

LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL

ORDINARY SESSION OF MAY 1937
HEARING OF 9 MAY 1937

In re DE PEGANOW

Judgment No. 16

THE LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed on 17 November 1936 by Miss T. de Peganow against the Secretariat of the League of Nations;

I. Competence:

A. The competence of the Administrative Tribunal is strictly limited to the legal matters determined by its Statute as adopted on 26 September 1927 by the Assembly of the League of Nations and by the Pensions Fund's Regulations.

As under Article II of the Statute, its competence extends exclusively: (a) to determining whether there has been non-observance in substance or in form of the terms of appointment of officials of the Secretariat or of the International Labour Office, or of such provisions of the Staff Regulations as are applicable to the case; (b) to settling any dispute concerning the compensation provided for by the Staff Regulations, and in particular by Articles 43 or 71 of the Staff Regulations of the Secretariat.

No extra-contractual actionable injury after the expiry of an official's appointment may form the basis of a request on which the Administrative Tribunal may validly rule within the limits of the authority vested in it.

B. It has been undisputedly ascertained that despite the notice given to the complainant on 29 August 1929, her appointment in the service of the League of Nations ended *ipso facto* on 31 December 1929, as the renewal of the contract was entirely at the discretion of the Secretary-General of the League of Nations.

Consequently, the Tribunal is not competent to rule on the request submitted to it, as the latter is based on extra-contractual actionable injury which occurred after 31 December 1929 and for which the complainant alleges the Secretariat of the League of Nations is responsible.

II. Receivability:

A. Article VII of the Statute of the Tribunal, as enacted by the Assembly of the League of Nations, expressly states that, to be receivable, a complaint must have been filed within ninety days after the complainant was notified of the final decision impugned. It is also stipulated that, where the Administration fails to take a final decision upon any claim submitted to it within sixty days, the ninety-day period shall run from the expiration of the sixty days allowed for the taking of the decision by the Administration.

B. It follows from the aforementioned considerations that the Tribunal's competence is limited in this case to the termination of the complainant's appointment of which she was given advance notice on 29 August 1929, this termination being based on her state of health.

In fact, the complainant's salary was paid to her until the normal end of her appointment, i.e. until 31 December 1929. The Administration also informed the complainant that she could apply for compensation under Article 1 of the Rules on the Procedure for examining applications for allowances in the event of death or invalidity, approved by the Administrative Board of the Pensions Fund on 7 May 1926. The complainant has not acted on this information to date.

In law the Secretariat of the League of Nations was notified of the complainant's protest against her dismissal by a letter dated 5 December 1929 from Maître Oederlin, lawyer and member of the Geneva Bar, in other words six days after the expiry of the time limit laid down in Article VII, not even the essential formal requirement for filing a complaint with the Administrative Tribunal having been fulfilled at that time.

C. If this letter from Maître Oederlin were to be regarded as opening a special dispute regarding the failure to forward his client's administrative file to her and certain measures taken by the Secretariat vis-à-vis the Genevan authorities, it has been established that Maître Oederlin's protest was repeated on 16 December 1929 and that the Secretariat replied to it in a letter which merely referred to the "numerous letters to the person concerned and her family".

At all events this answer must be regarded as an omission by the Secretariat to take a decision on the claims submitted in Maître Oederlin's letter of 5 December 1929. It follows from this that, to be receivable, a complaint should have been filed with the Administrative Tribunal at the latest fifty days after that date, in other words before 5 May 1930.

The complaint now before the Tribunal was not filed until 17 November 1936. The complaint, insofar as it constitutes an appeal against either the decision of 29 August 1929 or the absence of decision on the protest of 5 December 1929, is therefore irreceivable.

The complainant contends that her failure to act within the prescribed time limits was due to the moral pressure exercised on her by the Secretariat.

This consideration must be dismissed without even examining whether it might have any factual basis, since none of the provisions of the Statute give the Tribunal the power to depart from the formal rule laid down in Article VII.

For the above reasons,

The Tribunal finds that it is not competent to rule on the complaint insofar as it is based on extra-contractual actionable injury which occurred after 31 December 1929;

Finds the complaint irreceivable insofar as it is based on the termination of an appointment notified on 29 August 1929 or on the protests submitted by Maître Oederlin in his letter of 5 December 1929;

Confirms that the complainant is entitled to submit to the Death and Invalidity Fund the application for which provision is made in Article 1 of the Rules of Procedure for examining applications for allowances in the event of death or invalidity;

Declares that the deposit made by the complainant under Article VIII of the Statute remains 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. 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.