

LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL

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

***In re* KREMER**

Judgment No. 36

THE LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed on 24 June 1940 by Miss Erna Kremer against the International Labour Office;

Considering that the complainant asks the Tribunal to:

(a) Determine that the letters of 3 February and 28 March 1940 by which the Director of the International Labour Office terminated her appointment as an official of the Office are based on an amendment (of 21 December 1939) of Articles 19 and 83 of the Staff Regulations which is unlawful because it was incorporated in breach of Article 97 of the Staff Regulations and that, consequently, the termination of her employment contract was in breach of Articles 19 and 83 of the Staff Regulations, which had been unlawfully amended to that end, and of the terms of the complainant's appointment as established by those articles of the Staff Regulations;

(b) Order the International Labour Office to pay the complainant forthwith:

(i) a sum corresponding to five months' salary as set by the complainant's contract;

(ii) the outstanding amount of the sum corresponding to one year's salary which is due to the complainant as compensation for termination under Article 83 of the Staff Regulations in the version of the provision before its last amendment;

(iii) interest on these sums, calculated at a rate of 4 per cent as from the date on which they fell due until their date of payment;

(iv) the costs of this complaint;

(c) Order the refunding of the deposit.

THE FACTS:

The complainant was a permanent official of the International Labour Office according to the terms of her employment contract which took effect on 1 January 1932 and replaced a previous employment contract which entered into force on 12 September 1927.

By a letter of 22 December 1939 the Director of the Office invited the complainant either to request the suspension of her contract or to resign, and advised her that, should she fail to take such a step, she would be placed on the list of officials whose contracts would be terminated on 31 January 1940 on the terms set forth in the Staff Regulations as amended the previous day.

By a letter of 3 February 1940 the complainant was notified that her appointment had been terminated on 31 January 1940.

On 8 February 1940 the complainant, acting in pursuance of Article 19(d) of the Staff Regulations, brought her case before the Joint Committee, an internal body of the International Labour Office, and asked it to find that the manner in which her appointment had been terminated (one month's notice instead of six and payment in four instalments of compensation amounting to one year's salary instead of a single payment) constituted a breach of her contract and, more generally, of the Staff Regulations.

The decisions of the Director of the International Labour Office of 3 February and 28 March 1940, which are being challenged in this complaint, terminating the complainant's appointment with only one month's notice and according to which the payment of the compensation for termination due to her under Article 83(a) of the Staff Regulations would be made in several instalments, are based on the amendments of the Staff Regulations introduced on 21 December 1939, and in particular on Articles 19(b) and 83(b) as modified by that amendment.

COMPETENCE:

I. Article II, paragraph 1, of the Statute of the Administrative Tribunal expressly states that the Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials.

This wording implies the granting of full competence in respect of the performance of all contractual undertakings entered into by the League of Nations with regard to its officials; no distinction whatsoever is drawn between an act of the Assembly itself and an act of the agents upon whom it confers authority over staff.

The Statute of the Tribunal was submitted to the Assembly on 26 September 1927 and adopted as drafted without any amendment with regard either to its spirit or to its letter. Thus it was the Assembly itself which, by its sovereign authority, determined the scope of the Tribunal's competence and thus gave its staff a guarantee of justice which thenceforward it could not retract.

This was in fact confirmed by the Committee of Jurists set up by the Chairman of the First Committee of the 13th Assembly in its formal opinion on the latter's right to reduce officials' salary; this opinion of 8 October 1932 recognising the competence of the Administrative Tribunal was given unanimously by the members of the Committee (Mr. Andersen, Mr. Basdevant, Mr. Huber, Sir William Malkin and Mr. Pedroso), cf. *Official Journal of the League of Nations*, Special Supplement No. 107, p. 206.

II. Moreover the Director of the International Labour Office was wrong to apply the Assembly resolution of 14 December 1939 to the complainant through the impugned decision.

The version of the Office's Staff Regulations in force at the date on which the complainant was appointed formed part of her employment contract and the complainant had an acquired right by virtue of which amendments of the Staff Regulations, in particular the disputed amendments of Articles 19 and 83, could not be applied to her unless there was mutual agreement.

No such mutual agreement was reached.

The argument that the Assembly, by its resolution of 14 December 1939, intended to infringe acquired rights without expressly mentioning it cannot be accepted.

In this respect, the text adopted by the Assembly is unequivocal and does not even refer to Article 97 of the Staff Regulations establishing that acquired rights must be respected.

The complaint is therefore not only formally but also effectively directed against a decision by the Director of the International Labour Office, which means that at all events it falls within the competence of the Administrative Tribunal.

ON THE MERITS:

The complainant, under her employment contract, had an acquired right to have the version of Articles 19 and 83 of the Staff Regulations of the International Labour Office in force on the date of her appointment applied to the termination of her appointment by the impugned decision.

The impugned decision wrongly deprived the complainant of the benefit of this acquired right by applying the Assembly resolution of 14 December 1939.

It is to no avail that *force majeure* was relied on in order to justify the application of the aforementioned resolution.

Indeed, it cannot be accepted that the League of Nations was unable to honour the acquired rights of its staff.

The complainant is therefore entitled to:

1. six months' notice, or the payment of six months' salary in lieu thereof;
2. the immediate payment of compensation equal to one year's salary.

Given that salary in lieu of notice will be paid only after a lengthy delay and that compensation was paid late and in instalments on various dates, the complainant is entitled to interest, which the Tribunal sets *ex aequo et bono* at 4 per cent.

For the above reasons,

The Tribunal

Declares that it is competent;

Finds the complaint receivable in form and in substance;

Finds that the complainant is entitled to the application of the version of Articles 19 and 83 of the Staff Regulations of the International Labour Office in force on the date of her appointment;

Consequently:

1. Orders the defendant to pay the complainant 3,656.25 Swiss francs, representing five months' salary, together with interest at 4 per cent as from 1 February 1940;
2. Orders the defendant to pay the complainant interest at a rate of 4 per cent:
on 6,581.25 Swiss francs from 1 February 1940 to 31 January 1941;
on 4,387.50 Swiss francs from 31 January 1941 to 31 January 1942;
on 2,193.75 Swiss francs from 31 January 1942 to 31 January 1943;
3. Orders the defendant to pay the complainant 250 Swiss francs to cover part of her legal costs;
4. Orders the refunding of the deposit made by the complainant under Article VIII of the Statute of the Tribunal.

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.