

LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL

**ORDINARY SESSION OF MARCH 1934
HEARING OF 7 MARCH 1934**

***In re* SCHUMANN**

Judgment No. 13

THE LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed on 21 November 1933 by Mr. Robert Gervais Bernard Schumann against the Secretariat of the League of Nations;

The facts:

On 1 February 1930 the complainant was appointed as a temporary translator in the French Interpreters' and Translators' Service of the League of Nations.

On 1 January 1931 he was appointed as a permanent translator subject to confirmation by the Council and the customary probationary period.

He has been a member of the Pensions Fund as from that appointment since he stated that he did not wish to contribute to the Fund for the period prior to 1 January 1931.

The probationary period was extended until 12 March 1933 inclusive owing to illness.

By a letter of 23 February 1933 the complainant asked the Administrative Board of the Pensions Fund to be allowed to go back on the aforementioned decision and to make retroactive contributions as from his entry into service on 1 February 1930.

By a letter to him of 25 February 1933 towards the end of the probationary period, the Secretary-General, Sir Eric Drummond, terminated the existing appointment as from 27 March 1933 and replaced it with a temporary appointment with the reservation, however, that the complainant's appointment could be terminated at any time after 27 March 1933 with one month's notice, it being understood that his service could not extend beyond the end of the year.

The final paragraph of this letter read:

"I should add that, while you remain in the service, you will continue to contribute to the pensions Fund and be subject to the Pensions Regulations."*

The complainant accepted this new appointment.

By a letter of 6 June 1933 from its Secretary, the Administrative Board of the Pensions Fund rejected the complainant's requests.

This decision was notified to the complainant by a letter of 6 June 1933 from the Secretary-General, the final paragraph of which read:

"I regret to find that I was mistaken as to the effect under the Pensions Regulations of the arrangement for continuance of your services in a temporary capacity made by my letter of February 25th, 1933, but I am bound to accept the Board's decision."*

* English original.

By a letter of 2 August 1933 the complainant asked the Secretary-General for compensation for the injury which he had allegedly sustained.

On 21 November 1933 Mr. Schumann filed a complaint with the Administrative Tribunal asking the Tribunal:

"To find and declare that the Secretariat of the League of Nations has committed a breach entailing its responsibility and that it is bound fully to redress the injury thus caused to the complainant;

To order the Secretariat of the League of Nations to pay the complainant the following sums or compensation to redress the injury suffered:

reimbursement of the contributions paid by the complainant to the Pensions Fund together with simple interest in the amount of ... (to be calculated),

a sum equal to the total amount of the complainant's contributions to the Pensions Fund and of the sums due in respect of him to the Fund by the League (or which would have been due in pursuance of the promise of 25 February), plus simple interest, but, if appropriate, less the complainant's contributions refunded by the Pensions Fund if the Tribunal should order this in the amount of ... (to be calculated);

To further order the Secretariat to compensate the complainant for all the costs incurred by him when exercising his rights, in particular travel and subsistence costs, legal costs, writing materials, etc., and for the losses resulting from deprivation of all gainful activity during this period and the ensuing moral injury, all of which may not be assessed at less than 3,000 Swiss francs;

To order the refund to the complainant of his deposit in the amount of 272 Swiss francs;

To order the Secretariat of the League of Nations to pay all costs;

To order that the compensation and other sums awarded to the complainant be paid to him within three days of the delivery of the judgment, after which they shall automatically bear interest at a rate of 4 per cent per annum in favour of the complainant."

On the law:

A. As Mr. Schumann did not impugn the Secretary-General's decision to end his service as a probationer within the ninety-day time limit, any claim which he has now endeavoured to file on this point as part of the current dispute must be deemed irreceivable.

In order to remain within the bounds of the properly filed application, it is necessary to ascertain whether the Secretary-General of the League of Nations in his letter of 25 February 1933 entered into a formal and unconditional obligation to Mr. Schumann, as the latter contends, to extend his appointment until 31 December 1933, with the result that this would secure to him the benefits of the Pensions Fund, in particular the payment of the sums for which provision is made in Article 9, paragraph 5, of the Fund's Regulations.

If this were the case, it is also necessary to decide whether, as the Secretary-General did not keep his promise, he is under an obligation to pay the complainant compensation for the injury which the latter claims to have sustained as a result of the failure to honour the obligation entered into by the Secretary-General.

The Tribunal, having weighed up all the circumstances which have come to light either from the written evidence produced by the parties or from oral testimony during the hearing, is of the opinion that the Secretary-General did not enter into an obligation to the effect envisaged by Mr. Schumann.

This negative finding is based on the following grounds:

(a) The Secretary-General, in his letter of 25 February 1933, reserved the right to dismiss Mr. Schumann at any time with one month's notice. Therefore, the Secretary-General did not undertake to extend the complainant's service until 31 December 1933; this depended on the requirements of the London Economic Conference and the Disarmament Conference, which were impossible to predict. Moreover, the Secretary-General had given an undertaking to the Council of the League of Nations to terminate the appointments of non-essential staff.

