

LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL

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

***In re* SOUC**

Judgment No. 22

THE LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed on 8 December 1939 by Mr. Edouard Souc against the Secretariat of the League of Nations;

The facts:

The complainant was recruited as a temporary official of the International Labour Office in 1921.

On 1 August 1923 he was given a further temporary appointment in the Secretariat of the League of Nations, where he then remained by virtue of several successive appointments.

After several contracts of varying lengths, in February 1926 he was given a seven-year appointment, and at the end of February 1931, an appointment as a permanent locally recruited official, which appointment was governed by the provisions of the Staff Regulations, including those of Article 18.

By a letter of 8 March 1939 the Administration notified the complainant that his appointment would be terminated in six months' time.

Following this decision, the complainant requested the opinion of the Judicial Committee which, by a letter of 29 June 1939, advised him that there were no grounds for reconsidering the decision of 8 March.

On 21 July 1939 the Director of Personnel and Internal Administration informed the complainant that his appointment would expire, after a shorter period of notice, on 31 July 1939.

On 20 June 1939 the complainant, in a memorandum addressed to the Secretary-General, asked to be granted the benefit of Article 70 of the Staff Regulations.

On 11 September 1939 the Director of Personnel and Internal Administration notified the complainant that his request had been refused.

It is against the latter decision that the complainant filed his complaint, asking the Tribunal to:

Find and declare that, on account of the exercise of his duties at the Secretariat of the League of Nations, he contracted an illness, or his capacity to work was reduced, and that this state of health was the consequence of overwork and the unhealthy conditions in which he was required to work;

Declare consequently that the Secretariat of the League of Nations must award him equitable compensation equal to the difference between the benefits which he would have obtained in the form of salary and retirement pension if he had left the Secretariat at the age of 60, and the benefits which he received owing to the early termination of his appointment;

Find and declare at all events that the Secretariat of the League of Nations must award him compensation of no less than 20,000 francs;

Declare that all costs related to his complaint before the League of Nations Administrative Tribunal should be settled in accordance with the Statute and the Rules of the Administrative Tribunal, and that the deposit he had to pay should be refunded to him;

Subsidiarily:

Allow the complainant sufficient time to reply to the Secretariat's arguments which the notification of 11 September 1939 did not disclose;

Having done that:

Order oral proceedings to enable him to supplement and develop his factual and legal pleas as appropriate;

More subsidiarily:

Declare that before the oral proceedings, witnesses will be heard in order to enable him to demonstrate the authenticity of the evidence adduced and the accuracy of the pleas in support of his complaint;

Even more subsidiarily:

Order an expert opinion to establish, as a matter of principle, the scope of Article 70, first paragraph, of the Staff Regulations and to determine the portion of equitable compensation to which he is entitled, and an expert examination to ascertain the cause and effect relationship between his failing health and the duties which he performed at the Secretariat of the League of Nations.

The defendant asks the Tribunal to:

Declare Mr. Souc's complaint irreceivable because, in light of Article 70, third paragraph, of the Staff Regulations and the case law of the Administrative Tribunal, it has been filed out of time;

Find that at all events the complaint is ill-founded and dismiss the complainant's principal and subsidiary claims in their entirety.

On the merits:

The complainant has filed his complaint against the Secretariat's refusal to grant him compensation under Article 70 of the Staff Regulations which provides for compensation for diseases or accidents incurred in the course of employment.

The defendant does not dispute the fact that the hygiene conditions in which the complainant was required to work in 1925, 1926 and 1927 were very bad, as the basement room was poorly ventilated and through the window received the carbonic acid exhaust fumes from cars and through the door the smells and gasses which escaped from the boilers.

It was only from 1928 that the complainant occupied another office where the hygiene conditions were not criticised.

According to a certificate issued by Dr. Weber-Bauler dated 2 February 1928, the disease from which the complainant suffered could be partly due to the bad conditions in which he had worked.

It is therefore indisputable that these unhealthy conditions probably contributed to Mr. Souc's poor health in 1928.

The defendant has objected to the receivability of the complaint by relying on Article 70 of the Staff Regulations on which the complainant based his complaint and which, after an amendment in 1936 of which all the staff was informed, read as follows:

"3(a) Claims for compensation must be submitted within a reasonable time of the date on which the accident or injury occurred. Any accident in which an official has been injured and which occurred in the course and in consequence of his employment should be notified to the Secretary-General as soon as possible. For this purpose the official must, if possible, use a prescribed form which can be obtained from the Personnel Office and must comply with the directions on the form."

