

LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL

ORDINARY SESSION OF MAY 1937
HEARING OF 9 MAY 1937

In re PERRASSE

Judgment No. 17

THE LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed on 24 July 1936 by Mrs. Marie Perrasse against the Secretariat of the League of Nations;

Considering that the complainant asks the Tribunal to:

Find that her complaint is well-founded;

Find that the complainant was appointed at the Secretariat of the League of Nations in 1922 under a contract assuring her of employment until the age of 55; that the Secretariat cancelled this contract when she reached 38 years of age, specifying that there was no fault on her part and that the termination of her contract was not an obstacle to her possible re-employment;

that the termination of her contract was decided by the Administration on account of a reorganisation of services designed to reduce the Secretariat staff;

that this reorganisation obviously ended in respect of Mrs. Perrasse, as is evidenced by the publication of a vacancy notice placed by the Secretariat of the League of Nations in the *Tribune de Genève* of 18 April 1936, as new staff in the category to which Mrs. Perrasse belonged was appointed;

that the grounds for the termination of her contract have therefore disappeared and the re-employment of staff entitles the complainant to receive another appointment on the same terms as if her contract had not been discontinued;

Find consequently, in accordance with the provisions of her employment contract of 16 October 1922 and with Articles 16 (paragraphs 1 and 2), 18 and 22 of the Staff Regulations of the Secretariat of the League of Nations, that the League of Nations or the Secretariat thereof is under an obligation either to re-employ the complainant or to pay her compensation in an amount on which she can live until at least the age of 55, the date until which she was appointed under contract;

Find also that the Secretariat is under an obligation to grant those of the complainant's claims set forth in her letter of 13 January 1936 which have not been settled.

The complaint is formally filed against the letter of 11 May 1936 by which the Secretary-General informed the complainant that he could not allow her to take part in the competition for new posts to be filled in the Secretariat (as this competition was open only to persons aged between 21 at least and 30 at the most), that her rights under the Staff Regulations as an official of the League of Nations had been exhausted and that her situation was identical to that of a person who had never been part of the Secretariat.

The defendant Administration submits that: the discharge decision of 17 March 1934 constitutes a final decision because Mrs. Perrasse failed to file an appeal against it with the Administrative Tribunal within ninety days of being notified of this decision, as required by Article VII, paragraph 2, of the Statute of the Tribunal; no clause of her employment contract or of the Staff Regulations entitles the complainant to be re-employed; the Secretary-General's letter refusing her request for re-employment does not therefore constitute non-observance in substance or in form of the terms of her appointment or of the provisions of the Staff Regulations; for this reason the Tribunal, by virtue of Article II of its Statute, is not competent to hear Mrs. Perrasse's complaint.

The complainant contends that: when her appointment was terminated owing to a reorganisation of the Secretariat and a reduction in its staff, she had no reason to believe that reorganisation would not take place and she could not therefore appeal to the Administrative Tribunal against the decision to dismiss her which, at that juncture, could be considered to be consistent with the terms of her contract and of Article 18 of the Staff Regulations; on the date when the announcement of the competition to fill vacant posts was published, the staff reduction due to reorganisation proved to be fictional; since the reason given for the decision to dismiss her was wrong, her employment contract never ceased to exist but was merely suspended; the Secretary-General's decision of 11 May 1936 constitutes non-observance of the terms of her appointment which assured her employment up to the age of 55 and of Article 16 of the Staff Regulations which entitles those persons who, in some other capacity, have been associated with the work of the League of Nations to be re-employed and consequently the complaint, which has been filed within the prescribed time limit, must be deemed receivable.

Mrs. Perrasse's appointment was terminated in 1934 in a manner which was undeniably consistent with the terms of her contract and with Article 18 of the Staff Regulations.

In accordance with paragraph 3 of that article, the Secretary-General sought the opinion of the Judicial Committee. In its report of 11 April 1934, the Committee indicated that it was convinced that the Administration had taken particular care to ensure the equitable application of the methods recommended by the Supervisory Committee, in other words: the absorption as far as possible in other services of holders of posts which had been abolished and the dismissal of officials who could not be employed elsewhere.

