

LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL

**ORDINARY SESSION OF FEBRUARY 1946
HEARING OF 26 FEBRUARY 1946**

***In re* AUBERT**

Judgment No. 26

THE LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed on 19 February 1940 by Miss Eva Henriette Aubert against the Secretariat of the League of Nations;

Considering that the complainant asks the Tribunal to:

As to form:

Declare that this complaint, filed on 19 February 1940, challenging the decision taken against the complainant by the Director of Personnel on 29 December 1939, is in due and proper form;

On the merits:

Find that the amendments to the provisions of Articles 18 and 73 of the Staff Regulations resulting from the decision of the Assembly of the League of Nations of 14 December 1939 were wrongly and unlawfully applied to the complainant;

Declare that she will remain covered by the provisions in force on 1 January 1931;

Find consequently that the complainant is entitled to:

- (1) a single payment of compensation equal to one year's salary under Article 73 of the Staff Regulations;
- (2) the minimum period of six months' notice provided for in Article 18 of the Staff Regulations, in lieu of which, under Article 20, salary may be paid;

Order the Secretariat of the League of Nations immediately to pay the complainant the remainder of the compensation in the amount of one year's salary (of which she has received only one instalment equal to three months): 10,800 Swiss francs with interest at 5 per cent as from 1 February 1940. If necessary, expressly order it to do so;

Order it also to pay the complainant the following sums or compensation:

- (1) 6,000 Swiss francs, representing the five months' salary of which she was deprived by receiving only one month's notice instead of six, with interest at 5 per cent as from 1 February 1940;
- (2) 750 Swiss francs to cover part of her lawyer's fees;

Dismiss all other or contrary claims by the Secretariat of the League of Nations;

Order it to pay all the costs of the proceedings;

THE FACTS:

The complainant entered the service of the Secretariat of the League of Nations in July 1923.

By a letter of 31 January 1931 the Secretary-General of the League of Nations offered the complainant a category I (intermediate class) class B post in the Second Division as a permanent non-locally recruited official.

This letter stipulated that the proposed appointment would be governed by the provisions of the Staff Regulations that were in force.

After some negotiation, Miss E. H. Aubert finally accepted the terms of the proposed appointment.

On 20 December 1939 the Director of Personnel offered Miss Aubert a choice between the suspension of her appointment and her resignation on certain conditions.

On 23 December the complainant replied that she could not accept the terms of the dilemma proposed. She contended that she had held a permanent appointment for almost 20 years and she relied on Article 80 of the Staff Regulations, which established the principle of the inviolability of acquired rights.

By a letter of 29 December 1939 the Director of Personnel replied that, in view of her reply, the Secretary-General was obliged to apply to her the provisions of Article 18 of the Staff Regulations as amended by the Assembly's decision of 14 December 1939, and that her appointment would end on the evening of 31 January 1940.

The letter specified that the termination entitled the complainant to the compensation provided for in Article 73 of the Staff Regulations, which had also been amended by the same Assembly decision.

COMPETENCE:

I. Article II, paragraph 1, of the Statute of the Administrative Tribunal expressly states that the Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials.

This wording implies the granting of full competence in respect of the performance of all contractual undertakings entered into by the League of Nations with regard to its officials; no distinction whatsoever is drawn between an act of the Assembly itself and an act of the officials upon whom it confers authority over staff.

The Statute of the Tribunal was submitted to the Assembly on 26 September 1927 and adopted as drafted without any amendment with regard either to its spirit or to its letter. Thus it was the Assembly itself which, by its sovereign authority, determined the scope of the Tribunal's competence and thereby gave its staff a guarantee of justice which thenceforward it could not retract.

This was in fact confirmed by the Committee of Jurists set up by the Chairman of the First Committee of the 13th Assembly in its formal opinion on the latter's right to reduce officials' salary; this opinion of 8 October 1932 recognising the competence of the Administrative Tribunal was given unanimously by the members of the Committee (Mr. Andersen, Mr. Basdevant, Mr. Huber, Sir William Malkin and Mr. Pedrosa), cf. *Official Journal of the League of Nations*, Special Supplement No. 107, p. 206.