Mr. Souc, who became ill in 1928, did not ask the Administration to defray the medical and pharmaceutical expenses resulting from this illness. Throughout the period between February 1928 and 20 June 1939, Mr. Souc never raised the issue of the effect of his working conditions on his health, despite the amendment of Article 70 of the Staff Regulations in 1936. Mr. Souc therefore allowed 11 years to elapse before claiming for the first time that his health had been undermined by the time he had spent in the office in question.

The complainant has submitted that: throughout that period, the Administration knew of his poor health; when he filed his complaint, he was still suffering from the illness contracted in the exercise of his duties; since this state of health is chronic and will not change, it cannot be contended that his claim for compensation was not submitted within a reasonable period of time; as long as he was assured that he would continue to receive his salary, he had considered it inopportune to ask for compensation; it was only when his appointment was in jeopardy that he found himself obliged first to reserve and then to assert his rights.

These objections are groundless.

It is incumbent upon the official himself to provide proof of injury as is plain from the text of Article 70.

The time limit begins to run as from the date on which the illness and its nature have been diagnosed.

If it were otherwise, officials could postpone claims under Article 70 until the time of leaving the service.

If the complainant was still in poor health when he filed his complaint, this does not justify non-observance of the rule contained in Article 70.

The fact that Mr. Souc considered it inappropriate to apply for compensation as long as he was receiving his salary does not change the matter.

With regard to Mr. Souc's state of health, it is necessary to consider that when he entered the service of the Secretariat of the League of Nations, the complainant had been discharged from his military service owing to a war wound leading to 50 per cent disability. Moreover, he was involved in a car accident on 12 June 1936. After this accident he initiated proceedings before the Court of first instance of Geneva during which he claimed a sum for a "permanent reduction in [his] capacity to work and for disability resulting from the accident" and said that, as a consequence of the accident, he suffered from "headaches, impaired sight, physical injury and a deterioration in [his] health". During these proceedings, several witnesses referred to the serious deterioration in Mr. Souc's health after the accident. The witness Mr. Roulet, Mr. Souc's supervisor, stated that after Mr. Souc's return to work following the accident, he realised that the complainant could currently no longer do the work he had been performing in 1935-36. Consequently it is impossible to determine whether the cause of Mr. Souc's ill health is his war wound, the unhealthy office he occupied between 1925 and 1928 or the car accident. However, in a letter of 7 December 1939, Professor Naville stated that during examinations in 1939 he had noted a continuing state of nervous fatigue in which the car accident of 1936 played only a minor role and which went back to 1927 and 1928, being partially due to earlier lower resistance but also to "overwork and unhealthy working conditions". It must be noted that the testimony of Mr. Souc and the witnesses in the proceedings before the Court of first instance of Geneva contradict Professor Naville's findings, and in the circumstances the Tribunal may not base its decision on the latter's statements.

As far as the alleged overwork is concerned, consideration must be given to the fact that it was at Mr. Souc's own request that in November 1927, at a time when he occupied the office in question, he took on a colleague's work in addition to his own, hence the overwork of which he now complains.

It was not until 14 March 1939, after receiving the letter terminating his appointment on 8 March, that Mr. Souc first mentioned his state of a health in a letter asking whether consideration could be given to the possibility of moving him to another service rather than terminating his appointment. In this letter he merely states that the particular work he is doing tires him because of accidents in which he was involved.

In a memorandum submitted to the Judicial Committee on 8 April 1939 concerning the termination of his appointment, Mr. Souc stated that his state of health could not constitute a reason for this termination.

The complainant has allowed more time to elapse than that stipulated in Article 70 of the Staff Regulations and cannot prove that the alleged illness was contracted in the exercise of his duties. Given the time that has passed and in view of the complexity of the alleged causes, a fresh expert opinion would necessarily be frivolous.

For the above reasons,

The Tribunal

Dismisses all wider and contrary claims;

Dismisses the complaint filed by Mr. Edouard Souc against the decision of the Secretariat of the League of Nations not to grant him compensation for invalidity;

Declares that the deposit made under Article VIII of the Statute of the Tribunal shall remain forfeit to the Secretariat.

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.