Privy Council Appeal No. 54 *of* 1933.

The Ottoman Bank of Nicosia - - - - - *Appellant*

v.

Angelos Dascalopoulos - - - - - - *Respondent*

FROM

THE SUPREME COURT OF CYPRUS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 12TH APRIL, 1934.

Present at the Hearing:

LORD BLANESBURGH.

LORD MERRIVALE.

SIR SIDNEY ROWLATT.

[*Delivered by* LORD BLANESBURGH.]

This is an appeal from a judgment of the Supreme Court of Cyprus affirming the judgment of the District Court of Nicosia at the trial.

The appellants, defendants in the action, are the Ottoman Bank of Nicosia, and the respondent, the plaintiff, is a former official of the bank. Prior to his retirement on the 31st December, 1931, the respondent was serving in the Larnaca branch in Cyprus and the one question which survives for determination upon the present appeal is whether the pension to which, in accordance with the terms of his employment, he then became entitled is, as both Courts in Cyprus have held, a pension payable in Turkish gold pounds translated into Cyprus currency at the exchange of the day, or whether, as the appellant bank contends, it is due only in pounds of Turkish currency, or, whether so or not is in Cyprus payable only in the currency of the Island at the fixed rate of exchange of 100 Cyprus for 110 Turkish pounds. and that whether the salary pounds be gold or not. The respondent's pension, in other words, according to the view of the bank, so far from being based upon gold, is really in Cyprus

a sum expressed in Cyprus currency fixed and invariable, whatever, either intrinsically or in exchange, the value of that currency may be or become. As the Cyprus pound is no longer on a gold basis, and bears in actual exchange to a Turkish gold pound a very much higher ratio than 100 to 110, the question at issue is even now one of substantial consequence to the respondent. To the bank the issue may also be of general importance as affecting the pension claims of other of its retired officials in a position similar or analogous to that of the respondent.

In 1903, the respondent entered the service of the Imperial Ottoman Bank, with which, for all present purposes, the appellant bank may be regarded as identical. In March, 1905, he joined the permanent and pensionable staff, and he then signed a declaration by which he bound himself to adhere to the regulations governing the pensions and superannuation fund of the bank, which, adopted by the Direction Générale in December, 1898, had been in force as from 1st January, 1899. These regulations, as the respondent then further declared, formed an integral part of the conditions of his engagement with the bank.

The regulations are voluminous. Only a few of the articles constituting them need, however, here be specifically referred to. By article 2, the general management of the bank may at all times of the year discharge an employee, but (article 3) he receives an indemnity from the pension fund applicable to his case. Each employee (article 9) cedes to the bank prescribed proportions of his fixed salary and increments. These sums are retained by the bank each month, and lodged by it to the account of the fund. The bank, for its part, is to lodge, every month, to the same account, 6 per cent. of the salaries of the personnel and undertakes to make good the deficiency, if the total of the fund, as so composed, is insufficient to meet pensions then already granted.

By article 14, the amount of a retired employee's pension is fixed "on the basis of the salary which [he] received on the 31st December of the year preceding that in which he is retired." The date applicable to the respondent's case accordingly is the 31st December, 1930. By article 15, the amount of pension is calculated for 10 full years' service at 30 per cent. of the employee's annual fixed salary, with 2 per cent. for each of the subsequent years.

Article 30 is striking. "The general management reserve unto themselves the right to modify these regulations every time they think it necessary, *and in so far as the rights and interests of the personnel will not be injured by these modifications.*"

It is complained that the general management have, on occasions, purported to exercise this power without due or any regard to the qualification imposed by the words above italicised. The powers of the bank, in this behalf, are not, however, in the present case directly in question. But incidentally the article must again be referred to.

There is in the regulations no direct statement as to the currency in which any salary is to be paid. There is, however, in article 16, expressed in Turkish pounds, a minimum as well as a maximum pension which employees of a particular type may claim. A similar provision in the case of a pension payable to the widow of a deceased employee is to be found in article 22. It may also be observed that at the date of the regulations the only Turkish pound either known or, (with the possible exception of pounds of equivalent intrinsic value issued in paper by the bank itself), in circulation, were gold coins of a special gold content, and their Lordships can have no doubt that the reference in the regulations was a reference to these Turkish gold pounds.

