

FIRST ORDINARY SESSION

***In re* HICKEL**

(Arbitral Competence)

Judgment No. 5

THE ADMINISTRATIVE TRIBUNAL,

Being seised of a Complaint dated 30 October 1946 by Mr. Jacques Hickel against the International Institute of Intellectual Co-operation,

Whereas the Complainant, by a contract dated 1 October 1931, was appointed to the post of Principal Editor at the International Institute of Intellectual Co-operation for a fixed period of seven years and was maintained in his functions for a further period of seven years from 1 October 1938;

Whereas his salary was regularly paid to him until 30 September 1944;

Whereas the Complainant by a letter dated 30 September 1945 requested the Acting Director of the Institute: (1) to pay him the amount of unpaid salary from 1 October 1944; (2) to inform him if he was in a position to renew the contract which had just expired;

Whereas by a letter dated 6 October 1945 the Acting Director informed the Complainant "that Mr. Henri Bonnet, former Director of the Institute ... discontinued the payment of your salary as from October 1944. This measure was taken in execution of a mandate which the Governing Body gave my predecessor and it is by virtue of this authority that your contract was terminated. In these circumstances, I see no possibility of calling upon you to occupy another post with the Institute";

Whereas the Complainant submitted to the Governing Body within the proper time limit a claim that there should be a further examination of the decision of Mr. Bonnet and, at the same time, asked the Acting Director to communicate to him a copy of the decision of Mr. Bonnet;

Whereas, without alluding to a decision taken by the Governing Body, the Acting Director, by a letter dated 29 November 1945, replied to the Complainant:

It may be that the decision of Mr. Henri Bonnet concerning you, dated October 1944, was not taken with all necessary legal safeguards, probably as a result of the haste with which Mr. Bonnet had to act at that time. It goes without saying that in my view and, I suppose, in yours, it remains essentially valid;

Whereas a decision taken by the Governing Body has never been communicated to the Complainant;

Whereas later the Complainant filed a complaint dated 30 October 1946 requesting that the Tribunal:

I. Declare and adjudge that the present complaint is receivable;

II. That the conditions in which the International Institute of Intellectual Co-operation terminated the contract of the Complainant constituted a violation of the rules laid down in Article 30 of the Staff Regulations and that the Institute treated the Complainant in a manner which, from a legal point of view, is contrary to the provisions governing his appointment;

III. That the action of the Institute entitles the Complainant to compensation for the injury caused to him, as provided in Article IX of the Statute of the Tribunal;

IV. That the amount of this compensation should be fixed ex aequo et bono at the sum of one million French francs;

V. That the Institute should reimburse the Complainant, upon proof, the costs of the present suit;

VI. That the deposit made in accordance with Article VIII of the Statute of the Tribunal should be refunded to the Complainant;

VII. As a minor point, that the Complainant be admitted as intervenor in the suit at present brought against the International Institute of Intellectual Co-operation by Mr. Weiss, former Legal Adviser;

Arguing that:

The decision of the Director of the Institute, the date of which is unknown, should nevertheless be considered as final, since no meeting of the Governing Body is scheduled to take place between now and 31 December 1946, the date on which the measures of liquidation of the Institute, at present being carried out, should be completed;

Whereas the Defendant, by memorandum dated 30 November 1946, replied:

It is true that the Institute ceased paying the salary of Mr. Hickel on 30 September 1944 although he was in possession of a contract which did not expire until 30 September 1945. This decision was taken by Mr. Bonnet, at that time Director of the Institute, on his return from North Africa, after the liberation of Paris. As a result of the disorganisation which existed in the services of the Institute following the German occupation and the continuation of the state of war, together with the fact that Mr. Bonnet fell ill at that time and was then called upon to fill the high functions of Ambassador of France to the United States of America, the notification of this decision was not made to Mr. Hickel. In fact, his contract was terminated in accordance with Article 29 which provides that the appointment of an official guilty of misconduct may be terminated at any time and that, in such case, the official shall not be entitled to claim such notice and allowances as are provided for in the other articles of the present regulations, or the leave to which he would ordinarily have a right. The Institute considered that the fact that Mr. Hickel had accepted from the Government of Vichy, which, it should not be forgotten, had broken with the League of Nations, an appointment as official in the Economic Control was incompatible with the duties of an official of the International Institute and constituted misconduct in the meaning of Article 29. Mr. Bonnet took this decision by virtue of the exceptional powers conferred upon him by the Committee of Directors during its 49th Session of April 1939. It may moreover be considered that this decision was ratified, at least by implication, by the Governing Body at its sitting of 25 October 1945, since it made no observation concerning the state of the personnel.

