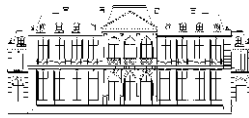


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ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal
handed down on 9 May 1994

JUDGMENT IN CASE No 9

Mrs. P.
v/Secretary-General

Translation

(The French version constitutes the authentic text)

JUDGMENT IN CASE No. 9 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on Monday 9 May 1994
at 11 a.m. in the Château de la Muette
2 rue André Pascal, Paris

The Administrative Tribunal was composed of:

Mr. Jean MASSOT, Chairman,
Mrs. Elisabeth PALM
and Professor James R. CRAWFORD,

with Mr. Colin McINTOSH providing Registry services.

By letter dated 26 January 1993 addressed to the Secretary-General, Mrs. P., a former official of the Organisation, asked the Organisation to pay her an indemnity corresponding to 4 months' emoluments. The Organisation refused this request.

On 24 March 1993, Mrs. P. applied to the Joint Advisory Board which, in its opinion of 11 May 1993, recommended that she be paid an indemnity of 20 000 francs.

By letter of 26 July 1993, the Secretary-General informed Mrs. P. that he was unable to follow the Board's opinion.

On 25 October 1993, Mrs. P. filed an application (No. 009), asking the Tribunal: a) to annul the Secretary-General's decision of 26 July, b) to order the Organisation to pay an indemnity of 30 000 francs by way of compensation for all the moral prejudice suffered by the applicant and c) to order payment of 5 000 francs by way of reimbursement of expenses incurred.

On 31 January 1994, the Secretary-General submitted comments rejecting the applicant's submissions a) and b). As for the claim for reimbursement of expenses, he referred to Article 13 of the Council Resolution of December 1991 on the Statute and Operation of the Administrative Tribunal.

The Secretary-General considered that the application did not warrant an oral hearing and asked that Article 10 d) of the above-mentioned Council Resolution be applied.

In her reply of 25 February 1994, Mrs. P. did not contest the request for application of Article 10.

On 16 March 1994, the Secretary-General submitted comments in rejoinder.

The Staff Association lodged a submission in intervention supporting the applicant's submissions.

Mrs. P. was represented by her Counsel, Professor Philippe Cocatre-Zilgien, Professor in the Law Faculty of the University of Rheims.

The Secretary-General was represented by Mr. Christian Schricke, Legal Counsel, Head of the Legal Directorate of the Organisation.

After deliberating on 9 May 1994, the Tribunal handed down the following judgment.

The facts

Between 1972 and 1992, the applicant served as an official of the Organisation. In 1992, she was working as a translator and had reached the grade of L3/10. By memorandum of 27 July 1992, she informed the Head of Personnel that since she would be 58 years old on 24 November 1992, she would like to take "early retirement" as from 1 December 1992. On 4 August 1992, the Head of Personnel replied that her contract would be terminated as from 1 December 1992 in accordance with the provisions of Regulation 13 of the Staff Rules and that she would then receive "payment of the emoluments corresponding to the period of notice appropriate to (her) grade".

By memorandum of 13 November 1992, the Head of Personnel informed the applicant that the Administration had made a mistake and that she was not entitled to the four months' emoluments referred to in the memorandum of 4 August.

On 10 December 1992, the applicant asked the Head of Personnel to reconsider his decision. On 15 January 1993, this request was refused. On 26 January 1993, she asked the Secretary-General to make "an ex gratia payment of an indemnity equal to four months' emoluments". On 26 February 1993, this request was refused on the ground, inter alia, that the request for early retirement amounted to "a resignation, which can never involve payment in lieu of notice".

In its opinion to the Secretary-General, the Joint Advisory Board recommended that an indemnity of 20 000 francs be paid to the applicant.

By letter of 26 July 1993, the Secretary-General refused the request for an indemnity, stating that he was not in a position to follow the opinion of the majority of the Board. He referred to the minority opinion of the Board with which he concurred, whereby the mistake could not be deemed serious enough to warrant payment of an indemnity for moral prejudice.

The alleged illegality as to the form of the Secretary-General's decision, notified by letter of 26 July 1993

The applicant argued that the decision of 26 July was vitiated by a formal defect, sufficient to warrant its annulment. She claimed above all that the Secretary-General had improperly mentioned the differences of opinion within the Board and that he seemed to consider that a majority recommendation had less force than a unanimous one.

The Secretary-General contests this argument, claiming that the reference to the minority opinion of the Board in no way served as a basis for the decision but simply demonstrated the similarity between the reasoning adopted by the Secretary-General and that of the minority of the Board.

The Tribunal, which makes no comment on the alleged inadvisability of referring to the majority and minority opinions of the Board, can only find that the way in which the reference was made cannot render the decision unlawful.

The mistakes made by the Administration of the Organisation

The applicant claims that the Administration was at fault in four ways: 1) officials of the Organisation are not properly informed of their rights and obligations under the Staff Regulations, 2) a particularly serious initial error was made by the personnel service, which 3) took a long time to correct the mistake, and 4) did not take adequate steps to rectify the initial error.

The Secretary-General recognises that an administrative error was committed. He claims that it was due to confusion, on the part of the Administration, between the concept of "early retirement" -- for which provision is made in the pension scheme rules which specify that an "early" retirement pension may be claimed between 50 and 60 years of age -- and the claiming of retirement benefits, as provided for in Regulation 13 of the Staff Rules. He denies that the Organisation was at fault on any other ground.

The Tribunal first of all notes that the applicant and the Organisation agree that an administrative error was committed when the applicant was told -- without having given the Organisation any wrong information about her situation -- that she would receive four months' emoluments on leaving the Organisation. The parties also agree that the Organisation was entitled to correct the error. They disagree, however, about the manner in which such an error should be corrected. The mistake was made on 4 August 1992 and corrected on 13 November 1992, before any payment had been made to the applicant. The Tribunal is of the opinion that even though the applicant might well have made specific plans on the basis of the error committed, there are not, in the case in point, any special circumstances such as to oblige the Organisation to pay -- contrary to the pension scheme rules -- any indemnity in respect of a wrong decision. Nor does the Tribunal find the applicant's other arguments convincing. The Tribunal therefore rejects the application.

The intervention by the Staff Association

The Tribunal can only take note of the intervention of the Staff Association which essentially supported the applicant's submissions.

The claim for expenses

The Tribunal finds that the applicant's expenses in this case should be reimbursed.

For these reasons, the Tribunal

1. rejects the application,
2. orders the Organisation to pay the applicant 5 000 francs by way of reimbursement of expenses.