

The Polish Government is of opinion that the High Commissioner's decision is, generally speaking, insufficiently grounded in law. It is contrary to the provisions in force, and it is inexpedient as, on the one hand, it hampers the Polish Railway Administration in administering and operating the Danzig railways, and, on the other hand, it affords no advantages to the Free City.

5. In its appeal dated March 4th, 1932, the Senate asks:

That points A and B of the High Commissioner's decision of January 14th, 1932, be modified as follows:

A. It is not admissible that the Administration of the railways situated within the territory of the Free City of Danzig should be absorbed into the Administration of the railway lines in Poland. The Administration of the railway lines situated in Danzig territory should, on the contrary, have the character of a separate unit of the Polish Railway Administration.

B. The Polish Railway Administration is bound to set up immediately at Danzig a Polish Railway organisation which will be responsible for the administration of the whole railway system situated within the territory of the Free City (except tramways and narrow-gauge railways) and which will have the character of a separate unit of the Polish Railway Administration with all the powers and functions of a district direction (Bezirks-Direktion) of the Polish State Railways.

"The Senate quotes a passage from the preamble to the High Commissioner's decision, in which, after endorsing the opinion pronounced by the Legal Committee, he makes the following remarks:

"It clearly shows that, while Poland is not obliged to maintain on Danzig territory a railway direction having substantially the same powers and functions as the present direction of Eastern Pomerania, she is nevertheless obliged to set up at Danzig an organisation which (while taking into account the obligations devolving upon Poland as regards the railway service in Danzig territory which obligations she must at all times be in a position to observe) will ensure that the Danzig system does not lose the character of a separate unit of the Polish Railway Administration.

"In this connection, the Senate says that, if the text of the decision is considered in itself, it looks as if the body to be set up as a separate unit at Danzig must have *all* the powers and functions ('attributions') connected with the administration of the Danzig railways. Considered in conjunction with the High Commissioner's above-mentioned remark, however, it appears that the text is to be understood as meaning that the organisation to be set up need not have all the powers and functions ('attributions') connected with the administration of the Danzig railways. Such a meaning for the text of the decision is not, in the opinion of the Danzig Senate, in harmony with the legal situation.

"Lastly the Senate states that the Legal Committee has offered no justification for its opinion which, in the Senate's view, is less a legal opinion than a proposal for a practical settlement from the point of view of railway technical considerations and expediency.

"6. The High Commissioner based his decision on the opinion given to him by the Permanent Legal Committee of the Communications and Transit Organisation, assisted by the Administrative Section of the Permanent Committee for Transport by Rail of the same Committee. In other words, the opinion given to the High Commissioner was given by persons with special qualifications in the matter. The objection made that the opinion is less a legal opinion than a proposal for a practical settlement from the point of view of railway technical consideration and expediency seems to me, far from being a reproach, to be the best evidence that the High Commissioner's decision is well grounded from every standpoint.

"With these remarks I would propose that the Council simply confirm the High Commissioner's decision in the terms of the following resolution.

"The Council.

"Confirms the decision rendered by the High Commissioner on January 14th, 1932."

The draft resolution was adopted.

3062. Free City of Danzig Personnel of Danzig Nationality in the Service of the Polish Railway Administration.

Mr. EDEN presented the following report and draft resolution.¹

"1. The Polish Government on February 26th, 1932, lodged an appeal against the decision given by the High Commissioner of the League of Nations at Danzig on January 15th, 1932, in the matter of the personnel of Danzig nationality in the service of the Polish Railway Administra-

¹ Document C.448.1932.I.

tion. The matter had been brought before the High Commissioner by a request by Danzig dated November 21st, 1929. The text of the High Commissioner's decision and that of the Polish Government's appeal, as also that of the opinion given to the High Commissioner by the Permanent Legal Committee of the Communications and Transit Organisation on September 30th, 1930, have been communicated to the Council. There is no need therefore to give a detailed summary of the arguments put forward. It will be sufficient to give a brief account of the history of the case.

" 2. On November 21st, 1929, the Government of the Free City submitted a request to the High Commissioner in the following terms:

" I. (1) Danzig citizens who are employed on the "working staff" of the Danzig railways may not be removed from their posts by dismissal, notice of discharge or transfer to other posts unless the exigencies of the railway service so require, on grounds to be recognised as justifiable.

" (2) The question whether the exigencies of the railway service can be recognised as justifying the removal of a Danzig citizen from a post on the working staff of the Danzig railways should be examined by the official of the Danzig Government appointed under paragraph 9 (vi) of the decision of August 15th, 1921, and may form the subject of a difference between the Free City and Poland within the meaning of Article 39 of the Paris Treaty of November 9th, 1920.

" (3) Danzig citizens employed on the "working staff" of the Danzig railways may not be transferred to a place outside Danzig territory

" II. The Polish Railway Administration is required to revoke the following measures, which are inconsistent with the foregoing decisions:

- " (a) The notice of discharge of the Danzig citizen Arnheim,
- " (b) The removal of the Danzig citizens Sandkamp, Wurm, Mehl, Damnitz, Conrad and Stepphuhn from their posts;
- " (c) The transfer of the Danzig citizen Heinz to a place outside the territory of the Free City of Danzig.

" 3. In its Replique submitted on February 27th, 1930, the Danzig Senate added certain supplementary conclusions and asked for a decision to the following effect:

" I. (1) See the request dated November 21st, 1929.

