

LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL

ORDINARY SESSION OF MAY 1935  
HEARING OF 11 MAY 1935

*In re* PERRASSE

Judgment No. 14

THE LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed on 5 January 1935 by Mrs. Marie Perrasse against the Secretariat of the League of Nations;

The facts:

The complainant, who entered the service of the League of Nations on 3 July 1922 as a temporary official, received a permanent appointment as a shorthand-typist by a letter of 16 October 1922.

On 12 April 1934 the Secretary-General informed the complainant that her appointment would end on 12 October 1934 owing to the reorganisation of the Secretariat and a reduction in the number of posts in the Central Shorthand and Typing Service.

Under Article 73 of the Staff Regulations the complainant received compensation equal to one year's salary, that is 5,450 Swiss francs, and also a sum of 5,322 francs paid by the Provident Fund.

As the complainant contended that in the exercise and on account of her duties she had contracted two serious illnesses resulting in her almost complete incapacity to work, a medical board comprising three physicians was set up, where the Administration was represented by Dr. Weber-Bauler, the Medical Adviser of the Secretariat, and the complainant was represented by Dr. Oltramare, both physicians having chosen Professor Roch as the third member.

The board delivered its report on 28 June 1934.

The questions put to the board and its unanimous answers were as follows:

Question: "Is Miss Perrasse's state of health satisfactory?"

Reply: "No, while Perrasse is not currently suffering from any obvious specific organic disorder, her general state is poor. She still shows signs of some intestinal disorders probably the after-effects of colibacillosis, certainly aggravated by her hypochondria."

Question: "Is the disorder from which Miss Perrasse is suffering due to her physical working environment at the Secretariat?"

Reply: "We think that we can say that Miss Perrasse's state of health is not due to her working conditions at the Secretariat."

On the basis of this report the Secretary-General, by a letter of 15 October 1934, advised the complainant that the Administrative Board had been of the opinion that no compensation should be awarded to her under Article 70 of the Staff Regulations. An *ex gratia* payment of 1,200 francs was made to her nonetheless.

This sum was accepted by the complainant with the express reservation of all her rights, in particular that of referring any matter to the Administrative Tribunal.

On 5 January 1935 Mrs. Perrasse filed a complaint with the Tribunal, asking it:

"To declare that the complainant in the exercise and on account of duties at the Secretariat of the League of Nations contracted two illnesses entitling her to receive reasonable compensation;

To declare, consequently and in accordance with the provisions of Article 70 of the Staff Regulations of the Secretariat of the League of Nations, that the League of Nations or its Secretariat is under an obligation to pay the complainant compensation amounting to 60,000 (sixty thousand) Swiss francs plus interest as from 12 October 1934 at the rate of 5 % (five per cent)."

On the law:

A. Mrs. Perrasse contends that:

- (a) Although she entered the service of the Secretariat in excellent health in 1922, in 1923 she began to suffer from various disorders after chronic carbon monoxide poisoning in Office 205 between 1922 and 1925, and in Office 556 in 1927;
- (b) Successive chills in Offices 205 (from 1922 to 1925) and 470 (1929) and particularly severe overwork during those periods had had other harmful consequences and had prevented the complainant from undergoing extended treatment.

In his oral submissions the honourable representative of the Secretariat objected to the receivability of the complaint on the grounds that the requests for compensation under Article 70 should have been submitted within a reasonable period of time after the date on which the accident or illness allegedly occurred.

Generally speaking, this consideration seems to reflect a legal necessity insofar as, while reconciling officials' interests with the Administration's interests, it offers the latter an opportunity to establish the truth of the alleged causes of the injury to be remedied.

In this case it is of decisive importance that the Secretariat stated in its first reply that it was prepared "to examine the complainant's grievance and to pay her compensation if it is proved that her complaint is well-founded".

The Secretariat may not therefore retract this statement which, once it has been made, gives rise to an acquired right of the person concerned.

B. With regard to the substance of the matter, the Administration's defence may be summarised as follows:

- (a) The complainant has not proved that she was employed in conditions which could have had on her health the effects she describes;
- (b) The Tribunal has no medical testimony which would justify its acceptance of the complainant's allegation, given the existence of the unanimous report of the medical board whose opinion the Secretary-General endorsed when refusing the complainant's request.

