

FOURTEENTH ORDINARY SESSION

***In re* METZLER**

Judgment No. 81

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Staff Superannuation and Benevolent Funds of the International Telecommunication Union and against the Union itself, drawn up by Mrs H el ene Metzler, widow, on 27 November 1963, the Union's reply dated 2 February 1964, the additional statement of the complainant dated 15 May 1964, the Union's reply to that statement dated 5 July 1964 and the additional information lodged by the Union on 5 March 1965;

Considering articles II, paragraphs 5 and 6, and VII, paragraph 2, of the Statute of the Tribunal, Regulation VI of the Staff Regulations and Staff Rules applicable to elected officials of the International Telecommunication Union, and of articles 3 and 40 of the Regulations for the Staff Superannuation and Benevolent Funds (S.S. and B. Funds) of the International Telecommunication Union;

Having heard Mr Jean-Flavien Lalive, legal adviser of the complainant, assisted by Mr. J.F. Heyman, and Mr. Charles-Edouard Muller, agent of the International Telecommunication Union, in public sitting on 5 April 1965;

Considering that the material facts of the case are as follows:

A. On 15 August 1956, Dr. Metzler, husband (now deceased) of the complainant, was elected Director of the International Radio Consultative Committee (CCIR), an organ of the International Telecommunication Union, his conditions of service being specified in a contract the terms of which had been previously approved by the Plenary Assembly of the CCIR. The said contract provided that, with the exception of specific provisions inapplicable to elected officials, the terms of Dr. Metzler's appointment would be governed by the Staff Regulations of ITU and that the person concerned would be a member either of the Pension Fund or of the Savings Insurance Fund of ITU. Dr. Metzler became in fact a member of the Pension Fund, but it was provided, by a special agreement concluded in accordance with the terms of the Regulations of the Fund, that both the amount of the entrance fee and that of the retirement pension would be reduced but that the widow's pension would not be subject to any reduction and would be fixed in accordance with the insured earnings.

B. At its session in 1959 the Plenipotentiary Conference of the Union decided that the conditions of service of the staff of the Union should be assimilated to those of United Nations staff. After having communicated to the staff the decisions of principle taken by the Plenipotentiary Conference the Secretary-General informed them individually of the measures for the introduction of the new salary scales and for their incorporation as members of the United Nations Joint Staff Pension Fund in application of the system established for the purpose of such assimilation. In particular, on 25 March 1960, Dr. Metzler received a detailed statement of his new salary, which indicated the amounts deducted as contributions to the United Nations Joint Staff Pension Fund, while at an unspecified date during the month of September 1960 the Secretary-General published the Regulations for the Staff Superannuation and Benevolent Funds, effective 1 January 1960, which provided, in article 3, for the transfer of officials in the category to which Dr. Metzler belonged to membership of the Joint Fund and set out in article 40 the rights which they retained by virtue of their participation in the old Pension Fund of the Union.

C. Dr. Metzler died on 20 June 1963, and on 30 July 1963 his widow, Mrs. H el ene Metzler, was informed that she would receive an annual income of 19,600 Swiss francs, plus a cost-of-living allowance amounting to 15 per cent. of that sum. Requested to re-examine this decision, the Management Board of the Pension Fund confirmed it by a letter dated 28 August 1963, which was communicated to Mrs. Metzler the following day.

D. By the present complaint, dated 27 November 1963 and directed against the Staff Superannuation and Benevolent Funds of the Union and against the Union itself, Mrs. Metzler claims, principally, the payment, back-dated to 1 July 1963, of a monthly sum of 2,564.10 Swiss francs, excluding the cost-of-living allowance, and

subsidiarily, the reimbursement of the contributions paid into the Staff Superannuation and Benevolent Funds in respect of the amounts above those which were used as a basis for calculating the pension. In support of her main demand she claims to be entitled, in conformity with her husband's contract of engagement and the agreement concluded between him and the Pension Fund of the Union, to 35 per cent. of the sum in respect of which he had paid his pension contributions immediately before his death. As regards her subsidiary claim she maintains that the right to recovery of payments made by mistake is generally recognised.

