



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Greffe du Tribunal Administratif  
Registry of the Administrative Tribunal

**ADMINISTRATIVE TRIBUNAL**

Judgment of the Administrative Tribunal

handed down on 8 March 2001

**JUDGMENT IN CASE No. 49**

Mr. G.

v/ Secretary-General

**Translation**

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 49 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Wednesday 28 February 2001  
at 11 a.m. at 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 Arghyrios A. FATOUROS,

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

Mr. G. filed an application (No. 49), dated 30 June 2000, requesting the Tribunal in particular to annul the definitive decision of the Secretary-General, communicated by letter of 28 March 2000, informing him of his dismissal as from 30 June 1999, following the suppression of his post.

On 13 November 2000, the Secretary-General submitted his comments alleging that some of the applicant's requests were inadmissible and asking for the remainder to be dismissed.

On 13 December 2000, the applicant submitted a reply.

On 1 February 2001, the Secretary-General submitted his comments in rejoinder.

The Tribunal heard:

Maître Françoise Rozelaar-Vigier, Barrister, Counsel for the applicant;

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

and Mr. Jean-Louis Rossi, representing the Staff Association.

It handed down the following decision:

The facts

On 6 January 1999, the Head of Human Resource Management notified Mr. G. of the decision to suppress his post in the context of the 1999 budget, informing him that the date of reception of this letter constituted the start of the 10 months' period of notice provided for in Regulation 11 b) of the Staff Regulations.

Following an enquiry by Mr. G., he was informed on 22 January 1999 that the Directorate to which he had been assigned considered that since the work in which he had been participating had come to an end, his post had had to be chosen as the one to be suppressed.

On 26 February, the Head of Human Resource Management informed Mr. G. that a half-time post, which might suit him, was available at the International Energy Agency and on 4 March, Mr. G.

informed the Head of Human Resource Management that he was unable to return to work due to his state of health.

On 3 March, Mr. G. asked the Secretary-General to withdraw the decision of the preceding 6 January, announcing his intention to challenge it before the Administrative Tribunal.

On 31 March, the Head of Human Resource Management informed him that the letter of 6 January was simply a declaration of intent which could not be challenged before the Administrative Tribunal.

On 7 April, the Head of Human Resource Management informed Mr. G. that the period of three months of searching for a post, which began with the letter of 6 January, had come to an end without any post which might suit him having been found, that it was necessary to proceed with the termination of his appointment and that he could elect to be heard by the Board which had the task of giving an opinion on this termination.

On 10 April, Mr. G. said that his state of health did not allow him to appear before this Board.

On 11 June, the Head of Human Resource Management informed Mr. G. of the decision taken by the Secretary-General to terminate his appointment as from 30 June and told him what indemnities would be paid to him, specifying in particular that because he had been on sick leave on 7 January 1999 (the date on which he was notified of the Secretary-General's intention to terminate his appointment), his period of notice was increased by the number of days on which he was on sick leave after this notification.

On 28 July, Mr. G. asked the Secretary-General to annul this decision, failing which to refer the matter to the Joint Advisory Board.

On 27 August, the Head of Human Resource Management replied to Mr. G. that the Secretary-General was maintaining his decision.

On 26 November, Mr. G. filed an application with the Tribunal « subject to his main substantive claim » which he had submitted to the Joint Advisory Board for opinion, alleging that his dismissal was illegal in that the decision was taken prematurely given that he was on sick leave.

On 2 December, the Chairman of the Tribunal informed Mr. G. that he could refer the matter to the Tribunal within three months of the notification to him of the Secretary-General's decision taken after the Board's opinion, inasmuch as it was the same decision which was the subject of the application of 26 November and of the referral to the Board.

On 21 January 2000, the Joint Advisory Board examined the request of Mr. G. and concluded that the misuse of powers alleged by the applicant had not been proved.

On 28 March 2000, the Executive Director communicated to Mr. G. the opinion of the Board and the decision of the Secretary-General to maintain his initial decision.

