

**LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL**

**(arbitral jurisdiction)**

**ORDINARY SESSION OF MAY 1935  
HEARING OF 11 MAY 1935**

***In re* TCHOUMAKOFF**

**Judgment No. 15**

THE LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed on 25 January 1934 by Mr. Juan Tchoumakoff against the Nansen International Office for Refugees;

The facts:

The complainant was employed by the League of Nations High Commission for Refugees from 1 June 1923 to 1 January 1925.

After the transfer of Refugees Organisation to the International Labour Office, he continued his service on the basis of appointments terminating at the end of each year.

As the Nansen Office was to be set up as an autonomous institution in 1931, by a letter of 18 December 1930 the Secretary-General of the League of Nations, acting in agreement with Dr. Max Huber, the future President of the Office, offered the complainant a six-month appointment from 1 January to 30 June 1931 as delegate of the High Commission for Refugees in Argentina.

The complainant accepted this appointment.

By a letter of 17 March 1931 the President of the Office offered him an appointment as the Office's representative in Argentina for the period 1 April to 31 December 1931, the basic annual salary being calculated as 11,000 Swiss francs.

The complainant accepted this appointment.

After a six-month extension this appointment ended on 30 June 1932.

After the termination of his appointment, the complainant sent some requests for compensation to the Governing Body of the Office.

By a letter of 19 November 1932, the Secretary-General of the Office forwarded to him a decision taken by the Governing Body.

By this decision the Governing Body had determined that the Office had no legal obligation to pay compensation on the normal expiry of a staff member's contract, but that, for considerations of equity, it had approved a recommendation to the Managing Committee that the complainant should be paid compensation in the form of a share of the amount of 47,804.90 Swiss francs put aside by the Office for the possible establishment of a pension fund, this share being worked out by taking account of the emoluments paid to the complainant until his appointment ended as a percentage of all the emoluments paid to Office officials.

As a result of this decision, the compensation awarded to the complainant was calculated on the basis of 3.51 per cent of the total emoluments received by him (80,686.90 Swiss francs).

The complainant received this compensation in the sum of 2,830 Swiss francs.

The complainant challenged this decision in a new request to the Governing Body of the Office.

In a letter of 4 November 1933, the Office advised the complainant that the Governing Body, at its session of 25 October 1933, had maintained its earlier decision after reviewing Mr. Tchoumakoff's claims.

On 25 January 1934 the complainant filed a complaint with the Administrative Tribunal asking it to:

- "1. Declare that, in view of the general circumstances of the case, the compensation paid to him is less than what he should have equitably received;
2. Declare that the decision taken by the Office on his compensation is contrary to the terms of his appointment;
3. Declare that his compensation should have been based on the principle of equivalence with the contributions made by the League of Nations on behalf of officials who were members of the Pensions Fund and who leave its service after more than seven and less than ten years;
4. Set the amount of the compensation which should have been awarded to him in light of the considerable delay in settling this matter."

On the law:

A. Upon the complainant's request for a review of the decision notified to him on 19 November 1932, the Office again examined Mr. Tchoumakoff's claims.

Its last decision (of 25 October 1933), although it reproduces that notified on 19 November 1932, must be regarded as the final decision.

This final decision was notified to the complainant by a letter of 4 November 1933.

The complainant, by a letter of 27 November 1933, informed the President that he would be submitting his case to the arbitration of the Administrative Tribunal.

Under Article 18 of the Staff Regulations of the Office, the complaint must therefore be deemed to be receivable on this point.

B. Under the terms of Article 18 of the Staff Regulations of the Nansen International Office for Refugees, the Tribunal's jurisdiction is confined to ruling on the question of whether a decision adopted by the Governing Body is, from a legal point of view, contrary to the terms of an official's appointment.

The complaint must be considered irreceivable insofar as it concerns questions of equity.

C. The complainant was offered his appointment by a letter from the President of the Office, accompanied by a copy of the Staff Regulations of the Nansen Office, which formed part of his terms of employment.

Consequently, it is necessary to ascertain whether the impugned decision is contrary to the provisions of these Staff Regulations, Article 8 of which concerns the complainant's claims.

Article 8 provides that:

"The Governing Body shall consider in due course the question of pensions, retired pay and sickness insurance. It hereby expresses its preference for affiliation to an existing pensions and insurance fund, to which the Office could contribute premiums as long as the official is in its service."

