

**FIRST ORDINARY SESSION**

***In re* WEISS**

**(Arbitral Competence)**

**Judgment No. 4**

THE ADMINISTRATIVE TRIBUNAL,

Being seised of a Complaint dated 26 May 1946 by Mr. Raymond Weiss against the International Institute of Intellectual Co-operation,

Whereas it appears from the circumstances of the case that the Complainant rightfully claims to have been a member, until the liberation of France, of the Staff of the International Institute of Intellectual Co-operation in the capacity of an official en disponibilité;

Whereas in fact the validity of this assertion depends on the following three circumstances:

- (1) Were Mr. Herriot and Mr. de Reynold, President and Vice-President of the Governing Body of the Institute, authorised in the circumstances of 1939 to act in the name of the Governing Body to keep the Institute in being by maintaining a skeleton staff?
- (2) Did they delegate this power to Mr. Weiss and Mr. de Montenach on 19 February 1941?
- (3) Was the Complainant, in using this delegation, justified in prolonging his services en disponibilité until the recommencement of normal activity by the Institute?

Whereas many items in the dossier make it probable that these several questions should be answered in the affirmative, but nevertheless there was up to the present no certainty which permitted a decision on the soundness of the Complainant's claim;

Whereas Mr. President Herriot, on being questioned by the President of the Administrative Tribunal on 26 February 1947, replied in the following terms:

- (1) The Governing Body authorised me in 1939, because of the exceptional circumstances, to take any decision in the name of the Institute concerning, in particular, the permanence of the organism and the maintenance in service or en disponibilité of certain members of the staff;
- (2) During a meeting on 19 February 1941 Mr. Weiss and Mr. de Montenach were expressly instructed to take all measures to maintain this skeleton staff;
- (3) The measures taken by Mr. Weiss and Mr. de Montenach either jointly or separately with the effect of maintaining the skeleton staff, including Mr. Weiss himself, en disponibilité until the Liberation, fall within the limits of the delegation of powers vested in them;

Whereas it is impossible to doubt for a moment the categorical affirmation of Mr. President Herriot;

Whereas Mr. Weiss therefore rightfully understood himself to be in the position of an official maintained en disponibilité and when normal conditions were re-established the Institute wrongfully refused to pay him the arrears of salary to which he was entitled;

Whereas all other considerations which had been raised by one party or the other in the course of the case thus become irrelevant to the solution of the dispute;

Whereas the amounts due to the Complainant by reason of the functions which he exercised are as follows:

(1) full payment of the sums to which he is entitled as salary en disponibilité on the basis of 75 per cent. of his normal salary;

(2) payment to the Pensions Fund of contributions relating to that period;

(3) reimbursement of his travel and subsistence expenses;

Whereas Mr. President Herriot voluntarily declares that he wishes to take advantage of the opportunity to pay homage to the valuable collaboration of Mr. Weiss, and the Tribunal after examining the circumstances of the case associates itself with this declaration;

Whereas the delay in paying the sums due, the extremely painful changes in economic conditions, and the need for Mr. Weiss to provide for his defence, justify, quite apart from any consideration relating to the changes in the purchasing power of the franc, the allocation of compensation under the heading of damages;

And whereas the indubitable moral prejudice suffered by Mr. Weiss by reason of the insecurity in which he has been since the recommencement of normal activity by the Institute should also be taken into consideration;

ON THE GROUNDS AS AFORESAID:

The Administrative Tribunal

Setting aside all fuller or contrary conclusions;

Giving judgment by default, the Defendant having failed to appear, orders the latter:

(1) To pay to the Complainant the sum of 234,000 French francs in respect of salary and allowances due during the period between 1 October 1941 and 1 October 1945;

(2) To pay to the Pensions Fund the contributions relating to this period;

(3) To repay, on the presentation of the bills, the travel and subsistence expenses which the Complainant incurred in the service of the Institute;

(4) To pay the Complainant, as damages, the sum of 200,000 French francs;

Orders the refund of the deposits made by the Complainant in accordance with the Statute of the Tribunal.

In witness of which judgment, pronounced in public sitting on 27 February 1947, by His Excellency Mr. A. Devèze, President, Jonkheer van Rijckevorsel, Vice-President, and Mr. Eide, Judge, the aforementioned have hereunto subscribed their signatures as well as myself, van Asch van Wijck, Assistant Registrar of the Tribunal.

(Signatures)

Vald. Eide

Albert Devèze

A. van Rijckevorsel

W.H.J. van Asch van Wijck