Registry's translation, the French text alone being authoritative.

LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL

ORDINARY SESSION OF JANUARY 1929
HEARING OF 15 JANUARY 1929

In re PHELAN

Judgment No. 2

THE LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed on 26 May 1928 by Mr. Phelan against the International Labour Office;

Considering that the complainant asks the Tribunal to:

Declare the complaint receivable in form;

On the merits,

Find that the complainant was wrongly barred from participating in the League of Nations Staff Provident Fund;

Order that the complainant be affiliated to the Fund on the same conditions as the other permanent officials of the International Labour Office;

Order that such affiliation shall take effect retroactively on 1 January 1924;

Subsidiarily, if the Tribunal were to consider that it should not order the complainant's affiliation to the League of Nations Staff Provident Fund:

Find that the provisions of Articles 54 to 61 of the Staff Regulations of the International Labour Office (January 1923 edition) are and remain applicable to the complainant, irrespective of any prior decision to the contrary;

Order that the sum deposited by the complainant be refunded in accordance with Article VIII of the Statute of the Tribunal;

Considering that the defendant, while drawing attention to the fact that it has always been in favour of allowing Heads of Sections to be admitted as members of the Provident Fund, states that it defers to the justice of the Tribunal;

I. Concerning receivability:

A. The receivability of the complaint is indisputable having regard to the express terms of the report of the Fourth Committee dated 24 September 1926, the conclusions of which were approved by the Assembly on 25 September 1926, and which contains the following passage:

"It [the Committee] also concurred in the opinion of the Supervisory Commission that there was no justification either in equity or law for restoring, in favour of the Heads of Sections of the International Labour Office, Article 60 of the Statute, which provided for a payment on the expiration of contracts. It noted, however, that the Supervisory Commission would have no objection to these officials bringing the question before the Administrative Tribunal when it had been set up."

The complaint is hence receivable insofar as it concerns the complainant's right to retain the benefit of Article 60 of the Staff Regulations, which entered into force on 1 January 1923.

B. It follows implicitly from the foregoing that the complaint is also receivable insofar as it concerns Articles 54, 55, 56, 57, 58, 59 and 61 of the Staff Regulations.

Indeed, these articles form an indivisible set of provisions establishing the system of indemnities which is and shall remain applicable to every official until such time as, in accordance with the text of Article 54 of the Staff Regulations, a pension system covering officials is established with the participation of the International Labour Office.

The decision taken by the Assembly of the League of Nations must be interpreted as meaning that the complaint is receivable insofar as it concerns all the indemnities provided for in the Staff Regulations.

C. However, the complaint is not receivable insofar as it concerns an alleged obligation on the part of the defendant to extend to the complainant the benefit of affiliation to the Staff Provident Fund, which has been operating since 1 January 1924 in respect of some staff members.

Indeed, such a claim would be tantamount to requesting the Tribunal to legislate on an issue to be determined through staff regulations, rather than to rule on a dispute between the staff and the Administration.

The Administration is at liberty to establish for its staff such regulations as it may see fit, provided that it does not in any way infringe the acquired rights of any staff member.

II. Concerning the merits:

A. It is unnecessary for the Tribunal to dwell on the considerations of equity invoked by the complainant.

The Tribunal must apply the internal law of the League of Nations, as set out either in general regulations or in decisions and texts governing specific cases, as well as the contractual stipulations agreed between the Administration and its officials.

Only in the absence of such positive law will the Tribunal refer to general principles of law and equity.

That situation does not arise here.

B. It is common ground that the text of Article 54 of the Staff Regulations can only refer to the situation where a pension fund has been established, to which the official in question is affiliated.

If it were otherwise, the official would be placed in a position less advantageous than that ensured by her or his original contract without receiving the compensation for which that contract expressly provides.

In this respect, the resolutory condition provided for in Article 54 is of no avail.

That condition applies individually to each contractor, and it is therefore necessary to examine in each case whether it has effectively been fulfilled.

That is plainly not the case as far as the complainant is concerned.

C. The Administration's reliance on the general provision allowing it to modify the staff regulations during an official's appointment (Article 117 of the Staff Regulations) is misplaced.

Such an article could not have been intended to expose officials to arbitrary decisions of the Administration since, on the contrary, the existence of staff regulations stems from the need to afford staff members legitimate guarantees as to the stability and terms of their employment both now and in the future.

The report of Mr. Noblemaire, which pre-dates the adoption of the Staff Regulations, clearly demonstrates the intention in which they were drawn up, namely to remedy the insecure position in which the staff members found themselves before these guarantees of stability were established.

Article 117 must therefore be construed as referring only to conditions of application or ancillary matters and not to the substantive rights enjoyed by the staff.

For the above reasons,

The Tribunal,

Dismissing all wider or contrary claims,

1. Declares the complaint irreceivable insofar as it seeks an order requiring the defendant to affiliate the complainant to the Staff Provident Fund;

2. Declares the complaint receivable insofar as it concerns the complainant's right to the application of Articles 54 to 61 of the Staff Regulations of 1 January 1923;

Declares the complaint to be well founded;

Declares that the complainant remains fully entitled to the benefit of Articles 54 to 61 of the Staff Regulations which entered into force on 1 January 1923;

3. Orders the refunding to the complainant of the deposit which he made, in accordance with Article VIII of the Statute of the Tribunal.

In witness of which judgment, pronounced in public sitting on 15 January 1929 by Mr. Albert Devèze, President, and Mr. Montagna and Mr. Froelich, Judges, the aforementioned have hereunto subscribed their signatures, as well as myself, Nisot, Registrar of the Tribunal.

(Signatures)

A. Devèze
R. Montagna
W. Froelich
J. Nisot

Certified copy,

The Registrar of the Administrative Tribunal.