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

LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL

ORDINARY SESSION OF MAY 1938
HEARING OF 6 MAY 1938

In re DESPLANQUE

Judgment No. 19

THE LEAGUE OF NATIONS ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed on 15 July 1937 by Mr. Jean Jules Achille Desplanque against the Administrative Board of the Pensions Fund;

On receivability:

In accordance with the Statute of the Administrative Tribunal, to be receivable, a complaint must be filed within ninety days of the notification of the impugned decision.

A. On 27 October 1936 the complainant sent the Administrative Board of the Pensions Fund a request for a purely *ex gratia* measure, not that his pension be paid in non-devalued Swiss francs but that he be awarded compensation to offset the difference in the exchange rate resulting from the devaluation of the Swiss franc after the amount of this pension had been set.

It is ascertained that at its meeting on 7 January the Administrative Board of the Pensions Fund discussed this request and on 8 January 1937 its Chairman notified its decision in the following terms: "I have the honour to inform you that on 7 January 1937 the Administrative Board examined your request to receive your pension in non-devalued Swiss francs. I regret to advise you that the Administrative Board could find no legal argument warranting such a procedure..."*.

The complainant observed on 20 January 1937 that his request sought only the adoption of an amicable compromise and that he had requested only an *ex gratia* gesture. He added that he merely took note of the decision and that he reserved every right to submit claims to the Assembly and any competent judicial body.

On 22 April 1937 the complainant submitted a new request in which he this time entered a legal claim no longer for compensation to offset the devaluation but for payment in Swiss francs at the same exchange rate for gold as that which had existed on average during the fourteen years in which his contributions had been paid, that is to say in non-devalued Swiss francs.

On 8 May the Administration replied that it could not modify its decision of 7 January by which the Board had rejected the request for the payment of the pension in non-devalued Swiss francs. On 12 May the complainant drew attention to the difference in nature and purpose between his requests of 27 October 1936 and 22 April 1937, and asked that a decision open to possible appeal before the Administrative Tribunal be taken on the latter request. On 2 July the Administrative Board replied that it considered the decision of 7 January, which had been notified on 8 January, to be the final decision taken in due form, by which it had refused both on legal grounds and out of goodwill to pay the pension in non-devalued Swiss francs, thereby categorically maintaining the point of view already expressed in the reply of 8 May.

The complaint was filed in accordance with the rules on 15 July 1937, that is to say within the statutory time limit as far as the decision of 22 April 1937 was concerned, but it was filed out of time if the view is taken that the decision of 7 January 1937, notified on 8 January, had already ruled on the issue raised in the request of 22 April. The receivability of the complaint therefore depends on the elucidation of this essential point.

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* Registry's translation.

B. It is obvious that the decision of 7 January 1937 expressly ruled that the complainant was not entitled to the payment of his pension "in non-devalued Swiss francs". This was the sole purpose of the request of 22 April 1937.

It is to no avail that the objection could be made that the requests presented on 27 October 1936 and 22 April 1937 are different in form and in substance. The Statute of the Tribunal draws no distinction between decisions taken in response to a request and decisions taken spontaneously by the Administration. If a question is raised when a request is submitted, the Administration is perfectly entitled to decide on it, even if it is not required to do so. The Administration indisputably acted thus on its own initiative on 7 January and the complainant was informed thereof on the next day. He unequivocally realised this himself since, in his reply of 20 January he takes note of the decision and even states that he expressly reserves "every right to submit claims to the Assembly and any competent judicial body", the only competent judicial body being the Administrative Tribunal.

As the time limits for receivability are set in Article VII of the Statute of the Administrative Tribunal and this Statute is itself the work of the Assembly of the League of Nations, the Tribunal has no power to exempt the complainant from them and must examine *ex officio* the receivability of the complaint before considering the substance of the dispute.

In the instant case the defendant party expressly states that it does not insist on abiding by the letter of the law but forgoes reliance on failure to observe the time limits prescribed in Article VII. By their nature those time limits do not constitute part of the internal public policy of the League of Nations and are stipulated only in favour of the defendant party. The complaint may therefore be nevertheless considered receivable.

On the merits:

A. The complainant's rights with regard to the defendant party are determined by the following circumstances:

(1) In response to a report of the Fourth Committee of the Assembly of the League of Nations, the Swiss franc was adopted for the calculation and payment of staff salaries (1921 Session); this decision was not accompanied by any reservation to stabilise equivalence if the Swiss franc were to be devalued in relation to gold; on the contrary, paragraphs 27 to 29 of the Committee report recognise that if fluctuations in the exchange rate were to entail a considerable depreciation of the Swiss franc vis-à-vis the national currency, it might become necessary to study whether some compensation for any exchange depreciation should be granted to officials who remitted part of their salaries to their home countries; the meaning of the Assembly decision cannot therefore be called into question;

(2) Monthly contributions to the Pensions Fund, of which officials are obligatory members, are deducted from staff salaries; these deductions are made in Swiss francs (Article 4 of the Regulations);

(3) The amount of the pension – in the case of the complainant – is proportional to the length of his service and is calculated for each completed year of service at the rate of one-fiftieth of the annual average pensionable emoluments received by the official during his last three years of service (Article 9 of the Regulations);

(4) All the accounts kept by the Pensions Fund are denominated in Swiss francs (Article 22 of the Regulations);

(5) All these considerations show that exactly the same currency is used for salaries, deductions and pensions.

