

LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL

**ORDINARY SESSION OF FEBRUARY 1946
HEARING OF 26 FEBRUARY 1946**

***In re* GARNIER**

Judgment No. 23

THE LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed on 16 September 1940 by Mr. Georges Auguste Garnier against the Secretariat of the League of Nations;

Considering that the complainant asks the Tribunal to:

1. (a) Find that at the end of the first period of his appointment, it was incumbent upon the Administration to terminate the complainant's contract on grounds of invalidity and to grant him the appropriate pension from the Pensions Fund;

(b) Order the Secretariat immediately to adopt the administrative measures which should have been taken in this connection when the complainant's first appointment was terminated;

(c) Invite the Pensions Fund to pay the complainant an invalidity pension as from the date on which his appointment was terminated, with interest at 4 per cent;

2. Subsidiarily, order the Secretariat to pay the complainant a compensation for termination in the amount of one year's salary on the terms established by the Assembly in 1939;

3. At all events, order that his deposit be refunded to the complainant.

The Secretariat asks the Tribunal to dismiss the complaint.

On the merits:

The complainant joined the Secretariat on 16 September 1929 on a temporary basis. On 17 November 1930 he was given a seven-year appointment. This appointment was not extended on its expiry owing to the state of health of the complainant who was given a new contract for only one year. However, in the letter informing the complainant of this measure, the Administration added that if, by the end of that appointment, the complainant's health had improved, he might be given a seven-year contract. When this new appointment ended on 16 November 1938, the complainant received only a short-term contract until 31 December 1938 after a medical examination conducted by Dr. Weber-Bauler. In 1938 the Assembly ordered the carrying out of some substantial cost-saving measures. After this, the Administration granted the complainant only an extension of his contract until 31 December 1938, then a new contract until 31 March 1939 and, lastly, a contract for the period 1 April to 31 December 1939. After the declaration of war, the Secretariat informed the complainant that it could not contemplate the extension of his appointment and that his duties would end definitively on 31 December 1939.

In law:

(1) Article 10 of the Regulations of the Pensions Fund provides that if, after completing not less than two years' service and before attaining the age of 60, an official is discharged on the ground of invalidity, he shall be awarded an invalidity pension.

(2) It is to no avail that the complainant contends that, on the expiry of his first appointment, it was incumbent upon the Administration to terminate his contract on the ground of invalidity and therefore to grant him a pension.

On the contrary, it is up to the official to apply for an invalidity pension and to supply the Administration with proof of the alleged invalidity.

Although the reason given for the Administration's refusal to grant the complainant a further seven-year appointment was his poor state of health, this does not mean that the Administration had found that he suffered from invalidity warranting the grant of a pension under Article 10 of the Regulations of the Pensions Fund.

(3) The complainant's alleged invalidity had not in fact been diagnosed at the end of his first appointment.

(4) On the contrary, the complainant pursued his service satisfactorily without taking any sick leave between 16 November 1937, the date on which his first appointment expired, and 14 July 1939, and in 1939 he took only eighteen and a half days' sick leave.

(5) On the expiry of the first appointment and after being informed of the Administration's refusal of a seven-year extension of his contract, the complainant did not apply for an invalidity pension.

(6) It was not until a few days before the expiry of his last appointment that the complainant submitted a request to the Administration for a pension on the basis of invalidity which had allegedly arisen during his first appointment.

(7) An official holding a seven-year appointment is not entitled to the extension thereof unless a provision to this effect is included in the contract, which is not the case here.

On this point the complaint is both irreceivable and groundless.

It contains the subsidiary claim that the Secretariat should be ordered to pay the complainant compensation for termination in the amount of one year's salary on the terms established by the Assembly in 1939.

It does not follow from the Assembly's decisions that the Administration was bound to grant such compensation to the complainant, since he did not meet the requisite condition of length of service.

For the above reasons,

The Tribunal

Dismisses the complaint filed by Mr. Georges Auguste Garnier against the Secretariat of the League of Nations;

Orders however the Secretariat to refund to the complainant the deposit made by him under Article VIII of the Statute.

In witness of which judgment, pronounced in public sitting on 26 February 1946 by Jonkheer van Rijckevorsel, President, Mr. Eide, Vice-President, and His Excellency Mr. Devèze, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, van Asch van Wijck, Registrar of the Tribunal.

(Signatures)

Albert Devèze
A. van Rijckevorsel
Vald. Eide
W.H.J. van Asch van Wijck

Certified copy,

The Registrar of the Administrative Tribunal.