In relation to these two issues, which constitute the nub of the dispute, a very detailed discussion took place between the parties in an effort to ascertain whether Mrs. Perrasse was required to work in conditions which were harmful to her health; whether the illnesses from which she suffered and still suffers were the consequence of these conditions; and whether the ensuing incapacity to work warrants the compensation requested.

The Tribunal finds itself confronted with several difficulties in this connection which render its task singularly delicate, to wit the persistent complete disagreement between the parties on the details constituting the root of the dispute, the technical nature of some questions which transcend the Tribunal's competence since they lie in the realms of medical theory and practice and, as the deliberations have shown, the lack of really reliable principles for the diagnosis and the effects of carbon monoxide poisoning, which means that a legal expert's report would be of no use.

In these circumstances the Tribunal considers that it must confine itself to established facts and appraise them cautiously for the sake of justice.

In accordance with these guidelines, it must first be found that the Secretariat's submission contradicts an official document, namely the report of the Medical Adviser to the Secretariat which was appended to the Supervisory Commission's report of 6 May 1930.

This report noted the following:

"The attic, which is reached by a wooden staircase (evacuation hazard in the event of fire), may be considered, like the basement, the worst part of the whole building, despite the considerable improvements which have been made [...]. Room 205 (volume 34m<sup>3</sup>) looks out [...] onto a chimney wall one metre away from the window and the flue from the kitchen sends combustion fumes into the room when the windows are open. These two rooms are clearly unhealthy. On average, 13 officials occupy more or less defective attic premises; most do not have the requisite per person air volume. When these premises were occupied by typists, one of them suffered from specific anaemia probably due to chronic carbon monoxide poisoning."\*

This finding, made at a time when no complaint against the Secretariat existed, is clearly of probative value.

Moreover, an inspection carried out by the members of the Tribunal and the testimony of an employee, Mr. Dufey, confirmed the distinctly unhealthy nature of Office 205, where the complainant had to work during part of her service.

Mr. Dufey, whose improperly evasive attitude must be emphasised by the Tribunal, admitted that soot and coal particles fell on the paper when he occupied Office 205 and the window had to be kept open.

It must be inferred from this that noxious gases from the chimneys could enter the room all the more easily.

With regard to the other office occupied in the past by Mrs. Perrasse, the testimony of its current occupant also confirms its unhealthy character due to smoke from another chimney.

The chills from which Mrs. Perrasse allegedly suffered when she occupied the room in 1929 are confirmed rather than refuted by the evidence, by the inspection carried out by the members of the Tribunal who found traces of an old fissure and by the testimony of Miss Podgorska who shared the room with the complainant and acknowledged that she suffered greatly from the cold one winter.

C. On the other hand, as far as Mrs. Perrasse's health is concerned, it is not true that the complaint filed with the Tribunal is unsupported by qualified medical testimony.

On the contrary, there are numerous items of evidence of this kind in the file and further proof was provided during the hearing.

The Tribunal, rather than enumerating all of them, will mention only those which formed the subject of more in-depth discussion and which are exceptionally important. In July 1926 the Medical Adviser noted that Mrs. Perrasse's health had been greatly weakened. During the same year she suffered from total alopecia and Dr. Weber-Bauler and Dr. Naville certified that the hair loss was not caused by a disease that could be considered as contagious. On 5 March 1929 Dr. Naville certified, with the approval of Dr. Kreteff, that Mrs. Perrasse had suffered from various infections of the upper respiratory tract. On 6 June 1930 Dr. Maystre made the following diagnosis: "chronic laryngo-pharyngotracheitis with acute phases, bilateral cervical adenitis, intercostal and vertebral rheumatism". In the meantime, a general weakening of the complainant's organism and nervous stability has been noted. In 1930 a new series of disorders was diagnosed: gastro-intestinal disorders treated in hospital, cervical ganglion adenitis treated by Dr. Jentzer. In 1933 Mrs. Perrasse suffered from a colibacillosis with multiple side effects (cystitis, enterocolitis, cholecystitis and parametritis). This had a great impact on her mental state.

D. In light of these findings, it is necessary to ascertain whether the above-mentioned pathological pattern is related to the complainant's working environment.

The medical board set up by the Secretariat in 1934 distinctly ruled out any cause and effect relationship between that environment and Mrs. Perrasse's state of health.