However this may be, and even if the Tribunal considers that misconduct has not been proved, the injury caused to Mr. Hickel cannot, under the terms of Article 30 of the Regulations, entitle him to compensation amounting to more than a year's salary, that is 36,000 francs. The argument of Mr. Hickel that this compensation should be increased proportionally to the depreciation of the franc cannot be accepted, for the Staff Regulations of the Institute have never admitted that the staff should benefit by a guaranteed rate of exchange ... ;

And it concludes:

In these circumstances we consider the request for compensation made by Mr. Hickel against the Institute to be unfounded in law and unjustifiable in equity.

We therefore request that the Tribunal reject the claims of Mr. Hickel and recognise that the Institute of Intellectual co-operation does not owe him any compensation in respect of his dismissal;

ON THE SUBSTANCE

Whereas the Complainant was appointed by contract until 30 September 1945;

Whereas the Director of the Institute, Mr. Bonnet, decided on an unknown date to cut off the salary of the Complainant as from 30 September 1944 and to consider him as no longer being a member of the staff;

Whereas the Complainant was not informed of the reason which the Director considered as justification of his decision except by the above-mentioned memorandum of 30 November 1946;

Whereas under the terms of Article 29 of the Staff Regulations such a measure can only be taken in respect of an

official "guilty" of misconduct;

And whereas in order that an official may be considered as "guilty", it is obviously necessary that he should be first informed in clear and precise terms of the grave charge against him and that he then have the possibility of defending himself before the competent authority before the latter takes its decision;

And whereas none of these conditions was fulfilled in the case of the Complainant and that the Institute must therefore be charged with responsibility under this head;

Whereas moreover the charge appears in no way to be of the character necessary to justify immediate dismissal without notice or compensation;

And whereas, while it is true that the acceptance of any employment outside the service, except with special authorisation, is forbidden to officials appointed by the Institute, this provision is obviously only applicable when the Institute is functioning in normal conditions and in particular is in a position to use the services of its staff and to pay them in accordance with its contracts;

And whereas it is superfluous to point out that at the time when the Complainant accepted employment none of these conditions was applicable and the Institute was, on the contrary, in a particularly abnormal situation as a result of war;

Whereas, moreover, the employment in question was of a purely temporary and subordinate character, its remuneration was small and it did not involve any activity of a political character on the part of the Complainant;

And whereas it appears from the letter of the Director-General of Economic Control and Enquiry, dated 20 February 1947, that it was an exclusively economic service which was not suppressed at the liberation and the national importance of which was clear;

And whereas it does not seem that the circumstance that, at the time when this employment was given, de facto authority, was vested in the Government of Vichy, should have any influence in an evaluation of the charge, especially as the Institute itself at that time accepted the subsidies which the Government of Vichy continued to pay to it and used them to pay its staff;

And whereas the attitude of the Complainant throughout the period of occupation appears to have been irreproachable from the point of view of dignity and patriotism and his actions in no way constituted collaboration with the enemy of his country;

Whereas therefore the dismissal of the Complainant is not justified and he has the right to full payment of his salary up to the expiration of his contract;

Whereas, however, the fact of being dismissed for misconduct has had a highly prejudicial effect on the moral and social standing of the Complainant and has necessarily crippled his chances of finding other means of livelihood in an employment corresponding to his capabilities and his experience;

And whereas on this ground the Institute must compensate the Complainant for an injury which is both material and moral in character

ON THE GROUNDS AS AFORESAID:

The Tribunal,

Giving judgment by default, the Defendant having failed to appear;

Declares the Complaint to be receivable and well-founded;

Rejecting all other fuller or contrary conclusions;

Orders the Defendant to pay the Complainant;

- (1) His salary up to 30 September 1945;
- (2) To make the contributions incumbent upon it to the Pensions Fund;
- (3) Under the head of damages, calculated ex aequo et bono, the sum of 200,000 French francs;

Orders the refund of the deposit 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