Nor is the salary to be paid to the respondent referred to in any document then signed by him. The amount was no doubt agreed, and increased from time to time. That it was, *ab initio*, expressed in terms which in the result made it payable in Turkish gold pounds can hardly be doubted. It is, indeed, stated in evidence by the bank that in Turkey prior to the war, the employees' salaries were always paid in Turkish gold pounds.

And here it may be convenient to allude to the origin, with the meaning to be attached to it, of the conversion of Turkish into Cyprus pounds at the rate of 110 to 100. To this conversion, as has already been indicated, and as will later more clearly appear, final importance is attached by the bank. Cyprus pounds were here the equivalent of the English sovereign and this particular ratio which as is explained was always followed in the books of the bank in relation to English sovereigns represented a real ratio founded on the actual gold content of two gold coins—a Turkish pound and an English sovereign. In fixing it, the gold content of the Turkish pound was taken to be 7·216 grammes, and that of the English sovereign 7·988 grammes. It is further in evidence and it may here be conveniently added that during the term of the respondent's service in Cyprus—certainly at the critical date, the 31st December, 1930—the Cyprus £1 note and the sovereign were in practice interchangeable. In Cyprus, said Mr. Jones, a witness for the bank, there was no difference between gold and paper.

Now the respondent, on the permanent staff of the bank since March, 1905, was, in 1923, serving temporarily in Constantinople. He had previously been employed in branches in other parts of Turkey. In 1923 he was transferred to Cyprus, and became Chief of the Larnaca office. In that post he remained until the 31st December, 1931, when he was retired. Thenceforth he was eligible for pension, and it is not now in question that in accordance with the pension regulations above summarised, and in view of his length of service, the respondent was entitled to a monthly pension of 64 per cent. of the fixed salary he was receiving on the 31st December, 1930. It is now further agreed that the fixed or pensionable salary of the respon-

dent on that date was one which, expressed in terms of Turkish currency was a salary of 45 Turkish pounds per month. The first, and it may be the final, question for determination is whether these Turkish pounds were any other than Turkish gold pounds representing the pensionable portion of the salary to which, under the terms of his employment, the respondent was then entitled.

It is vital to remember in the consideration of this question that the respondent at the date of his retirement was being employed outside Turkey. Had he then been employed within Turkey—for example, in Constantinople where the official in the *Ottoman Bank* v. *Chakarian* [1930] A.C. 277, had been employed, different considerations as to his pension rights might have arisen. Here, however, their Lordships are concerned only with the case of an official of the bank who had continuously for about eight years before his retirement been serving abroad—to wit in Cyprus.

Now it is in evidence that on transfer for service abroad no fresh agreement was normally entered into as to the salary payable to the transferred employee by the bank.

In the particular case of the respondent, however, when in 1923 he was transferred to Cyprus, he was informed by the director of the bank, so he says, that his salary—then a salary of 45 Turkish pounds a month, would be as formerly, and that he would draw it in parity, that is he would draw salary at 110 Turkish gold pounds to 100 English.

Objection was taken by the bank to the admission of this evidence; but the fact that the Turkish pounds on which the translation into Cyprus or English currency depended were throughout the respondent's service Turkish gold pounds is, their Lordships think, clearly shown by what actually happened in Cyprus.

First on the 21st May, 1926, the respondent was granted an increase in his emolument—a so-called indemnity—expressed as 2 Turkish pounds to be added to the 45 Turkish pounds he was then receiving. He was granted a similar increase as from the 1st January, 1929. It is not open to doubt their Lordships think, that in each case these were and were intended to be, additions of two Turkish gold pounds to the fixed salary then described in the same currency.

But the most conclusive evidence as to nature of the Turkish pounds in which the respondent's salary in Cyprus was expressed is supplied by the salary book of the bank framed in terms which for the present purposes are of great significance. Every month the respondent on receipt of his salary was required to sign and did sign the salary book. The details specified are always in the same form. For convenience their Lordships take the entry which, of those printed in the appendix, is latest in date. It is the entry for January, 1929.

There, in the first column the name of the respondent appears at the head of the "Directing Staff." In the 2nd column headed

" Salary £tq. " his salary is entered as 45. The third column is headed " Indemnity £tq." In this column the respondent's two increases are entered as £tq. 4. Passing over columns 4 and 5 indicating deductions from the £tq. 49 shown in columns 2 and 3, we find under the 6th column headed " Net salary in £tq. " that the respondent's net salary is brought out at £tq. 46.75. The 7th column, the most important perhaps of all in this connection, is headed " Equivalent in £ s cp " : and the respondent's equivalent is entered at £42 10s. Then under the 8th column headed " Total in £ s cp, the same figure as in column 7 is brought out, namely : £42 10s. The whole is signed by the respondent.

