



reply from Ms. de Kermel, and she had not resumed her duties at the Organization as planned, IMO decided to place Ms. de Kermel on special leave without pay as of 1st February 2010. On 20 January 2010, Ms. de Kermel acknowledged receipt of the communication dated 14 January 2010 and the forms attached to it, and asked for additional information about special leave without pay. Taking into account the number

disputes the argument that the cost-sharing formula was rejected and claims that it was decided by consensus that IMO should cover the costs in question.

16. Ms. de Kermel states that the Secretary-General did not follow staff regulation 5.2 (annual leave and special leave), which provides that the Secretary-General may grant special leave only in exceptional cases, and under staff rule 105.2 (special leave), which refers to important reasons. Moreover, Ms. de Kermel claims that the Secretary-General did not act in good faith throughout this case.

17. Ms. de Kermel claims that on 20 January 2011, she did in fact reply to the communication of 14 January 2011 informing her that she had been placed on special leave.

87.

20. Ms. de Kermel therefore claims that the decision to place her on special leave without pay, to recall her to London and to refuse her request for annual leave, which were taken in violation of staff regulation 5.2 by an incompetent authority who did not act in good faith, were the result of an abuse of power and/or were equivalent to a hidden sanction.

21. Ms. de Kermel argues that the staff regulations guarantee freedom of association for staff members and that, as noted by the Administrative Tribunal of the International Labour Organization (ILO), IMO was required to consult the Staff Association before taking any decision that would affect its work. Ms. de Kermel says that, as a result of that decision particularly as regards its change of position regarding cost sharing, IMO had undermined an important element of staff representation within the United Nations system, limiting the ability of FICSA to encourage members to elect the most qualified candidates to the highest positions. Moreover, by its action, IMO had abridged the right of staff members to freely elect their representatives.

22. Finally, Ms. de Kermel claims that the delay of JAB in submitting its report on the review of her appeal had the effect of violating her right of appeal.

23. Ms. de Kermel asks for damages and interest in addition for the financial loss she suffered when she was placed on special leave without pay, as well as damages and interest for moral or non-pecuniary harm, in an amount equivalent to one year's net base salary. Ms. de Kermel also asks the Appeals Tribunal to consider the fact that the present case is one in which exceptional circumstances apply that would justify granting compensation of more than two years of net base salary.

Secretary-General's Answer

24. Before discussing Ms. de Kermel's appeal, the Secretary-General asks the Appeals Tribunal to explain the nature of the review to be conducted in this case. In particular, he asks the Tribunal to determine whether the measures decided by JAB are equivalent to those of the UNDT, which would limit the role of the Appeals Tribunal to the competencies defined in article 2.1 of the Statute of the Appeals Tribunal or whether, on the contrary, the Appeals Tribunal is acting in this case as a jurisdiction of the first and last instance.

25. The Secretary-General argues that it is clear from the exchanges between IMO, on one hand, and Ms. de Kermel and FICSA, on the other, that IMO would fund Ms. de Kermel's assignment to FICSA for

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case, IMO took note of her observations and reviewed the case file in order to correct in future any problems brought to light by this situation

31. The Secretary-General argues that the role of JAB and the Appeals Tribunal is to offer advice in cases of staff appeals against administrative decisions where there has been an alleged breach of the terms of employment, including of all applicable regulations, or against disciplinary measures. It does not concern decisions taken by inter-agency bodies. The Secretary-General claims that JAB was reluctant to undertake a review of inter-agency cost-sharing arrangements, over which IMO had no control, and he argues that this position should be confirmed by the Appeals Tribunal

32. The Secretary-General argues that the question of freedom of association was duly considered by JAB and that JAB explicitly concluded that there had been no breach of that right. Moreover, the IMO Staff Union had stated that as far as it knew, there was no circumstance that would require the Organization to

Considerations

36. The Appeals Tribunal is seized of an appeal against an administrative decision dated 27 June 2011 taken by the Secretary-General of IMO on the basis of a JAB. The Secretary-General rejected Ms de Kermel's appeal against the decision to place her on special leave without pay starting with effect on 16 April 2010, as well as the related decisions concerning, on the one hand, her annual leave and her return to IMO Headquarters at the end of her release to the General Secretary of ICSA and, on the other hand, the views of IMO regarding the ongoing process of reaching an inter-agency cost-sharing agreement.

37.

43. Staff regulation 5.2 provides that special leave may be granted by the Secretary-General in exceptional circumstances, and staff rule 5.2 adds that special leave may be granted with full or partial pay or without pay for such periods as the Secretary-General may prescribe.

44. Under these provisions, only the Secretary-General, or an official to whom he has delegated authority before the date of the decision, is legally qualified to place a staff member on special leave without pay.

45. In this case, it does not follow from the documents included in the case file that the decision to place Ms. de Kermel on special leave without pay was signed by the Secretary-General. JAB did indeed point out in its report that it was a well-known fact that HRS is authorized to take decisions on human resources but, in any event, it was not established that the Secretary-General had delegated his authority, in advance of the disputed decision, to Human Resources or whoever had in effect taken the decision. It followed that the decision to place Ms. de Kermel on special leave without pay was irregular.

46. It was clear, however, from a letter dated 18 February 2009 addressed to the President of FICSA

sufficient evidence to lead one to seriously think that the Secretary-General did not exercise his discretionary power in good faith, much less that he was imposing a hidden sanction.

49. With regard to the argument that the right to defence was not respected because of the delay, we recognize that JAB could have submitted its report sooner, but the delay was not such that it could be regarded as a breach of the right to appeal.

50. In conclusion, we believe that the appeal does not so much raise legal questions as it refers to the relations between an organization and a federation of staff associations in the context of inter-agency relations. Whatever the Tribunal might think of IMO policy on the matter, it is within the context of the broad discretionary power of the authorities of the organization, when their decisions are not arbitrary, are not based on considerations other than those of good management and respect the rules of procedure. We believe that the decisions in dispute are not arbitrary, and they are based on considerations other than those of good management. As regards respect for the rules of procedure, we find that the irregularity mentioned above is not sufficient, in the special circumstances mentioned, to have caused significant harm to the Appellant.

Judgment

51. The appeal is dismissed.

Original and Authoritative Version: French

Done this 29th day of June 2012 at Geneva, Switzerland.

(Signed)

Judge Courtial, Presiding

(Signed)

Judge Garewal

(Signed)

Judge Simón

Entered in the Register on this 12th day of September in New York, United States.

(Signed)

Weicheng Lin, Registrar