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 30 March 2004

JUDGMENT IN CASE No. 056

Mrs. G.-D.

v/ Secretary-General

Translation (the French version constitutes the authentic text)

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JUDGMENT IN CASE No. 056 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Monday 22 March 2004

at 10.30 a.m. at the Château de la Muette,

2 rue André-Pascal, Paris

The Administrative Tribunal consisted of

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

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

By letter of 8 July 2003, Mrs. G.-D., a former official of grade B4, was informed by the Head of Human Resource Management that the Secretary-General refused her prior written requests of 2 June 2003 in which she contested both her dismissal on grounds of post suppression and the refusal to recognise the accident she suffered on the premises of the Organisation on 14 January 2003, during her period of notice, as being a work accident.

Mrs. G.-D. then filed an application, dated 2 October 2003 and registered as case No. 056, asking the Tribunal to annul the Organisation's decision to terminate her appointment or, in the alternative, to award her financial compensation.

On 5 December 2003, the Secretary-General submitted his comments asking for these claims to be dismissed.

On 23 January 2004, having obtained an extension of the deadline applicable, the applicant submitted a reply.

On 26 February 2004, the Secretary-General submitted his comments in rejoinder.

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

It handed down the following decision:

The facts

Having entered the service of the Organisation in 1984 at B4 level with an indefinite-term contract, Mrs. G.-D. was notified, on 7 January 2003, of a letter from the Head of Human Resource Management informing her that her post was being suppressed in the 2003-2004 Budget and that her 10-month notice period was beginning to run. She was also informed that she was excused from working during this period and that the Organisation was going to investigate, for 3 months, whether there was a vacant post commensurate with her qualifications and experience, and that if no such post was found, the competent Advisory Board would be consulted about the termination of her appointment.

On 14 January 2003, Mrs. G.-D., who was in her former office, suffered a fall and an injury to her left eye.

On 8 April 2003, the Head of Human Resource Management informed Mrs. G.-D. that, not having found any suitable post, the Secretary-General was going to consult the Advisory Board about the termination of her appointment. After this meeting on 23 April 2003, in the presence of the applicant, the Head of Human Resource Management informed Mrs. G.-D. of the decision to terminate her appointment as from 25 April 2003, and offered the services of the Right Garon Bonvalot company to help her look for employment outside the OECD.

On 2 June 2003, Mrs. G.-D. asked the Secretary-General to withdraw the decision of 25 April 2003 and to change the calculation of her indemnities.

On 8 July 2003, the Head of Human Resource Management informed the applicant that these requests had been refused.

On 2 October 2003, Mrs. G.-D. filed an application asking the Tribunal to annul the decision terminating her appointment, and requesting compensation for the prejudice she claimed to have suffered both because the decision was alleged to be illegal and because she had not had any performance appraisal report since the one established in 1996.

In law

The allegation that Mrs. G.-D.' dismissal should not have been pronounced because she was on sick leave following a work accident.

The accident referred to is the one, mentioned above, which occurred on 14 January 2003 at which time Mrs. G.-D.' notice period had started a week previously and she was excused from service.

Under Rule 17/1.12 a) of the Staff Regulations, "An accident shall be deemed to be a work accident where it occurs as a result of, or in connection with, duties performed within the Organisation and causes physical injury to a serving official". It is clear from this provision that an accident occurring during a period of notice when the official concerned has been excused from service cannot be considered as one occurring either to a "serving" official or "as a result of, or in connection with, duties". Since this provision establishes clearly that the accident suffered by Mrs. G.-D. was not a work accident, the applicant cannot invoke the provisions of paragraph d) of the same Rule, which provides:

> "d) In the event of difficulty in interpreting principles set out in paragraphs a) to c) above, analogous reference shall be made to the French legislation applicable to work accidents and occupational diseases, and to relevant decisions of the French courts".

It makes little difference, in this respect, that the medical and social insurance office of the Organisation initially asked Mrs. G.-D. to fill out a form relating to accidents occurring on work premises and pursued this procedure until 15 April, the date on which Mrs. G.-D. was informed that the procedure had been annulled. Given that Mrs. G.-D. did not meet the conditions for her accident to be recognised as a work accident, the Organisation was obliged to stop a procedure which, not having yet terminated, could not have conferred any right upon her. Although regrettable, this mistake could in no way make the decision of 23 April 2003 terminating Mrs. G.-D.' appointment illegal, even supposing that the Staff Regulations prohibited notifying a decision of termination of appointment to an official on sick leave as a result of a work accident.

The allegation that the Organisation did not do enough to find a suitable post for Mrs. G.-D..