The complainant submits: 1. that, when the Nansen International Office was set up, the Assembly of the League of Nations had made it a statutory obligation of the Office to pay at the end of officials' service the customary compensation of the League of Nations; 2. that the Assembly had manifested this wish by refusing to reduce by 10 per cent its subsidy of the new Office and the refugee work as it had intended; 3. that, by incorporating Article 8

in the Staff Regulations, the Office had accepted the obligation imposed by it; 4. that it is plain from Article 13 of the Statute of the Office, which reads:

"The Office shall take over all the assets and all the liabilities of the League of Nations High Commissioner";

that the Office has taken on the responsibility for honouring the obligations which it has inherited from the other organs of the League of Nations.

D. It is plain from the documents produced that, in accordance with an Assembly decision, the Nansen International Office was set up as an autonomous institution with its own budget, which was independent of those of the other organs of the League of Nations.

For this reason and in the absence of any actual decisions to the contrary, the Office was bound to pay contributions for its officials as from its setting up in 1931.

The report of the Supervisory Commission No. C.609.M.236.1930 contains the following passage:

"Moreover there is one question which may involve the necessity of exceptional expenditure in 1931; this question was raised in the following terms in the Sixth Committee's report:

'The Assembly will obviously desire to grant the customary notice and compensation to officials who at present form part of the League of Nations Refugee Office, in so far as the International Office cannot make use of their services'."

It is clear from this report that the Assembly was bound to grant compensation only to officials who were not appointed to serve the new Office.

The complainant was appointed in the new Office.

While it is obvious that the text of the Assembly decision concerns only officials who were not taken over by the Nansen Office, it is no less certain that the plan was not to subject officials who were re-employed to less favourable terms.

However, the Tribunal is bound by the text and may not depart from its natural interpretation.

It is equally plain from the report of the Supervisory Commission that the Assembly decision not to reduce its subsidy for the new Office was unrelated to the question of pensions or compensation to be awarded to officials.

On the contrary, it is clear from this report that, when considering this reduction, the Assembly contemplated an entire programme for the progressive winding up of the Refugees Organisation and that it finally instructed Dr. Max Huber to make proposals on the stages of this reduction programme.

Article 8 of the Staff Regulations plainly shows that the contributions to be made for officials would be confined to the periods running from their entry into the service of the new Office to the termination of their appointment.

Insofar as the complainant contends that the Office is bound to honour the obligations which it has inherited from the other organs of the League of Nations, it must be found that, before entering the Office's service, the complainant was not a member of either the Provident Fund or the Pensions Fund of the League of Nations.

There is no proof that, on termination of his appointment with the League of Nations or with the International Labour Office, he was entitled to compensation from these institutions or from the High Commission for Refugees of the League of Nations.

The complainant relied on a request made by the Office to the League of Nations in September 1931 to affiliate its staff to the League of Nations Pensions Fund.

He submits that, through this request, the Office recognised its obligation to pay officials the customary League of Nations compensation calculated on the basis of the length of their service before the Office was set up.

This document shows that the Governing Body asked the League of Nations to express an opinion on whether the League of Nations would defray the share of outstanding contributions which should be paid for the period ending on 31 March 1931 in respect of Office officials who, in the period prior to that date, had served as officials of either the High Commission for Refugees, the International Labour Office or the Refugee Section of the League of Nations.

It is clear from this request that the Office denied that it had any obligation to pay contributions for the period before it was set up.

E. The decision granting *ex gratia* compensation must be interpreted in its widest sense, in other words as granting the maximum compensation to the complainant.

It is therefore necessary to order that the calculation thereof be revised accordingly.

For the above reasons,

The Tribunal,

Dismissing all wider or contrary claims,

Dismisses the complaint filed by Mr. Juan Tchoumakoff against the decision of the Governing Body of the Nansen International Office refusing to grant him compensation after the termination of his appointment;

Orders, ruling on the subsidiary claim regarding the interpretation of the decision of 25 October 1933 of the Governing Body of the Nansen Office, that this interpretation be revised in the manner most favourable to the complainant as may be encompassed by the text;

Orders the refunding to the complainant of the deposit made under Article VIII of the Statute of the Tribunal.

In witness of which judgment, pronounced in public sitting on 11 May 1935 by His Excellency Mr. Albert Devèze, President, Mr. Montagna, Vice-President, and Mr. Eide, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Nisot, Registrar of the Tribunal.

(Signatures)

Devèze  
Montagna  
Eide  
Nisot

Certified copy,

The Registrar of the Administrative Tribunal.