On 3 July 2000, Mr. G. filed an application with the Tribunal.

#### The admissibility of Mr. G.'s submissions

As Mr. G. was informed by the above-mentioned letter from the Chairman of the Tribunal, his submissions challenging the decision of the Secretary-General to terminate his appointment would be

admissible if this decision was maintained after the opinion of the Joint Advisory Board. It matters little in this respect that the Board heard some only of the arguments put forward by Mr. G. in support of his submissions. The contrary would be true only if Mr. G. had presented submissions directed against another decision of the Secretary-General. But as is clear from the description of the facts, it is the Secretary-General's decision of 11 June 1999, maintained on 28 March 2000, which remains the subject of the present dispute.

#### The allegation of a misuse of powers

Like the Joint Advisory Board, the Tribunal has found nothing in the file to support Mr. G.'s claim that the suppression of his post in 1999 was based on reasons other than the general interest and in particular on the desire to punish the way in which Mr. G. had performed his duties when, four years earlier, he had felt himself obliged to denounce publicly the behaviour of his Head of service. While it is certain that the events of 1994-1995 resulted in Mr. G. being moved from his service of origin, it does not appear that the Organisation, either at the time or subsequently, deliberately assigned him to a post which it thought might be suppressed. This first ground of complaint must therefore be dismissed.

#### The argument that it was not possible to dismiss Mr. G. because of his state of health or of his being on sick leave

It follows from Regulation 11 of the Staff Regulations that the Secretary-General may, after consulting an advisory body, terminate the appointment of an official whose post has been suppressed, that he must, in such cases, notify the official in writing of the decision to terminate his appointment, indicating the grounds for such termination and the period of notice, that the notice period runs from the notification of the Secretary-General's intention to terminate the appointment and lastly that « if an official is on sick leave [...] at the time of the notification of the termination of his appointment, the period of notice [...] shall be increased by the number of days during which such official is actually on sick leave [...] after the notification. »

It is clear from these provisions that notification of an intention to terminate an official's appointment may be given when the official is on sick leave, as Mr. G. was on 6 January 1999.

It is not in dispute that Mr. G.'s entitlement to paid sick leave under Regulation 20 of the Staff Regulations came to an end on 18 March 1999. Mr. G. argues, however, that since he remained ill after this date, he continued to be on « sick leave » since the Organisation had not assigned him any other statutory position.

Even supposing this argument to be correct, this would not, in the opinion of the Tribunal, affect in any way the Organisation's right to continue with the procedure of dismissal on grounds of post suppression or, therefore, the legality of the decision in dispute inasmuch as it terminates the appointment of Mr. G. as from 30 June 1999. At most, this argument might lead to a questioning of the duration of the prolongation of the notice period given to Mr. G. But, on this point, an interpretation that the notice period is prolonged for as long as the official is ill cannot reasonably be upheld. The only meaningful interpretation of Regulation 11 is that it limits prolongation of notice to a period that can be calculated and which can only be that of paid sick leave. There is therefore nothing illegal about the contested decision in this respect.

Lastly, although Mr. G. argues that the Secretary-General should not have taken his decision without the applicant undergoing a medical examination, the Tribunal points out that an official has a right to such an examination only if the Secretary-General's decision concerning him is taken on medical grounds, which is not the case here.

### The comments of the Staff Association

In the absence of written comments by the Staff Association, its representative, present at the hearing, was authorised by the Tribunal to present brief oral comments in accordance with Article 10 b) of the Council Resolution on the Statute and Operation of the Administrative Tribunal. The representative asked that Mr. G. be given fair treatment.

### Costs

The Tribunal considers that in the circumstances of the case, the applicant is entitled to reimbursement of his costs up to an amount of 10.000 francs.

The Tribunal decides

- 1) Mr. G.'s application is dismissed
- 2) The Organisation will pay Mr. G. the sum of 10.000 francs towards reimbursement of his costs.