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

LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL

ORDINARY SESSION OF JANUARY 1930
HEARING OF 22 JANUARY 1930

In re BOUVAIST-HAYES

Judgment No. 4

THE LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed on 27 July 1929 by Mrs. Jeanne Marie Bouvaist-Hayes against the Secretariat of the League of Nations;

The facts:

Mrs. Bouvaist-Hayes was temporarily attached to the staff of the League of Nations in June 1920 for the duration of a committee session.

This temporary appointment was followed by another temporary appointment as is plain from a letter of 19 August 1920 from the Secretariat of the League of Nations and from the complainant's reply of 25 August.

At the end of this second appointment, which coincided with the end of the International Financial Conference in Brussels, by a letter of 19 October 1920 Mrs. Bouvaist-Hayes provisionally accepted, subject to confirmation by the Council, a post in the Interpreters' and Translators' Section on the terms set out in the Secretariat letter of 16 October 1920, which entailed a three-month probationary period.

On the expiry of this probationary period no firm contract was offered to Mrs. Bouvaist-Hayes, who was informed that her service with the League of Nations would come to an end on 31 January 1921.

As all immediate remonstrances were unsuccessful, on 4 March 1929 Mrs. Bouvaist-Hayes sent a letter to the Secretary-General in which she asked him to review the decision of 1921 concerning her which, she alleged, had been taken in circumstances that were unjust and irregular, and to consider the possibility of remedying the consequences of that decision, either through reinstatement or by other means. In the course of the ensuing correspondence the Secretariat advised the complainant that her probationary period had ended normally, that the decision of 1921 was final and, lastly, by a letter of 2 July 1929 that it was impossible to reconsider that decision.

Following the latter communication, on 27 July 1929 Mrs. Bouvaist-Hayes filed a complaint with the Administrative Tribunal, in which she relied on the non-observance of her terms of appointment and contended that it was not a temporary appointment the expiry of which completely freed the Administration from any obligation towards her, but that on the contrary the Administration was under an obligation to award her a further contract or, at least, to take a reasoned decision. The complainant adds that the termination of her contract resulted from some secret reports which had been accepted without discussion or verification, and of which she should have been apprised, if only in order to protect her moral reputation. She therefore asks the Tribunal to:

(a) prevail upon the Administration to forward all the documents in her file or concerning her and all unofficial or official verbal reports;

(b) enable her to present her defense by making these items of evidence available to her and by informing her of the Administration's pleas;

(c) order the cancellation of the contested measure and the execution of the Administration's obligations resulting from her terms of appointment and the facts of the case through the granting of compensation commensurate with the material and moral injury suffered.

The Administration, relying on Articles VII and XII of the Statute of the Tribunal, objects to the receivability of the complaint.

In law:

The complaint has been formally filed against the contents of the Secretariat letter dated 2 July 1929 which merely referred to the decision taken with regard to the complainant in January 1921.

According to the principles governing the matter and accepted by legal theory and by various administrative judicial bodies, a complaint filed against a document which merely reproduces an earlier final measure is receivable only to the extent that it could be receivable against the said final measure. A communication of this kind does not create a new legal situation and consequently the party in question may not lay claim to a response which the Administration is under no obligation to furnish, in order to secure the possibility of an appeal which was not open before that response.

Consequently, in order to rule on the preliminary motion raised by the Secretariat in which it objects to the receivability of this complaint, it is necessary to examine, on the one hand, whether the decision taken in 1921 was final and, on the other hand, whether under the terms of the Statute of the Tribunal a complaint against that decision of 1921 would be receivable.

The final nature of the measure in question is indisputable: it was adopted by the highest competent authority, the Secretary-General, and, as the claimant recognizes, no appeal was possible either before the Council of the League of Nations or before any other authority. This is sufficient proof that the decision was final.

