will pay Mr. D. for a period of four years as from 18 June 1998 a sum equal to the salary the applicant would have received had he been reinstated in

execution of the judgment in case No. 32. This sum will be paid in accordance with the arrangements and on the conditions specified in this judgment.

- 2) The Organisation will pay Mr. D. the sum of FF 15 000 towards his costs.
- 3) Mr. D.'s remaining submissions are rejected.