Registry's translation, the French text alone being authoritative.

LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL

ORDINARY SESSION OF JANUARY 1932
HEARING OF 13 JANUARY 1932

In re DE REGEL

Judgment No. 11

THE LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed on 30 June 1931 by Miss Marie de Regel against the Secretariat of the League of Nations, in which she seeks to be considered a non-locally recruited official in pursuance of the Staff Regulations which entered into force on 1 January 1931;

A. Relations between the League of Nations and its officials are in principle governed by the Staff Regulations in force at the time of recruitment and, insofar as the Staff Regulations contain no relevant provisions or leave an area to the discretion of the parties, by special agreements.

If, during an appointment, new Staff Regulations replacing the Staff Regulations previously in force come to regulate these relations, these new Staff Regulations must determine whether, on what terms and within what limits existing contracts will be affected by the new provisions, without prejudice to the application of general principles of law.

New Staff Regulations did in fact come into force on 1 January 1931.

These new Staff Regulations draw a distinction already implicit in the previous Staff Regulations between officials who have left their place of residence to perform their duties in Geneva and locally recruited officials, in other words those who at the time of their recruitment had already been established, for five years in French-speaking Switzerland, or in French territory within a radius of fifteen kilometres from Geneva (Article 8).

On 23 February 1931, after the entry into force of the new Staff Regulations, the Secretary-General of the League of Nations offered Miss de Regel a category III post in the Second Division of the Secretariat of the League of Nations as a permanent locally recruited official and specified that the contract would be governed by the rules currently in force, among which it mentioned the new Staff Regulations and the Statute of the Administrative Tribunal.

On 1 January [sic June] 1931 Miss de Regel accepted this offer with the reservation, however, that she enjoy any rights she might have under the Staff Regulations not to be deemed to be locally recruited.

As this matter could not be settled by mutual agreement, the question arises of whether Miss de Regel's submission is well-founded.

B. In light of the aforementioned considerations, the issue must be resolved on the basis of the rules of the new Staff Regulations and the declarations exchanged between the parties.

The new Staff Regulations contain a final article which reads: "The present Regulations shall come into force on January 1st 1931 and shall supersede the Staff Regulations in force before that date. Existing terms of appointment shall be maintained except in so far as new terms shall by agreement be substituted therefor."

The dispute referred to the Tribunal essentially turns on the interpretation of this final article and the determination of its exact scope.

The defendant Administration submits that the definition of locally recruited staff given in paragraph 38 of the report of the Committee of Thirteen and now incorporated into Article 8 of the revised Staff Regulations applies only to officials recruited after the entry into force of the revised Staff Regulations.

This plea rests: (a) on the consideration that, when this definition was adopted by the Committee of Thirteen, the Committee approved the statement of the Secretary-General that the system currently applied to serving officials should continue to remain in force for them; (b) on the consideration that the budget for the 1931 financial year presented by the Financial Committee and approved by the Assembly of the League of Nations contained no appropriation for the payment of salary increases resulting from a reclassification of staff; (c) on the consideration that a modification of the conditions of recruitment or of the classification of staff does not *ipso facto* entail the reclassification of all existing staff members in accordance with the new rules.

The Tribunal cannot completely subscribe to this contention.

With regard to the declarations made and opinions expressed by the authorities responsible for the revision of the Staff Regulations during this process, it must be noted that, in accordance with the universally accepted general principles of law, *travaux préparatoires* are of no decisive value for the interpretation of law and in no way constitute an authentic interpretation, but indubitably serve as an indication of the general objects of the law (in this case an improvement of the staff's terms of employment) and even help to clarify the meaning of an ambiguous provision; whereas where the text of the law is clear, the *travaux préparatoires* can never warrant an interpretation which is incompatible with this text.

In this case the text of the final article of the revised Staff Regulations is unambiguous. Its wording certainly makes it clear that there will be no fresh reclassification of existing staff, that the new rules do not have retroactive effect, but that if new contracts are concluded with serving staff members these contracts are governed by the new Staff Regulations.

New contracts are formed not only when new officials are appointed but also when existing members of staff are reappointed. If it were otherwise, there would be no explanation for the rule of the revised Staff Regulations laying down that "[e]xisting terms of appointment shall be maintained except in so far as new terms shall by agreement be substituted therefor".