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\* Registry's translation.

However, the Tribunal cannot in all conscience agree that this opinion offers the absolute certainty required in this matter, on account of its categorical nature and of some specific considerations which will be clarified later.

This is precisely where the delicate aspect of the dispute lies.

The Tribunal has no hesitation in admitting that the Medical Adviser of the Secretariat was not the doctor best qualified to represent the Secretariat on a board which had to give an opinion on an employee whom he had examined on several occasions either individually or as a member of other medical boards. Dr. Weber-Bauler was naturally – albeit unconsciously – bound by his previous opinions. He was also able to exert a dominating influence on the board's work because of his prior knowledge and previous assessments which were hard to refute or even discuss. While strictly speaking those were not grounds for legal incompatibility, considerations of appropriateness required the abstention of Dr. Weber-Bauler. During the hearing it also became apparent, especially from the testimony of Dr. Maystre, that the Medical Adviser of the Secretariat did not display all the restraint which would have been desirable.

Consequently the firm and categorical conclusions drawn by the medical board should not have a decisive influence on the solution of the dispute.

The Tribunal is of the opinion that it should focus on the following circumstances:

- (a) It is undeniable that in the Medical Adviser's report appended to the Supervisory Commission's report, the "specific anaemia probably due to chronic carbon monoxide poisoning" from which Mrs. Perrasse suffered (for she is certainly the person in question) is attributed to the time that she spent in Office 205;
- (b) The bronchial disorders and rheumatism diagnosed in 1929 and 1930 immediately followed the time spent by Mrs. Perrasse in Office 470, which was likely to cause chills;
- (c) Dr. Maystre, Professor Jentzer and the Medical Adviser agree that all the other above-mentioned ailments could be the direct or indirect, proximate or remote consequence of carbon monoxide poisoning. In the current state of medical science, it is unfortunately impossible to arrive at a formal finding of a cause and effect relationship;
- (d) The dire consequences of carbon monoxide poisoning may become apparent several years later when traces of carbon monoxide are no longer present in the blood.

E. The Tribunal is therefore led to conclude as follows:

The complainant has not supplied any irrefutable proof of a cause and effect relationship between poisoning and her numerous illnesses, but such proof was impossible. Proof to the contrary derived from the medical board's opinion is unconvincing and inconsistent with the lessons of one area of medical theory. In these circumstances dismissal of the complaint might be a miscarriage of justice.

It is therefore necessary to abide by the hypothesis which seems most probable in an area where only hypotheses are possible: to accept that there is a connection between Mrs. Perrasse's poor state of health and the poisoning and chills from which she suffered while at work.

However, the honourable representative of the Secretariat has drawn the Tribunal's attention to a letter in which the complainant said that carbon monoxide fumes had been produced in her home.

The Administration infers from this circumstance that if Mrs. Perrasse suffered from poisoning, she should ascribe it to her private abode and not to the Secretariat premises.

The Tribunal will not subscribe fully to this contention, because the fact that Mrs. Perrasse could have been exposed to poisoning in her flat at night does not rule out the fact that she was exposed to the same hazard during the day in Secretariat offices which had been officially recognised as insalubrious owing to the presence of nearby chimneys.

Account must be taken of this circumstance only in order to reduce the extent of the Administration's responsibility.

F. Mrs. Perrasse's health and consequently her capacity to work do not appear to be completely and definitively compromised.

The request for compensation in the amount of 60,000 francs is unjustified.

Given the existence of some but not complete incapacity for work and considering that the complainant's general state may improve after appropriate and lengthy treatment, while also bearing in mind the concurrent poisoning which cannot be ascribed to the Secretariat, the Tribunal is of the opinion that compensation in the amount of 6,000 Swiss francs is reasonable having regard to the provisions of Article 70 of the Staff Regulations.

However, the *ex gratia* payment by the Secretariat of 1,200 francs must be offset against this sum.

No interest is due as in this case no money was owed.

There are grounds for ordering the full refund of the deposit made by the complainant under Article VIII of the Statute of the Tribunal.

For the above reasons,

The Tribunal

Declares that the Secretariat of the League of Nations must pay Mrs. Perrasse compensation in the amount of 4,800 Swiss francs;

Orders the full refund to the complainant of the deposit she 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.