

SECOND ORDINARY SESSION

In re STARKE

Judgment No. 9

THE ADMINISTRATIVE TRIBUNAL,

Being seised of a claim dated 30 September 1950 by Joseph G. Starke, Esq., against the Administrative Board of the Pensions Fund,

Whereas the Claimant specifies as follows the relief for which he makes application:

- (1) for an order that the said Board's decision of 24 June 1950 be resumed;
- (2) for an order that the said Board shall refund to the Claimant the pensions payments and contributions he made to the League of Nations Staff Pensions Fund from 1 July 1939 to 31 December 1940 or, alternatively, that the said Board shall pay compensation to the Claimant for not refunding to him the said pensions payments and contributions.

ON THE FACTS:

Whereas the Claimant, after nearly four years' probationary service in the League of Nations Secretariat, was given a seven years' contract, with effect from 1 July 1939, as Member of the Legal Section of the Secretariat, under the terms of which contract the Claimant was admitted to the League of Nations Staff Pensions Fund;

And whereas pursuant to the said League of Nations Staff Pensions Fund Regulations, monthly deductions at the rate of 6 per cent of the Claimant's monthly salary were paid to the said Fund from 1 July 1939 through 14 December 1939;

And whereas the Claimant's contract was suspended with effect from 14 December 1939 so that he might serve his country;

And whereas the Claimant's contract was terminated with effect 25 December 1940, pursuant to a decision of the League of Nations, made October 1940, that in view of the then hostilities the contracts of all officials on suspended status should be terminated;

And whereas by the same decision of the League, the Claimant was awarded compensation equal to six months' salary payable in two annuities, the first annual payment of which had already been made on the occasion of the suspension of the contract:

And whereas, although the Claimant immediately cabled a request for the refund of all pension payments made by him or the League on his account, he accepted the award of compensation referred to in the preceding paragraph;

And whereas the Claimant on 21 April 1947, through the High Commissioner of the Commonwealth of Australia, submitted to the Director-General of the International Labour Office a request for the refund of the aforesaid pension payments:

And whereas the International Labour Office forwarded this submission to the Secretary of the Staff Pensions Fund and after considering this and other relevant data the Administrative Board of the Pensions Fund during its 31st Session held in Geneva on 24 June 1950 rejected the Claimant's claim on the grounds that the application of the Regulations to the case of Mr. J.G. Starke was legally correct and that the Administrative Board does not possess any authority to order a refund of contributions except as provided by the Regulations;

ON JURISDICTION:

Whereas the jurisdiction of the Administrative Tribunal of the International Labour Organisation in relation to the claims of former officials of the Secretariat of the League of Nations against the Administrative Board of the

Pensions Fund is based upon first, Article 26 of the International Labour Organisation Staff Pensions Regulations which, so far as material provides that "1. Any complaint of non-observance of the present Regulations ... may ... be submitted to that Tribunal ... 2. For the purpose of the present Article, the Tribunal shall be open to former officials of the Secretariat of the League of Nations ..." and second, paragraph 15 figure 3(c) of the Resolution adopted by the Assembly of the League of Nations in April 1946 which provides that "the Tribunal shall otherwise retain its existing jurisdiction under its Statute and under Article 26 of the Staff Pensions Regulations";

ON THE MAIN ISSUES:

Whereas under Article 9 of the Staff Pensions Regulations, subparagraph (e), there is no provision for the payment or refund of pensions or contributions to an official who has completed less than three years' service after receiving a regular contract, and therefore there is no explicit provision of the said Regulations that has not been observed;

Whereas if, as appears from his written submission, the Claimant relies on contentions (1) that the contract between him and the Secretariat was frustrated by a general termination of all contracts of officials on suspended status as a result of a war situation unforeseen by and un contemplated by the parties at the time of the execution of his contract in 1939, and (2) that therefore he is ex aequo et bono entitled to a refund of his personal contributions to the Pensions Fund in order to avoid an unjust enrichment, this claim is not within the jurisdiction conferred on this Tribunal - and this Tribunal cannot rule either on these contentions or on the answer suggested by the Board's counsel that the Claimant has no equitable claim because without protest he accepted the gratuitous six months' salary given to him by the League as a final settlement in 1940;

ON THE GROUNDS AS AFORESAID:

The Tribunal

Declares that its jurisdiction in this case is limited by Article 26 of the International Labour Organisation Staff Pensions Regulations, so far as made applicable by the April 1946 Resolution of the Assembly of the League of Nations,

Finds that the Board has not failed to observe these Regulations in the case of the Claimant,

Decides that the Claimant is not entitled to judgment on so much of his claim as is within the jurisdiction of this Board,

Orders that the Claimant's claim be dismissed.

In witness of which judgment, pronounced in public sitting on 5 April 1951 by His Excellency Mr. Devèze, President, Jonkheer van Rijckevorsel, Vice-President, and the Honourable Mr. Wyzanski, Judge, the aforementioned have herewith subscribed their signatures as well as myself, Wolf, Registrar ad hoc of the Tribunal.

(Signatures)

Albert Devèze
A. van Rijckevorsel
Wyzanski
Francis Wolf