" I. (2) The question whether the exigencies of the railway service can be recognised as justifying the removal of a Danzig citizen from a post on the working staff of the Danzig railways should be examined by the official of the Danzig Government appointed under paragraph 9 (vi) of the decision of August 15th, 1921. The Polish Railway Administration should furnish this official with information, if he so requests, and allow him to inspect the papers: the above-mentioned question may form the subject of a difference between the Free City and Poland within the meaning of Article 39 of the Paris Treaty of November 9th, 1920.

" I. (3) See the request dated November 21st, 1929.

" I. (4) Employees in the railway services (Eisenbahndienststellen), in the railway offices (Eisenbahnämter) and in the Railway Direction (Eisenbahndirektion), with the exception of officials of the Railway Direction who, according to the service rules of the Polish Railway Administration, are empowered to take decisions and issue orders (Verfügungen), form part of the working staff (Betriebspersonal) of the Danzig railways.

" II. The Polish Railway Administration is required to revoke the following measures, which are inconsistent with the foregoing decisions:

- " (a) The notice of discharge of the Danzig citizen Arnheim,
- " (b) The removal of the Danzig citizens Sandkamp, Wurm, Mehl, Damnitz, Conrad and Stepphuhn, Knopf, Kent and Kurt Müller from their posts;
- " (c) The transfer of the Danzig citizens Heinz and Wagner to a place outside the territory of the Free City of Danzig.

" 4. On the strength of a legal opinion given to the High Commissioner, in accordance with the procedure in force, by the Permanent Legal Committee of the Advisory and Technical Committee on Communications and Transit, assisted by the Administrative Section of the Permanent Committee for Transport by Rail, the High Commissioner on January 15th, 1932, gave the following decision.

" A. It is for the Polish Railway Administration and its competent organs to take such administrative measures as the service requires with regard to the Danzig staff employed in the railway service.

" B. It is not for the official of the Danzig Senate appointed in conformity with paragraph 9 (vi) of the High Commissioner's decision of August 15th, 1921, to express an

opinion as to whether the measures taken by the Polish Railway Administration are justified by service requirements. The Polish Railway Administration is, however, bound to inform this official, as far as possible beforehand, of the reasons for any step depriving Danzig nationals forming part of the working staff of the railway system of the Free City of their posts, by dismissal, notice of discharge or transfer.

“ The Polish Administration is not bound to communicate to this official the papers concerning such action.

“ C. Danzig citizens forming part of the working staff of the Danzig railways cannot be employed without their consent outside the territory of the Free City except in the case where an employee, as a result of a formal disciplinary measure, is transferred to another post by way of punishment, and provided no similar post exists within the territory of the Free City

D The high officials” referred to in paragraph 15 of the High Commissioner’s decision of September 5th, 1921, include heads of sections, as well as the Director and his deputies, and heads of divisions and their deputies.

E. The individual cases mentioned in the Free City’s request dated November 21st, 1929, and in its Replique” of February 27th, 1930, should be dealt with on the lines laid down in the present decision.

5. In its appeal of February 26th, 1932, the Polish Government requested that:

- (1) The High Commissioner’s decision of January 15th, 1932, be reversed,
- (2) A ruling be given that the sole authority for settling staff questions affecting railway employees of Danzig nationality is the Polish Railway Administration, whose freedom of decision in this matter may not be hampered by any fresh limitations not deriving from the regulations hitherto in force, more particularly by the limitations laid down in Points B (second sentence), C and D in the decision of the League of Nations High Commissioner dated January 15th, 1932.

The Polish Government takes the view that the contested points establish entirely new directions by restricting the hitherto uncontested rights of the Polish Railway Administration. The Polish Government considers, first, that the legal grounds of the High Commissioner’s decision are irrelevant and insufficient to support it, and, secondly that the decision is not capable of application in practice.

6. I will confine myself to the following remarks:

On point D of the High Commissioner’s decision, defining the meaning of the term high officials the Polish Government observes that the High Commissioner does not make any specific reference in his decision to the personnel specially attached to the Director in person, though the experts refer to them in their report. I think it is sufficient on this point to quote what the High Commissioner says in his statement of the grounds for his decision. As regards the staff specially attached to the Director in person, I think the Director himself or the authority entitled to take decisions in this respect under the existing regulations should be left free to choose the Director’s immediate assistants. The Polish Government further finds that the limitative enumeration contained in the High Commissioner’s decision omits a certain number of posts existing in the higher administration of the Danzig railway system, which comply with the requirements laid down in the experts’ report; and it proceeds to enumerate a whole series of posts which, in its opinion, should come under the category of high officials. It is not possible to go into the details of these questions. I think it is sufficient to say that the Legal Committee based its opinion on the views of the Administrative Section of the Permanent Committee for Transport by Rail, which would appear to have special competence to judge in the matter. It may be noted that the Committee itself states that it has given a wider interpretation to General Haking’s decision. It states in its opinion that if consideration is confined to a literal interpretation of the texts, the words high officials” as opposed to working staff” can only relate to a very small number of officials. It would hardly in fact be possible to include in the number of these officials any persons other than the Director, his assistants, the heads of divisions and their assistants. It might be asked whether this narrow interpretation corresponds entirely to practical requirements, and above all to the responsibility of the Polish Administration for the satisfactory operation of the system, which remains unimpaired. In this connection, it would be desirable to include amongst these high officials” which the High Commissioner has in view at least the heads of section and the personnel specially attached to the Director in person as well.

7 With these remarks, I beg to propose that the Council should confirm the High Commissioner’s decision in the terms of the following draft resolution.

The Council.

Confirms the decision rendered by the High Commissioner on January 15th, 1932. ”

The draft resolution was adopted.