As no appeal was entered against the discharge decision, that decision has become final.

It is to no avail that the complainant submits that the fresh recruitment of shorthand typists proves that the reorganisation in the course of which her appointment was terminated never took place.

On the contrary, the documents submitted to the Tribunal show that the staff retrenchment took place and that no new posts were created in the category of interest to the complainant.

Unforeseeable circumstances may at any time necessitate an increase in the number of officials.

The complainant also contends that the decision of 17 March 1934 was not final because Article 16 of the Staff Regulations gives former officials the right to be re-employed in vacant posts. The Tribunal cannot subscribe to this contention.

This article goes no further than stipulating that, when candidates are of equal merit, preference should be given to those who have already been associated in some other capacity with the work of the League of Nations.

The final decision lies with the Secretary-General when candidates are of equal merit and consequently this provision merely offers the Secretary-General guidance but no grounds for the persons concerned to demand re-employment.

This guidance does not comprise any restriction on the Secretary-General's freedom to stipulate age conditions applicable to all candidates for the new posts.

As the Secretary-General's letter of 11 May 1936 could not therefore constitute in any way non-observance of Mrs. Perrasse's terms of appointment or of the provisions of the Staff Regulations, there is only one decision to terminate her contract, that of 17 March 1934.

For this reason, the complaint is irreceivable.

The complainant also complains of the decision by which in 1925 the Secretary-General refused to include the conditions on which she insisted in the offer of a post of shorthand typist which he made to her. The Tribunal can only refer to Judgment No. 4 of 22 January 1930 which establishes that no complaint against final decisions adopted by the Secretary-General before the Tribunal was set up is receivable.

Insofar as the complainant alleges that the payments which she received when her contract was terminated in 1934 were less than the amount due to her, the Tribunal similarly refers to the aforementioned judgment which establishes that a complaint filed against a document which merely reproduces an earlier final measure is receivable only to the extent that it could be receivable against the said final measure. In the instant case the Secretary-General in his letter of 11 May 1936 only referred to the discharge decision of 1934 in that he reminded the complainant that, when she left the Secretariat, all the terms of her appointment and all the conditions of the Staff Regulations concerning the abolition of posts had been met in full.

In her letter of 13 January 1936 the complainant requested:

- (a) compensation for injury allegedly caused to her by the nature of the two attestations given to her at her request by the Secretary-General, this compensation consisting in the payment of a monthly sum of 476.50 francs until the date of the rectification of the attestations in question;
- (b) certain payments related to the Mutual Sickness Insurance Fund of the staff of the League of Nations;
- (c) reimbursement of the fees charged by Dr. Maystre for giving evidence to the Administrative Tribunal in May 1935;
- (d) reimbursement of the costs of hospitalisation incurred in the summer of 1935 on account of her stay in the preventorium of her canton of origin.

By letter of 21 January 1936 the Secretary-General advised the complainant of the action taken on points (b) and (d).

By letter of 11 March 1936 the Secretary-General denied the requests made under (a) and (c).

As far as these points are concerned, the complaint was not filed within the prescribed time limit and is therefore irreceivable.

Consequently, the complaint filed by Mrs. Perrasse is irreceivable in its entirety and there is therefore no need to examine the substance thereof.

For the above reasons,

The Tribunal

Declares the complaint irreceivable;

Declares that the deposit made by the complainant under Article VIII of the Statute of the Tribunal shall remain forfeit to the Secretariat of the League of Nations.

In witness of which judgment, pronounced in public sitting on 9 May 1937 by His Excellency Mr. Albert Devèze, President, Mr. Eide and Jonkheer van Ryckevorsel, Judges, the aforementioned have hereunto subscribed their signatures, as well as myself, Nisot, Registrar of the Tribunal.

(Signatures)

Devèze
Eide
van Ryckevorsel
Nisot

Certified copy,

The Registrar of the Administrative Tribunal.