ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

ORGANISATION DE COOPÉRATION ET DE DÉVELOPPEMENT ÉCONOMIQUES

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal

handed down on 26 March 2012

JUDGMENT IN CASE No. 70

Ms. H

v/ Secretary-General

(Request for Reconsideration in Accordance with the Tribunal's Judgment of 15 March 2011)

The English version constitutes the authentic text.

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JUDGMENT IN CASE No. 70 OF THE ADMINISTRATIVE TRIBUNAL

The Administrative Tribunal consisted of:

Professor James R. CRAWFORD, Chairman

Professor Luigi CONDORELLI

and Mr. Alfredo MADUREIRA,

with Ms. Anne Carblanc providing Registry services.

Background

1. By a Request received in the Registry on 7 July 2011, the Applicant sought a further indemnity in respect of injuries sustained in a workplace accident, the subject of the Tribunal's Decision No 68.

2. By Decision No 68 dated 15 March 2011, the Tribunal, having held the claim admissible, rejected Ms H's principal claim under Rule 17/1.13 b) to the extension of her appointment until 14 May 2009, but deferred her claim to damages until after the decision of the Medical Board, Ms H. having leave to ask the Tribunal to resume its consideration of the case thereafter, if required.

3. The Medical Board convened under Rule 117/1.14 met on 16 March 2011 and unanimously decided that the Applicant was suffering from permanent partial incapacity at a level of 7%. In consequence the Organisation paid her a capital sum of €17,772.25.

The Request

4. In the Request Ms H. argued that the Organisation had behaved in an extremely damaging way towards her, and by its subsequent conduct prevented her from making a more rapid recovery.

5. Under the first of these rubrics, she stressed the difficulties created by the Tribunal's narrow interpretation of Rule 17/1.13 b) for fixed term employees who suffer a work-related injury but who manage to return to work prior to the expiry of their contract, even though their injury may not be consolidated. This was described as 'une carence du Règlement de l'OCDE',

particularly harmful for someone in Ms H.'s situation who was in truth still unfit to resume work but who did so out of a sense of duty.

6. In Decision No 68, the Tribunal confirmed its earlier holding that where a work-related disease has been recognised, an employee "cannot claim compensation on the basis of negligence on the part of the Organisation unless this negligence was inexcusable … or intentional".[1] Ms H. argued that this requirement was satisfied on several grounds: the absence of a central ramp with non-slip surface, subsequent neglect in medical care and extreme slowness in the administration of her claim for financial relief.

7. In response the Secretary General noted that the Applicant had not contested the Medical Board's assessment of her incapacity at 7%, and affirmed that the Organisation had not committed an inexcusable fault. Evidence was tendered to show the existence of a central ramp at the time of the accident. In fact no other accident at the site had been recorded since 2000, and (whether or not such a ramp was in place) the organisation had no grounds to treat the steps as posing a particular hazard. The Organisation's response to the accident, furthermore, was reasonable and did not violate any legal requirement.

8. The Staff Association supported the Application, expressing the view that "il semble dès lors juste d'indemniser la réquerante pour le prejudice subi du fait des lacunes des dispositions statutaires applicables".

The Tribunal's conclusions

9. The Tribunal has already held, with the force of *res judicata*, that in the circumstances which occurred the Applicant was not entitled to have her period of service extended pursuant to Rule 17/1.13 b). There is no basis to revisit that finding. As to the adequacy of the Rule, it is not the function of the Tribunal to rewrite the entitlement rules to deal with situations such as that of Ms H.: rather it is a matter for the Organisation to decide whether to retain or amend it, and if the latter in what way.

10. Nor is there any basis for holding the Organisation liable for inexcusable negligence. There was no history of accidents on the stairway and it appears that a ramp with anti-slippage surface was in place.[2] But whether or not this was so, there was no inexcusable neglect, either in seeking to prevent the accident or in the handling of it afterwards. In this regard the Tribunal refers to its comments in paragraph 41 of Decision No 68.

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[1] Decision No 68, para 40, citing *F v Secretary-General*, Application No 35, OECD Administrative Tribunal, 21 January 1999, http://www.oecd.org/dataoecd/11/22/44546012.pdf,

[2] Witness testimony presented by the Applicant on this point is somewhat vague and was prepared more than 2 years after the event. The Tribunal prefers the contemporary evidence (invoices, etc) suggesting that a ramp had been installed before the accident.

For these reasons, the Tribunal:

(1) Rejects Ms H.'s claim for damages;

(2) Awards her €2000 on account of legal costs incurred.

Done in Paris on 26 March 2012

(signed) James Crawford

Chairman

(signed) Anne Carblanc

Registrar