(b) The Secretary-General gave no guarantee whatsoever to Mr. Schumann that he would receive a pension or a sum from the Pensions Fund. The letter of 25 February 1933 relevantly read:
"I should add that, while you remain in service, you will continue to contribute to the Pensions Fund and be subject to the Fund's Regulations."

Mr. Schumann was thus simply allowed to maintain his contributions.

For all the remainder, the Secretary-General referred to the Fund's Regulations, the application of which depended essentially on the length of Mr. Schumann's service – which was uncertain at that juncture.

In any case, the Secretary-General had no capacity to decide whether an official was entitled to a Pensions Fund benefit, because the Regulations which give the Administrative Board of the Fund sole jurisdiction over the application of the retirement pensions scheme was already in force by 25 February 1933.

Consequently, there can be no question of a valid promise made by the competent authorities of the League of Nations, the non-performance of which would entail legal responsibility towards Mr. Schumann.

B. The complainant has submitted and endeavoured to prove that he made his acceptance of the new appointment conditional on his right to a retirement pension or to the payment of a capital sum.

This circumstance remained doubtful, for although it was confirmed by Mr. Demolon, the head of the service to which Mr. Schumann belonged, it was ruled out by Mr. Dennis, the supervisor to whom Mr. Demolon had to report on the negotiations with Mr. Schumann, and it was bluntly denied by Miss Williams, Head of the Personnel Office of the League of Nations.

Even supposing that Mr. Schumann's intention to make acceptance of the new appointment subject to the aforementioned condition had been reported as such to the authorities competent to decide on this new appointment, the fact that the letter of 25 February does not mention any such condition and that this letter provides for the possibility of terminating the appointment at any time with one month's notice suggests that this condition was refused rather than accepted.

However, Mr. Schumann, in order to rebut this finding, has alleged and even endeavoured to prove that Mr. Demolon had assured him that the clause concerning termination of appointment would be inoperative, because Mr. Schumann's services would be required until the end of the year.

This circumstance, which has not been confirmed, would not substantiate the contention that the written agreement had been amended by oral guarantees: Mr. Demolon may have expressed his personal impression by making assumptions based on what normally happened and on what he was prepared to accept, but he possessed neither the power nor the authority to restrict the Secretary-General's discretionary and decision-making powers.

The Tribunal will never accept that a written agreement into which a public administrative body has entered may be amended by oral interpretation.

C. The parties discussed at length whether, if Mr. Schumann had continued his contributions to the Pensions Fund until the end of his service, in other words until 31 December 1933, and for three consecutive years, he would have been entitled to the application of Article 9, paragraph 5, of the Fund's Regulations.

Although the scope of Article 9, paragraph 5, is extremely dubious, the Tribunal has no hesitation in recommending to the relevant authority an interpretation more favourable to officials.

It is true that Article 9, paragraph 5, grants the benefit of a capital sum equal to the total amount of the official's contributions to the Fund and of the payments due in respect of him to the Fund by the League of Nations when the official has completed "more than three but less than ten years' service".

The Secretariat submits that "more than three" years means at least three years and one day.

An official who, like Mr. Schumann, has served for exactly three years has not therefore completed more than three years and is not entitled to the above-mentioned benefit.

The Tribunal would have no difficulty in accepting this interpretation, which abides strictly by the letter of the provision, if it had to reflect only on the following two considerations:

(a) Article 16 of the aforementioned Regulations, which provides for the forfeiture of the right to Fund benefits if an official is dismissed for misconduct, entitles the guilty official who has completed at least three years' service to the repayment of his contributions with simple interest.

Service of at least three years suffices for officials who are dismissed on grounds of misconduct.

On the contrary, service of at least three years is insufficient for officials whose service ends through no fault of theirs.

In the instant case, Mr. Schumann would have been in a more favourable position if he had committed misconduct.

Faced with such inconsistency, the Tribunal is inclined to consider that the literal contents of the provision probably do not reflect its spirit and purpose as implied by the rules adopted.

In other words, it is possible to admit that the phrase in Article 9, paragraph 5, "more than three but less than ten years' service" has been misconstrued and that it was intended to indicate the period of service ranging from three to ten years, rather than to require a minimum term of service of three years and one day.

Between an interpretation which gives rise to a difference contrary to all rules of justice and equity and an equally possible interpretation which departs from the strictly literal meaning, the Tribunal is of the opinion that it should accept the second interpretation, especially as it is borne out, as it will be recalled, by a document from the Fund itself.

(b) In its third report to the Assembly of the League of Nations of 27 May 1933, the Administrative Board of the Fund, when indicating the number of Fund members whose service ended after 1 January 1931, mentioned members who had left after completing less than three years' service and who had received no benefits.

