

**FIRST ORDINARY SESSION**

***In re* LHOEST**

**Judgment No. 1**

THE ADMINISTRATIVE TRIBUNAL,

Being seised of a Complaint dated 31 October 1946 by Mr. Jean-Baptiste Lhoest against the Secretariat of the League of Nations;

Whereas the suit has been brought with the purpose of establishing that:

The termination allowance of one year's salary to which the Complainant is entitled under the terms of Article 73 of the Staff Regulations should include the cost-of-living allowance which he was receiving at the time of his termination: 1,587 francs,

The indemnity which is due to him, under the terms of Article 45, paragraph 2, of the Staff Regulations for 78 working days of accrued annual leave should be calculated on the basis of the 304 working days composing the civil year under the terms of Article 7, paragraph 1(c), and Article 42 of the Staff Regulations,

(Salary x 78) : 304 = 2,767.44 francs,

of which 2,305.15 francs have already been received.

The deposit made under the terms of Article VIII of the Statute of the Administrative Tribunal should be refunded,

A sum should be allotted for costs incurred,

**ON THE FACTS:**

Whereas on 4 August 1946 a note of 30 July from the Director of Personnel and Internal Administration was brought to the attention of the Complainant,

In that note the former informed the Staff Committee, in reply to a note from the Committee, that the Secretary-General had decided not to take the cost-of-living allowance into account in calculating the termination allowances provided for in the Staff Regulations,

And whereas, by a letter of 21 March 1946, the Complainant was informed that the forthcoming winding-up of the League of Nations would result in the termination of his appointment as an official of the Secretariat of the League of Nations on 31 July 1946,

And whereas he was informed at the same time that he would be entitled to compensation for any annual leave that had accrued to him at the date of his termination,

And whereas, on 31 July 1946, 78 working days of annual leave had accrued to the Complainant,

And whereas on 8 August he received a cheque for 1,953.70 francs for 78 days of accrued annual leave calculated on the basis of 365 days per year,

And whereas by a circular dated 19 September 1946, which was delivered to the staff on 14 October, the Secretary-General refused to add Sundays to working days due for accrued annual leave, but decided that the cost-of-living allowance granted since 1 July 1943 would be included in compensation for accrued annual leave,

And whereas on 14 October the Complainant received a cheque for 351.45 francs,

## ON RECEIVABILITY:

Whereas Article VII of the Statute of the Administrative Tribunal provides as follows:

A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations,

Whereas the Defendant has argued that the Complainant did not make a complaint to the Secretary-General so that it could be brought before the Judicial Committee set up under the terms of Article 67 of the Staff Regulations, and that nothing prevented the Complainant from making a complaint to the Judicial Committee, not several days, but several weeks, earlier,

Whereas the normal period in which recourse could be had to the Tribunal was three months, and the Complainant points out that this period had been reduced, by a decision of the Assembly, so as to end on 31 October; and that when he remembered this, he had to bring his action on the same day in order to preserve his rights,

Whereas in these circumstances, added to the fact that the Judicial Committee does not appear to have been constituted for the year 1946, that its competence was exclusively advisory, that the Secretary-General could, without any doubt, after the suit had been brought, have taken the advice of his legal advisers if he believed that it was useful for his decision,

Whereas, in view of these facts, there is no ground for declaring that the action is not receivable because the Judicial Committee was not previously consulted,

Whereas therefore the Complaint is receivable,

## ON THE SUBSTANCE:

Whereas the Complainant argues that the allowance of one year's salary to which he is entitled under the terms of Article 73 of the Staff Regulations should include the cost-of-living allowance which he was receiving at the date of termination of his appointment,

Whereas the said Article, paragraph 1, provides as follows:

A permanent official whose appointment is terminated under the provisions of Article 18 shall be paid a sum equal to six months' salary if he has served less than seven years, and one year's salary if he has served more than seven years,

And whereas the cost-of-living allowance is a voluntarily granted temporary supplement to the salary paid to the official as provided for in his contract or in the Staff Regulations, and this allowance was granted for one financial year only,

And whereas therefore the said allowance is not to be considered as forming part of the salary mentioned in Article 73, paragraph 1,

Whereas the Complainant argues that the indemnity to which he is entitled, under the terms of Article 45, paragraph 2, of the Staff Regulations, for 78 working days of accrued annual leave should be calculated on the basis of the 304 working days in the civil year under the terms of Article 7, paragraph 1(c) and Article 42 of the Staff Regulations,

And whereas Article 43, paragraph 1(a) provides as follows:

1. Permanent officials are entitled to ordinary annual leave in accordance with the following provisions:

(a) Officials of the First and non-locally recruited officials of the Second Division are entitled to thirty-six working days' annual leave in each year,

And whereas the Complainant has argued that under the terms of Article 7, paragraph 1(c) and Article 42, paragraph 1, of the Staff Regulations, which provide that officials shall not work on Sundays and the holidays

enumerated therein, the year consists of only 304 working days, that it would therefore be necessary to add to the days of accrued annual leave which form the basis for an indemnity a proportional number of non-working days, and that the indemnity which he should receive should therefore be calculated in accordance with the following formula:

(Annual salary x 78) : 304

Whereas the salary of the Complainant is annual, which corresponds to 365 days,

And whereas it follows that a day's leave for the purpose of compensation should be counted as one-365th of the annual salary and not as one-304th of the total working days, which would be admissible only if the salary were calculated by working day,

ON THE GROUNDS AS AFORESAID:

The Tribunal,

Declares the Complaint of Mr. Jean-Baptiste Lhoest receivable, but without substance,

Orders nevertheless the refund to the Complainant of the deposit made by him in accordance with Article VIII of the Statute of the Tribunal.

In witness of which judgment, pronounced in public sitting on 24 February 1947, by Mr. Eide, President, His Excellency Mr. Devèze, Vice-President, and Jonkheer van Rijckevorsel, Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Wolf, ad hoc Assistant Registrar of the Tribunal.

(Signatures)

Albert Devèze

Vald. Eide

A. van Rijckevorsel

Francis Wolf