E. The conclusions of the Staff Superannuation and Benevolent Funds and of the Union are that the Tribunal be pleased to dismiss the complaint. While the former declares to have strictly applied the existing regulations, the latter maintains, in particular, that since Dr. Metzler had accepted the decisions taken in respect of his case in 1960 and had paid, without protest, the contributions claimed, the complainant was now faced with the objections of prescription and assent.

CONSIDERATIONS:

On the receivability of the complaint in regard to the time limit:

1. Article VII, paragraph 2, of the Statute of the Tribunal stipulates that all complaints shall be submitted to it within 90 days of the date of notification or publication of the contested decision. In the present case the decision impugned was communicated to the complainant on 29 August 1963. The complaint was lodged on 27 November 1963, that is within the prescribed period, and was therefore submitted in time. The fact that the contested decision confirms a decision of 30 July 1963 is irrelevant. According to article 18, paragraph 2, of the Regulations for the Staff Superannuation and Benevolent Funds, the decision of 30 July 1963 was subject to reconsideration by the Management Board of the Funds and, consequently, could not be referred to the Tribunal.

On competence to act:

2. The real aim of the complaint is to contest, not that the Regulations for S.S. and B. Funds of ITU in force at the time of Dr. Metzler's death were correctly applied, but the validity of the bases on which the amount of Mrs. Metzler's widow's pension was calculated resulting from the application of the new pension arrangement. In the opinion of the complainant, the new arrangement, when applied to Dr. Metzler, adversely affected the balance of contracted obligations of her husband and infringed the essential terms in consideration of which he had accepted appointment. The validity of articles 3 and 40 of the Regulations for the Staff Superannuation and Benevolent Funds is thus being questioned in so far as the terms of Dr. Metzler's appointment are concerned, as well as the legality of the decision in accordance with which these provisions were made applicable in his particular case.

3. In accordance with the provisions of article II, paragraph 6, of the Statute of the Tribunal, the Tribunal shall be open "(a) to the official, even if his employment has ceased, and to any person on whom the official's rights have devolved on his death; (b) to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely". Since the complainant has never been an official of the Union and has no rights enjoyed by her husband devolving upon her, she is not entitled to invoke the provision under (a). It is therefore solely a matter of examining whether she is entitled to any rights under (b). This provision establishes a close link between the rights of the deceased official and the persons which it is designed to cover. However, such persons could not claim a right under a contractual or a statutory clause which the official was not entitled to invoke. Moreover, neither are they entitled to contest the validity of clauses which the official was called upon to respect.

4. In this case the complainant is attempting to deduce rights from clauses to which her husband could not have had recourse, since the decisions relating to the application of the new pensions scheme were not contested by Dr. Metzler within the period of 90 days prescribed by article VII, paragraph 2, of the Statute of the Tribunal, and these decisions, which thus became final in regard to Dr. Metzler, had the effect of irrevocably altering, before the date of his death, both the terms of his contract of appointment and the provisions of the regulations applicable in his case. In other words, Dr Metzler could not, immediately before his death, have invoked in his favour the Regulations for the old Pension Fund. Nor is the complainant entitled to do so now.

5. Moreover, she cannot claim the reimbursement of a part of the contributions paid by her husband into the Staff Superannuation and Benevolent Funds. Although it is true that the right to recovery of payments made by mistake is generally recognised and may, in consequence, be assimilated to a statutory right, Dr Metzler would not have

been in a position to claim the reimbursement of the payments he had made, with full knowledge of the facts, into the Staff Superannuation and Benevolent Funds, by virtue of a decision which had been rendered final as far as he was concerned. Neither has the complainant any right to do so.

DECISION:

The complaint is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 10 April 1965 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto attached their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed)

M. Letourneur
André Grisel
Devlin
Jacques Lemoine