II. Moreover the Secretary-General was wrong to apply the Assembly resolution of 14 December 1939 to the complainant through the impugned decision.

Indeed, the complainant's letter of appointment pre-dated 15 October 1932 and contained no clause stipulating that the Assembly could amend its terms.

The Staff Regulations of the Secretariat in force at the date on which the complainant was appointed formed part of her employment contract and the complainant had an acquired right by virtue of which amendments of the Staff Regulations, in particular the disputed amendments of Articles 18 and 73, could not be applied to her unless there was mutual agreement.

No such mutual agreement was reached.

The argument that the Assembly, by its resolution of 14 December 1939, intended to infringe acquired rights without expressly mentioning this cannot be accepted.

In this respect, the text adopted by the Assembly is unequivocal and does not even refer to Article 80 of the Staff Regulations, which provides that acquired rights must be respected.

The defendant's arguments to the effect that any other interpretation than that which it proposes would lead to absurd results, or would deprive the provisions in question of any practical effect, must also be rejected, since the disputed amendments apply to officials appointed after 15 October 1932 and to those appointed prior to that date but whose letter of appointment contains a clause stipulating that the terms thereof may be amended by the Assembly (Article 30*bis* of the Secretariat's Staff Regulations).

The complaint is therefore not only formally but also effectively directed against a decision of the Secretary-General, which means that at all events it falls within the competence of the Administrative Tribunal.

ON THE MERITS:

The complainant, under her employment contract, had an acquired right to have the version of Articles 18 and 73 of the Secretariat's Staff Regulations in force on the date of her appointment applied to the termination of her appointment by the impugned decision.

The impugned decision wrongly deprived the complainant of the benefit of this acquired right by applying the Assembly resolution of 14 December 1939.

It is to no avail that *force majeure* was relied on in order to justify the application of the aforementioned resolution.

Indeed, it cannot be accepted that the League of Nations was unable to honour the acquired rights of its staff.

The complainant is therefore entitled to:

1. six months' notice, or the payment of six months' salary in lieu thereof;
2. the immediate payment of compensation equal to one year's salary;

Given that salary in lieu of notice will be paid only after a lengthy delay and that compensation was paid late and in instalments on various dates, the complainant is entitled to interest, which the Tribunal sets *ex aequo et bono* at 4 per cent.

For the above reasons,

The Tribunal,

Declares that it is competent;

Finds the complaint receivable in form and in substance;

Finds that the complainant is entitled to the application of the version of Articles 18 and 73 of the Secretariat's Staff Regulations in force on the date of her appointment;

Consequently:

1. Orders the defendant to pay the complainant 6,000 Swiss francs, representing five months' salary, together with interest at 4 per cent as from 1 February 1940;
2. Orders the defendant to pay the complainant interest at a rate of 4 per cent:
on 10,800 Swiss francs from 1 February 1940 to 1 March 1941;
on 7,200 Swiss francs from 1 March 1941 to 18 February 1942;
on 3,600 Swiss francs from 18 February 1942 to 13 February 1943;
3. Orders the defendant to pay the complainant 500 Swiss francs to cover part of her legal costs;
4. Orders the refunding of the deposit made by the complainant under Article VIII of the Statute of the Tribunal.

In witness of which judgment, pronounced in public sitting on 26 February 1946 by Jonkheer van Rijckevorsel, President, Mr. Eide, Vice-President, and His Excellency Mr. Devèze, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, van Asch van Wijck, Registrar of the Tribunal.

(Signatures)

Albert Devèze
A. van Rijckevorsel
Vald. Eide
W.H.J. van Asch van Wijck

Certified copy,

The Registrar of the Administrative Tribunal.