This entry appears to be free from ambiguity. That the £tq. 45 and £tq. 4 are Turkish gold pounds is proved by the fact not really in dispute—that the so-called " equivalent " in column 7 is the Cyprus equivalent for a Turkish gold pound and for nothing else. Equally clear is it, when the actual facts are remembered, that the real function of this column was to equiparate in the Cyprus currency, in which payment was actually being made and accepted, the respondent's contractual salary in Turkish gold pounds.

The bank does not accept this view. Even if, contrary to its submission, based upon reasons later to be stated the Turkish pounds referred to are held to be Turkish gold pounds, even so, it contends that the respondent is not entitled, in Cyprus at all events, to any payment other than one in Cyprus currency exchanged at the rate of 110 Turkish pounds for 100 Cyprus pounds. Their Lordships are unable to accept this contention. They are satisfied that the " equivalent " in Cyprus currency ascertained by that formula was, and was intended to be, a real equivalent. It was merely exegetical of the basic contract. It was a formula applicable only where the result was to produce parity in terms of gold. To both parties it was a convenience that the salary of the respondent, stationed in Cyprus as he was, should be paid in Cyprus currency. But the salary remained a salary due in Turkish gold pounds, and if it had been tendered by the bank in that form it must have been accepted by the respondent. In short, these monthly entries express with clearness, as their Lordships think, the respondent's contractual rights in the matter of salary, and it being now agreed that his pensionable salary on the 31st December, 1930, was 45 Turkish pounds a month, they justify the declaration of the learned Trial Judge that the respondent is entitled to a monthly pension of a sum equal to 28·80 Turkish gold pounds ; with as a necessary corollary, now that Cyprus currency has so depreciated in terms of gold, that the " equivalent " in Cyprus currency must be calculated according to the rate of exchange, whatever it may be, prevailing at the date when each instalment of pension becomes due.

Their Lordships have reached this conclusion without so far considering the possible effect upon it of the fact that whereas up to 1915 there was substantially no Turkish pound existing other than a Turkish gold pound, there was brought into being on April 15, 1915, as the result of an Ordinance of that date, an issue of Turkish paper pounds to which were attached the privileges specified in the Ordinance.

The bank goes so far as to say, and it relies in support of its contention on a decision of this Board in the case already cited, that as one result of the issue of these paper pounds, the salaries of the bank's employees, whatever may have been the case before, ceased to be payable in gold. So far, however, as the respondent's salary is concerned, it will be found, their Lordships think, that for so long as he was employed outside Turkey—and that is the only case with which their Lordships are concerned—his position was unaffected either by the Ordinance or by any pronouncement of the bank following upon it. In order, however, to appreciate the true position in this respect and also to ascertain the bearing, if any, of the *Chakarian* decision upon the respondent's rights, it is necessary to go into some little detail.

By article 1 of the Ordinance in question the Ministry of Finance was authorised to issue £tqs. 6,583,094 of paper money against the deposit of effective gold for 150,000,000 francs. By article 2 the acceptance and circulation of this paper money exactly in the same way as cash was made obligatory in all the territory of the Empire in all transactions, either between private parties and the Government or between private parties themselves. By article 3 the counter-value of this paper money was to be reimbursed in gold at sight and to bearer, six months after the conclusion of peace at Constantinople. By article 4 such of the paper money as should not have been presented for reimbursement within the five years following the date fixed in article 3 was to be prescribed to the profit of the Treasury.

Now the effect of this Ordinance is of course a matter of Turkish law, with reference to which no evidence was tendered at the trial. But its somewhat remarkable provisions are alluded to in the Supreme Court. It is pointed out by Sertsios J. that the notes were to be legal tender only up to a date of six months after peace, an event which the Chief Justice points out occurred on 6th August, 1924. It may also be questioned whether these currency notes were ever made legal tender for any payment under a Turkish contract which by that contract had to be made outside of Turkey. These matters however have not been discussed in the Courts below and their Lordships in the absence of evidence as to Turkish law, are not in a position to pronounce upon them now. They need not, however, do so. For it is clear to them that not even in Turkey did the bank ever assert a right to meet the claims of its employees hitherto paid in Turkish gold pounds by tendering them Turkish paper pounds. So far as the employees

