

FIRST ORDINARY SESSION

***In re* ROTHBARTH**

(Arbitral Competence)

Judgment No. 6

THE ADMINISTRATIVE TRIBUNAL,

Being seised of a Complaint dated 17 May 1946 by Miss Margaret Johanna Rothbarth against the International Institute of Intellectual Co-operation;

Whereas the Complainant requests judgment to the effect:

That the Institute should pay in full her salary up to the expiration of her contract on 30 September 1941 as well as six months' salary from the expiration of her contract, of which she was not notified, in accordance with the decisions taken on 7 March 1941 by the Governing Body;

That it should pay the contributions to the Pensions Fund for a period equal at least to the duration of her appointment;

That there should be an increase in the amounts fixed to take into account the rise in the cost of living in accordance with the practice followed by the French Administration for its own employees;

ON THE FACTS:

Whereas the Complainant possessed a contract with the International Institute of Intellectual Co-operation which expired on 30 September 1941;

And whereas she was in Switzerland at the time of the declaration of war by France against Germany and did not return to France;

And whereas the Institute paid her full salary up to 30 November 1939;

And whereas following a decision taken by Mr. Bonnet, at that time Director of the Institute, half-salary was paid to her every month until 30 May 1940;

ON THE SUBSTANCE:

Whereas the Complainant had been engaged since 1926 in the service of the International Institute of Intellectual Co-operation under a contract which would normally have terminated on 30 September 1941;

Whereas at the time of the events of 1939 the Complainant was in Switzerland and did not return to the office in Paris;

Whereas this attitude does not appear to have been the result of a case of force majeure which would entitle the two parties to break that fixed-term contract;

And whereas therefore:

(1) While it is true that the Complainant claimed to be in ill-health, she nevertheless manifested a strong wish to return to service in Paris and, moreover, the Institute never asked her to produce a medical certificate to justify her absence;

(2) It is uncontested that the Complainant on many occasions took steps before various government services in

order to obtain permission to return to France but that she did not succeed; that, in addition, Mr Belime, who was at that time replacing the Director, Mr. Bonnet, who was in Norway, told her in express terms, on Monday 28 August 1939, not to return on any account but to wait in Switzerland until she was recalled and to be confident that her interests would be safe-guarded; that the Complainant did not cease to hold herself at the disposal of the Institute and in particular during the period of the contract received requests for work to which she immediately replied by furnishing the services in question;

And whereas it cannot be conceived that such requests would have been made to the Complainant if she had not been considered as still being a member of the staff of the Institute;

Whereas therefore the Complainant did not cease to be in service and no circumstance justifies the reduction, at first by half during a period en disponibilité, and then the cutting off of all remuneration while the contract was still in force; it follows that the Complainant is entitled to the payment of her full salary during the whole period of contract, that is, until 30 September 1941, but clearly cannot claim any payment beyond that date; and she does not prove that a decision of the Governing Body has never modified this legal situation;

Whereas it is clear that the Institute must consequently pay the contributions to the Pensions Fund relating to this period;

Whereas, in so far as the request for revaluation of the franc is concerned, general principles do not allow the acceptance of this request as formulated, but it is uncontested that the delay in paying the sums to which the Complainant was certainly entitled has caused her definite and considerable prejudice;

Whereas, in fact, in addition to the moral prejudice resulting from the anxiety and suffering to which she was exposed, she had to provide for her needs with insufficient resources and in more and more burdensome economic conditions; and she had, moreover, to provide for the defence of her rights with the reduced means at her disposal; therefore, as the Institute was guilty of breach of contract, it should compensate the Complainant for the injury caused to her;

Whereas the Tribunal evaluates this injury ex aequo et bono at the sum of 100,000 francs;

ON THE GROUNDS AS AFORESAID:

The Tribunal, rejecting all other fuller or contrary conclusions;

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

Orders the International Institute of Intellectual Co-operation to pay in full to the Complainant her salary up to the expiration of her contract on 30 September 1941, after having deducted the sums which she received as salary en disponibilité.

Orders it also to pay under the head of damages a sum of 100,000 French francs;

To pay the contributions to the Pensions Fund for a period equal of the duration of the Complainant's appointment;

To refund to the Complainant the deposit made by her in accordance with Article VIII of 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