For this reason, the interpretation followed by the Tribunal rests not only on considerations of justice, but is also supported by a document of indisputable significance.

D. Moreover, the Administrative Board of the Pensions Fund was wrong to deny Mr. Schumann the right to continued membership of the Fund during his last period of temporary service.

The decision of the Administrative Board appears to be all the more unlawful given that there is no provision preventing officials whose permanent service has ended and who are reappointed on a temporary basis from continuing to pay their contributions and to be subject to the Fund's Regulations.

It must be emphasised that, in a case similar to that of Mr. Schumann which arose towards the end of 1932, the Administrative Board of the Fund adopted a solution favourable to the official.

In these circumstances, Mr. Schumann was right to impugn the decision of the Administrative Board of the Fund, but forfeited this right because he overran the time limits prescribed by the Statute of the Tribunal.

E. It is to no avail that he endeavours to have the Secretary-General of the League of Nations declared legally responsible for the Fund's refusal.

He must first blame himself for failing in good time to exercise his right to bring before the Tribunal the matter of the non-observance of the Regulations.

Secondly, the submissions relied upon to hold the Secretary-General responsible are completely groundless.

The Pensions Fund is an independent institution the decisions of which are final and not submitted to the Secretariat of the League of Nations.

The Secretariat will not therefore be held responsible for acts which it had neither the duty nor the possibility to cancel or supervise and which may be impugned directly before the Administrative Tribunal.

Although a representative of the Secretary-General sits on the Administrative Board, this fact is not enough to entail the Secretary-General's responsibility.

F. The Secretariat could not be held responsible either because the Secretary-General advised Mr. Schumann that he could continue to be a member of the Fund, something which the Administrative Board of the Fund did not then allow.

The legal rule that whosoever promises action by a third party is responsible for non-execution by that third party does not apply in the instant case.

This rule concerns only civil law relationships.

In the instant case, it is a matter of an administrative law relationship governed by the principles of public law.

One of these principles, which the complainant seems to have forgotten, is that of respect for areas of jurisdiction.

As stated above, the Secretary-General did not have the capacity to promise action by the Fund's Administrative Board.

The Secretary-General was mistaken in having given this promise and honestly admitted his mistake in a letter to Mr. Schumann.

Mr. Schumann as an official and a lawyer could not be unaware of the respective powers of the Secretary-General and the Pensions Fund, and therefore made a mistake.

Mr. Schumann is not therefore entitled to ask to have the Secretary-General declared liable for action by the Fund, which the Secretary-General was unable to prevent, or for the complainant's own mistake.

The complainant lastly relied on the consideration that the Pensions Fund's refusal unduly enriched the Secretariat by enabling it to avoid payment of the sums which it should have paid to the Fund as its share of his contribution.

The Tribunal considers that it may subscribe to this submission to the extent that it appears to be well-founded.

A distinction must be drawn in this respect.

The contributions made to the Fund by the Secretariat as long as Mr. Schumann was a member of the Fund remain forfeit to the Fund and are incorporated in its funds.

These contributions obviously do not give rise to undue enrichment of the Secretariat.

However, with regard to the later payments which the Secretariat should have made between 27 March and 31 December 1933 and which the Secretariat avoided on account of the unlawful refusal of the Fund's Administrative Board to allow Mr. Schumann to remain a member of the Fund, there is no doubt that there was undue enrichment of the Secretariat.

For this reason, Mr. Schumann's application is well-founded within these limits.

The Secretariat of the League of Nations must therefore be ordered to pay Mr. Schumann all the sums which it would have paid to the Pensions Fund, if the Fund's Administrative Board had not refused to retain Mr. Schumann as a member.

Moreover, there are no grounds for ordering the Secretariat to pay Mr. Schumann compensation for the moral injury which he allegedly sustained, and of which there is not a shred of evidence.

It is not clear how moral injury could be caused by a discussion or an attitude concerning solely the economic interests of an official.

As a result of this decision, the refunding in part of the costs incurred by Mr. Schumann in order to exercise his rights appears warranted.

The Tribunal cannot subscribe to the Secretariat's contention that rules on ordering the unsuccessful party to pay costs have not been adopted by the Statute of the Administrative Tribunal.

When the unsuccessful party is the Administration of the League, there is no reason to depart from the general legal principle that costs, apart from compensation, shall be paid by the unsuccessful party.

In the instant case, the Tribunal considers that under this head it may award Mr. Schumann the sum of 1,000 Swiss francs.

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 Mr. Schumann the amount of the contributions which should have been paid to the Pensions Fund on Mr. Schumann's monthly salary from 27 March to 31 December 1933;

Orders the Secretariat to pay Mr. Schumann costs in the amount of 1,000 Swiss francs;

Orders the full 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 7 March 1934 by His Excellency Mr. Albert Devèze, President, and Mr. Montagna and Mr. Eide, Judges, 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.