of the bank outside of Turkey were concerned, there is no indication that any change at all was made in the manner of paying their salaries hitherto always paid on a gold basis. As for the employees in Turkey proper the bank did from time to time purport to alter the salaries, but nearly always by way of increase. In the present case, which is not concerned with an employee serving in Turkey at any relevant date, these variations are not important, and their Lordships are, for present purposes, content to accept the summary statement of the Chief Justice with reference to them that salaries in Turkey were being paid on a gold basis, each employee receiving in Turkish currency a sum, which had Turkish gold pounds been procurable, would have enabled him to obtain these to a number equal to the bank's original figures of his month's salary.

The bank, however, in 1920 made the following notable pronouncement applicable to the staff of Constantinople and the agencies in Turkey :—

> "As from the 1st January 1920 the gross monthly salary of each employee will be converted into pounds sterling at the rate of 110 Turkish pounds for 100 pounds sterling and the proceeds of conversion so obtained will be paid to each employee in Ottoman Treasury notes at the average selling price of the pound sterling registered at the head office during the three months immediately preceding the current month."

This method of payment was followed for nearly a year and a half. It was superseded by a decision of May, 1921 of the management committee, arbitrarily fixing 451 piastres—a number far less than the proper number in exchange—as the number to be taken as the equivalent of the pound sterling and finally, in 1923, after the respondent had gone to Cyprus, the bank adopted a method of directly converting the Turkish gold pound, "the gross monthly salary," into paper by treating it as the equivalent to 410 piastres.

Now the action of the bank in this matter has not passed unchallenged in the Cyprus Courts. It has, in the case of *Esmerian* v. *The Ottoman Bank*, been condemned as an attempt by the bank, under cover of article 30 of the pension regulations above set forth, to alter a fundamental term of their contracts in the case of its employees in Turkey. This may or may not be so. Upon such a question their Lordships in this case naturally express no opinion. But they draw attention to its existence in order that the meaning and effect of the judgment of the Board in *Ottoman Bank* v. *Chakarian* (*supra*) may be made clear.

That case is claimed by the bank as an authority for the proposition that the salaries of the bank's employees are no longer payable in gold. This claim seems to rest upon a complete misapprehension of the decision. The plaintiff there was an employee of the bank who, when employed at the Constantinople office, had, as he alleged, been wrongfully dismissed. His action against the bank, brought in Cyprus was one for damages for such wrongful dismissal. For the purpose

of assessing the damages, and only for that purpose, it was necessary to value the plantiff's pension rights on the footing that he had been retired at the date when he was dismissed. He had, in fact, received on the 31st December of the year preceding his dismissal, without protest or objection on his part, his salary calculated according to the above decision of May, 1921. In these circumstances it was held by the Board that for the purpose of fixing his pension rights the plaintiff was, under article 14 of the regulations, bound by and could not go behind that receipt—which as a receipt of 451 piastres for every pound sterling, was an essential part of the decision of May, 1921. The validity of the decision of May, 1921, was not itself in question : it was assumed to be valid : the only question under discussion was what it meant, and upon that question practical agreement was reached during the argument. In the judgment of the Board therefore, delivered by Lord Thankerton, it was not necessary to do more than record the result. It follows that so far as any general question as to payment in gold is concerned, the decision is only relevant now as showing that by common consent the " gross monthly salary " of the pronouncement of January, 1920—the exact counterpart of the respondent's £tq. 45 —was assumed to be, even in Turkey, a salary in Turkish gold pounds. But the case has no further application to the present, which relates to an employee of the bank serving out of Turkey : nor can it be any authority in any case, even of an employee serving in Turkey, where the validity of the decisions of May, 1921 and 1923 is not admitted or, if questioned, is not established.

In the view their Lordships take of the case it is unnecessary, they think, to deal with other questions canvassed during the argument. For the reasons given they are of opinion that the concurrent judgments of the Courts in Cyprus to the effect above stated were in the result right, and they will accordingly humbly advise His Majesty to dismiss this appeal.

Their Lordships understand that the costs have been arranged between the parties.

In the Privy Council.

THE OTTOMAN BANK OF NICOSIA

v.

ANGELOS DASCALOPOULOS.

DELIVERED BY LORD BLANESBURGH.

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