The Tribunal notes, in the first place, that the post of Mrs. G.-D. was suppressed in the context of budget cuts which led to the disappearance of 119 posts in 2003, and notably of 10 posts in the Directorate which employed her, a majority of which in the Publications Division alone, the Division in which she worked.

It notes in the second place that while, in the past, the Appeals Board of the Organisation was obliged to refer to a general principle of international civil service law in order to require the Organisation to make every "endeavour to find a new post corresponding to the qualifications of staff who have been in service for a very long time before their appointment is terminated" (Decision No. 116 of 10 June 1989, referred to in Decision No. 128 of 9 July 1991), the Staff Regulations have, since then, incorporated this rule in Instruction 111/1.7:

"Termination in the event of suppression, reduction, redefinition or redundancy of posts" 111/1.7

In cases in which the appointment of an official is terminated pursuant to Regulation 11 a) iii):

a) The Organisation shall assist the official by seeking actively and spontaneously a vacant post in the Organisation commensurate with his qualifications and experience, and, if this search is unsuccessful, by facilitating his search for employment outside the Organisation.
b) The Secretary-General shall, unless the official renounces thereto in writing, seek such a post during a period of three months following the beginning of the notice.
c) If the Secretary-General has been unable to find such a post by the end of the search period or if the official concerned does not wish to be redeployed, the Secretary-General may then terminate the official's appointment, after consultation with the competent advisory body, paying him the emoluments and allowances correspond to the balance of this period of notice.

Mrs. G.-D. alleges that the Organisation was in breach of this obligation since, during the period of three months when it was seeking a post commensurate with her qualifications and experience, first of all, external recruitment took place to the posts for which she could have applied and, secondly, her curriculum vitae was late in being sent to the Directors who might have offered her a post.

The Tribunal does not agree with this argument. It notes that the applicant herself admits that she had many interviews during the period in question, and the Tribunal cannot substitute its evaluation for that of the Administration in order to decide whether Mrs. G.-D. had all the skills required for these posts. The Organisation's claim that the applicant's special skills in distributing published paper documents had been rendered obsolete by advances in technology did not seem to the Tribunal to be based on a manifest error of appreciation. Lastly, in the circumstances of the case, concerning an official who had long served the Organisation, it is not altogether surprising that Directors who might have offered a post to Mrs. G.-D. did

not ask for communication of her complete file; the failure to distribute her curriculum vitae immediately could not therefore have deprived her of a serious opportunity to present her skills for the posts for which she applied.

Following examination of the written pleadings and the clarifications made at the hearing, the Tribunal considers that it is not in possession of information enabling it to assert that the Organisation failed in its obligation to seek actively and spontaneously during a period of three months a vacant post commensurate with the qualifications and experience of Mrs. G.-D. and that, in these circumstances, the decision to terminate her appointment was not illegal nor did it result in any prejudice giving rise to compensation, no estimate of which was ever given, moreover. Lastly, the Tribunal notes that the applicant did not contest the latest explanations given by the Organisation in its comments in rejoinder as to the accuracy of the calculation of the indemnities due in respect of her entitlement to leave.

The absence of a performance appraisal report later than the year 1996

As the Tribunal noted in its Judgment No. 20 of 25 June 1997:

> "It is nonetheless necessary that the personal files of officials be kept up do date and that performance appraisal reports and any annotations on them be completed within a reasonable time after the end of the period in question. In the case of an official who, following suppression of his post, must look for a new one, the absence of appraisal reports for the most recent years is necessarily prejudicial".

In this case, the Organisation does not dispute that no performance appraisal report was established in relation to Mrs. G.-D. for the years 1997 to 2002. The Tribunal can only regret that bad habits that it criticised nearly seven years ago still continue. This negligence is all the more prejudicial in that it continued up until the eve of the applicant's dismissal.

In these circumstances, but having regard to the absence of detailed arguments in support of any claim that the lack of such appraisal reports did in fact compromise Mrs. G.-D.' chances of being recruited, the Tribunal must restrict itself to compensating the moral prejudice suffered, and considers that a fair assessment of such compensation is six months of the applicant's salary, excluding any allowances relating to the exercise of her functions.

Costs

The Tribunal is of the opinion that the Organisation should pay Mrs. G.-D. € 1 500 in respect of her legal costs.

The Tribunal decides:

1) The Organisation shall pay Mrs. G.-D. an amount corresponding to six months of her December 2002 salary, excluding allowances relating to the exercise of her functions.

2) The remaining submissions of the application are dismissed.

3) The Organisation shall pay Mrs. G.-D. the sum of € 1 500 towards her legal costs.