It is also plain from the foregoing that the Secretary-General of the League of Nations irrefutably had the right not to amend the contracts of serving staff members and not to grant the benefit of the new definitions and salary scale to them. In those cases where, acting within his discretionary power, he decided to offer certain staff members a new appointment, he could not, however, avoid the application of the new definitions of staff members and the corresponding salary scale.

It is in vain that the Secretariat relies on the absence of budgetary appropriations to deal with the financial consequences of such a measure, because the obligations of public administrative bodies are completely independent of their budgetary arrangements.

C. It is therefore necessary to ascertain whether a new employment contract came into being between the League of Nations and Miss de Regel after the entry into force of the revised Staff Regulations.

The Secretariat, in order to deny the existence of any such contract, contends that Miss de Regel did not purely and simply accept the post offered to her by the Secretary-General in his letter of 23 February 1931, but that she replied that she would accept the new appointment provided that she would enjoy all the rights of an international contract. The Secretariat submits that a reply with reservations does not amount to acceptance; for this reason, no new contract could come about and the original contract remains in force.

This objection is groundless.

It must not be forgotten: (a) that, when offering a new contract, the Secretary-General expressly stated that this new contract would be governed by the rules currently in force, to wit the revised Staff Regulations and the Statute of the Administrative Tribunal; (b) that in her reply Miss de Regel did not convey a refusal but merely advanced her claim to have her rights governed by the provisions of the revised Staff Regulations, as she thought that they should be interpreted.

Miss de Regel's reply, while leaving a fundamental clause of the employment contract in abeyance, consequently deferred for the definitive clarification of this clause to legitimate means accorded to the staff by the League of Nations itself and left no room for vagueness or ambiguity.

It follows that this reply was complete and was grounds for a meeting of the minds and therefore there was a new employment contract.

The new relationship between the League of Nations and Miss de Regel was thus subject to the Staff Regulations which came into force on 1 January 1931.

D. For this reason the new definition of locally recruited officials and their salaries therefore had to be applied to her, provided that the conditions set by the new Staff Regulations were met.

One of these conditions was of decisive importance, namely that officials had been established for five years in French-speaking Switzerland, or in French territory within a radius of fifteen kilometres from Geneva.

It is necessary to determine when this condition had to be met.

Considerations of equity would seem to support the complainant's contention that the decisive time for determining whether an official could be locally recruited was that of their first appointment by the League of Nations and that all officials who had left their home country or who had moved at any date in order to perform their duties at the Secretariat should consequently be regarded as having been recruited on an international basis.

However, the Administrative Tribunal, which must rule in accordance with legal rules, cannot subscribe to this submission which is unsupported by any of the positive provisions of the Staff Regulations or by general principles of law.

While the new Staff Regulations apply to this case, not because they had retroactive effect but solely because a new employment contract had come into being, the legal consequence must be that the conditions laid down by the new Staff Regulations must be met when a new employment contract is concluded.

The Secretariat of the League of Nations is therefore right to refuse to apply the new definition of an international official to all officials who had been established for five years in Geneva, or in the surrounding area specified in Article 8.

If it were otherwise, that would mean that the new Staff Regulations were given retroactive effect, a situation which must be ruled out for the considerations set forth above.

This was not the situation of the complainant.

She came to live in Geneva in August 1926 and had not resided there for five years by 1 June 1931, the date on which her letter of acceptance completed the steps needed for the conclusion of her new employment contract.

For this reason the complaint is well-founded and the impugned decision must be rescinded.

At the same time, there are grounds for ordering the full refund of the deposit made by the complainant under Article VIII of the Statute.

For the above reasons,

The League of Nations Administrative Tribunal declares the complaint well-founded; orders the rescission of the decision of the Secretary-General of the League of Nations refusing to define the complainant's status as that of an internationally recruited official and to grant her the corresponding salary;

Orders that the deposit made under Article VIII of the Statute of the Tribunal be refunded in full to the complainant.

In witness of which judgment, pronounced in public sitting on 13 January 1932 by Mr. Albert Devèze, President, and Mr. Montagna and Mr. Froelich, Judges, the aforementioned have hereunto subscribed their signatures, as well as myself, Nisot, Registrar of the Tribunal.

(Signatures)

A. Devèze
R. Montagna
W. Froelich
J. Nisot

Certified copy,

The Registrar of the Administrative Tribunal.