It is to no avail that the complainant pleads that the true final measure was taken by the letter of 2 July 1929. The Tribunal cannot subscribe to this contention which, quite apart from the aforementioned considerations, would presuppose that administrative decisions could be impugned at any juncture, even after some considerable time has elapsed. Therefore, the law, the case law and even the internal law of the League of Nations (see Article VII of the Statute of the Tribunal) seek to set and to restrict the time limits within which the persons concerned may appeal either to the Administration or to the competent judicial authorities. On the grounds of this consideration alone, Mrs. Bouvaist-Hayes may not seek to defer, as she pleases, by belated appeals, the date on which the decision concerning her should be deemed final.

The complainant further contends that the decision was not final, as the Administration may always defer or amend a decision. This is to confuse the Administration's right to defer or amend measures without any bearing on their final nature, which must be determined in relation to the right of the persons concerned to enter an appeal. The measure becomes final when the person concerned has exhausted all means of resisting it as are open to him/her, or when there are no means of resisting it. This is exactly how final nature is construed in Article VII of the Statute of the Tribunal. In the instant case, it is necessary to consider not the right of the Administration but that of the complainant, which likewise leads to the conclusion that the measure adopted by the Secretariat in 1921 was inherently final.

In these circumstances, the complaint is irreceivable, as Article VII of the Statute of the Tribunal requires that, in order to be receivable, a complaint must have been filed within ninety days after the complainant was notified of the decision impugned. Mrs. Bouvaist-Hayes could not therefore in 1929 challenge a decision of which she had been notified in January 1921.

However, the complainant relies on considerations which warrant examination: she submits that the ninety-day time limit does not apply to her, because the decision concerning her was adopted before the Tribunal was set up and before any time limit was set, and she adds that the time limits prescribed by the Statute are of relevance, and can be of relevance, only to future cases, since the Statute contains no provisions relating to earlier cases.

These allegations are inconsistent with generally recognised principles and the positive provisions of the Statute. In principle the right to bring legal action – which is something separate from and independent of the right allegedly being asserted – exists only when there is an organised and competent judicial body. Consequently, even if the measure adopted in 1921 concerning Mrs. Bouvaist-Hayes were deemed to be improper, she would not have acquired the right to bring legal action, since at that juncture neither the League of Nations Administrative Tribunal, nor any other competent tribunal was in existence. Not only the time limit prescribed in Article VII of the Statute but also the organisation of the Tribunal are consequently of relevance exclusively to subsequent cases.

An express provision could indubitably have derogated from this principle, but Article XII of the Statute, far from supporting the complainant's contention, shows that the intent was to abide by the general rule. This article states: "If the decision impugned was notified to the person concerned or was published after December 31st 1927, but before the date at which the Tribunal first constituted itself, such decision, for the purpose of Article VII, shall be deemed to have been notified or published at the date at which the Tribunal first constituted itself." It appears, in particular from the *travaux préparatoires*, that a concession was made to officials allowing them to bring decisions post-dating 31 December 1927 before the Tribunal. The setting of that date – which would serve no purpose if the complainant's contention were correct – clearly establishes that, in accordance with the Statute of the Tribunal, complaints are in principle irreceivable if the decisions to which they refer were taken at an earlier date. It must be recalled that it was after deliberations of the Assembly of the League of Nations that the Tribunal was given jurisdiction to rule on the complaints filed by three Heads of Sections of the International Labour Office, although the decision which formed the subject of the complaint pre-dated the setting-up of the Tribunal. It is therefore positively accepted, even by the official documents of the League of Nations, that save when an express exception is made, decisions pre-dating the setting-up of the Tribunal do not fall within its jurisdiction.

The complaint filed by Mrs. Bouvaist-Hayes is therefore irreceivable and for this reason there is no need to examine the substance thereof.

There are therefore no grounds for ordering the refund of the deposit.

For the above reasons,

The Tribunal

Declares the complaint irreceivable;

Declares that the deposit made by the complainant under Article VIII of the Statute remains forfeit to the Secretariat of the League of Nations.

In witness of which judgment, pronounced in public sitting on 22 January 1930 by Mr. Raffaele Montagna, President, and Mr. Froelich and Mr. Eide, Judges, the aforementioned have hereunto subscribed their signatures, as well as myself, Nisot, Registrar of the Tribunal.

(Signatures)

Montagna
Froelich
Eide
Nisot

Certified copy,

The Registrar of the Administrative Tribunal.