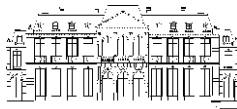


OCDE

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 15 October 1999

**JUDGMENT IN CASE No. 42**

Mr. D.

v/ Secretary-General

**Translation**

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 42 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Friday 8 October 1999  
at 11 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 9 December 1998, in case No. 037, the Tribunal decided that "*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.*"

In executing judgment No. 037, the Organisation proceeded on the basis solely of the basic salary corresponding to the applicant's grade at the time of his departure (A3, step 7), as resulting from the scale in force on 18 June 1998.

On 4 March 1999, Mr. D. submitted an appeal for interpretation, registered as No. 042, asking the Tribunal to specify that the salary he "*would have received*" should be interpreted as taking account of seniority and including the expatriation allowance as well as the family allowances to which he was entitled.

On 10 May 1999, the Secretary-General submitted his comments asking the Tribunal to reject the submissions of the appeal.

On 20 April 1999, the Staff Association filed an intervention document in support of the applicant's submissions.

On 9 June 1999, the applicant submitted a reply.

On 7 July 1999, the Secretary-General submitted his comments in rejoinder in which he rejected all the applicant's submissions.

The Tribunal heard:

Maître Roland Rappaport, Barrister, Counsel for the applicant;

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

and Mr. Malcolm Gain, on behalf of the Staff Association.

It handed down the following decision:

The Tribunal admits that in referring to the “salary” received by Mr. D., its previous judgment can give rise to different interpretations given that it was not expressly stated whether reference was being made to basic salary alone. It therefore gives the following clarification.

The Tribunal considers that the emoluments used as a basis on which to calculate the sum to be paid to Mr. D. should include, in addition to the basic salary, the allowances linked to the applicant’s family situation, but that they should not include the allowances designed to compensate for the constraints linked to the actual exercise of the functions of an official working at the Organisation’s headquarters in Paris.

In these circumstances, the Tribunal decides that the “salary” referred to in its previous judgment includes the household allowance and child’s allowance, but does not include the expatriation allowance, the education allowance or the expatriate child’s allowance. The adjustments accorded to all staff will be applied to this salary, but not the advancement from which Mr. D. might have benefited only if he had continued actually to perform the duties of an official of the OECD.

#### The Intervention of the Staff Association

The Tribunal notes this intervention which supports the request by Mr. D. that his compensation should include all the emoluments he was receiving before his dismissal.

#### Costs

The Tribunal considers that in the circumstances of the case, the Organisation should be ordered to pay Mr. D. FF 5.000 towards his costs.

The Tribunal decides:

- 1) The “salary” referred to in the judgment of 9 December 1998 includes the household allowance and child’s allowance, but does not include the expatriation allowance, the education allowance or the expatriate child’s allowance.
- 2) This “salary” will evolve in line with the adjustments accorded to all staff, only.
- 3) The Organisation will pay Mr. D. the sum of FF 5.000.
- 4) The remaining submissions of the appeal are dismissed.