B. The complainant requested and obtained retirement as of 15 October 1936. On 31 October 1936 the Administrative Board of the defendant set the annual amount of complainant's pension at 4,205.90 Swiss francs. In the meantime, on 26 September, the Swiss franc was devalued by 30 per cent in relation to the gold value of this currency.

In the present case the complainant claims the right to have this pension paid in non-devalued Swiss francs and it is necessary to examine the merits of this claim in light of the submissions of the parties to the dispute.

C. First of all, the question raised by the complainant of whether his relationship with the League of Nations and the defendant is contractual or institutional and whether it is of any real legal significance can have no practical effect on the decision on this dispute. In fact, the complainant may assert only those rights which he derives from the circumstances set out under A, without there being any need to consider whether these rights stem from his consent or from an official document of the League of Nations. Article II, paragraph 1, of the Statute of the

Tribunal establishing its jurisdiction, expressly provides that it is "competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials ... and of such provisions of the Staff Regulations as are applicable to the case".

D. The complainant seeks to have it found that there are currently two Swiss francs, a non-devalued one as it existed before 26 September 1936 and a devalued one, and that the co-existence of these two currencies should enable the Tribunal to entertain and allow the complaint.

In reality there exists and has always existed only one Swiss franc, the value in gold of which could be altered by an act of the Swiss authorities but which has nevertheless remained itself. The sole question which arises is whether, in order to remedy the consequences of devaluation, the complainant should be granted an increase in his pension which would restore it to equivalence with its previous exchange value. It is necessary to examine this request by taking account of the adoption of the Swiss franc as the currency of salaries and in the absence of any readjustment clause.

E. It is to no avail that the complainant relies on the fact that the League of Nations establishes member States' contributions on the basis of the gold franc. This was merely adopted as a sure and stable basis for apportioning between States the amount due as their contribution to total social charges.

The submission that the Pensions Fund has invested some of its reserves in gold and has realised a profit by this means is also of no relevance, since this constitutes prudent management to redress the Fund's deficit, which cannot have any bearing on the Fund's obligations to its members.

In reality, the only factor which must be borne in mind is the proportionality stipulated in Article IX of the Pensions Regulations between salaries and pensions, a proportionality that no longer seems to be respected when the currency in which salaries have been paid and deductions have been made from them has subsequently depreciated but is nevertheless still used to pay pensions.

F. There is an unavoidable risk when a particular currency has been adopted regardless of its apparent stability.

Moreover, the actual consequences of devaluation vary endlessly depending on whether the rise in domestic prices mirrors the depreciation of the national currency in a given country and on whether the effective value of that currency varies more or less in relation to other currencies, depending on the fate of each of these foreign currencies and on the state of the domestic market of each of these foreign countries.

No one can escape this world situation which in law is governed by the principle that in the absence of a readjustment clause – a clause which in many countries was even regarded as contrary to public policy and therefore null – the agreed or adopted currency remains the currency, "the franc remains the franc".

G. This fiction can obviously entail serious consequences from the point of view of equity.

This is particularly true of the League of Nations, as most of its officials do not have Swiss nationality, remit part of the salary to their country of origin and return to their country of origin after they retire.

However, in this case the Tribunal may not consider equity but must be guided by the intention expressed by the Fourth Committee of the Assembly in 1921 with regard to a situation where the consequences of currency instability would lead to flagrant injustice.

On the other hand, equity would not justify the perpetual maintenance of the full gold value giving some beneficiaries unwarranted advantages while entailing disastrous consequences for the League and the Pensions Fund.

<u>On the subsidiary claim</u>:

The Tribunal would overstep its authority were it to order the reinstatement of an official who has formally resigned from his duties.

On the applications to intervene:

These are receivable in form, but intervener Caldwell has the capacity to act only on his own behalf. These applications must be settled after a decision has been taken on the complaint.

On the refunding of deposits:

There are grounds in the circumstances of this case to order the refunding of deposits to the complainant and to intervener Caldwell.

For the above reasons,

The Tribunal

Declares the complaint receivable but groundless;

Dismisses all the complainant's principal and subsidiary claims;

Finds that the application to intervene of Mr. Caldwell is receivable insofar as it is filed on his own behalf, but not receivable for the remainder and groundless;

Finds that the application to intervene of the International Labour Office is receivable and well-founded;

Orders however the refunding of the deposits to the complainant and to intervener Caldwell.

In witness of which judgment, pronounced in public sitting on 6 May 1938 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, Nisot, Registrar of the Tribunal.

(Signatures)

Eide
Devèze
van Rijckevorsel
Nisot

Certified copy,

The Registrar of the Administrative Tribunal.