

Judgement No. 258*(Original: English)***Case No. 246:
El-Tawil****Against: The Secretary-General
of the United Nations**

Request for validation for pension purposes of a period of service during which the staff member concerned was not a participant in the Joint Staff Pension Fund.

Respondent's objection that the application was not submitted within the prescribed limits.—Objection rejected on the ground that none of the provisions cited by the Respondent relates to the filing of an application to the Tribunal.

Conditions applying to requests for validation.—Applicant's failure to comply with the instructions contained in a Note appended to the "Participant's Declaration".—Applicant's letter to the Chief, Field Operations Service.—Impossibility of regarding that letter as the required notice in writing to the Secretary of the Staff Pension Committee.—Applicant's negligence was the determining factor in depriving him of the validation.—The Applicant took no action for the next fifteen years.—Oral assurances allegedly given to the Applicant.—Those assurances cannot be regarded as entitling the Applicant to compensation.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, Vice-President, presiding; Mr. Samar Sen; Mr. Arnold Kean;

Whereas, on 27 February 1980, Bahgat A. El-Tawil, a former staff member of the United Nations, filed an application the pleas of which read as follows:

"1. The Appellant wishes to appeal the decision of the Secretary-General to not entertain the Appellant's request for corrective action to the administrative error committed by the Administration, and requests the Tribunal to order the Secretary-General to inform the Secretary of the United Nations Joint Staff Pension Committee that the United Nations committed an administrative error, and that, because of it, the United Nations will bear the financial consequence and pay the United Nations Joint Pension Fund the amount it requires, in accordance with the Rules and Regulations of the Fund, towards the cost of validation of the Appellant's initial period of service with the United Nations.

"2. In this connexion, the Appellant wishes to bring to the attention of the Tribunal the fact that the United Nations would have had to bear these costs, with some adjustments, if the Appellant was not prevented, at the time, from participating in the Fund. Accordingly, what the United Nations is being asked to pay corresponds roughly to what it would have otherwise paid if not for the administrative error committed by it."

Whereas the Respondent filed his answer on 13 June 1980;

Whereas the Applicant filed written observations on 1 August 1980;

Whereas the facts in the case are as follows:

The Applicant was recruited in 1961 as a Technical Assistance Expert to establish a regional training centre in Addis Ababa and served as the first Director of the Statistical Training Centre from 2 June 1961 to 1 October 1962. On 10 October 1962 he joined the Secretariat of the Economic Commission for Africa (ECA) as Deputy Chief of the Statistics Division and his service with the United Nations, in various capacities, was continuous since that date until his retirement on 31 December 1979.

Shortly after joining the Secretariat of ECA, the Applicant received from the United Nations Joint Staff Pension Fund a "Participant's Declaration" form which he completed and signed on 23 November 1962; the form contained the following note:

"Note—In case a participant wishes to validate previous service in accordance with Articles III, XII, XVI or Supplementary Article B of the Regulations and considers that the eligibility requirements expressed in that article are met, he may obtain the necessary application forms from the Secretary of his Staff Pension Committee. Such application must be made within the time limits provided by the Regulations."

On 30 November 1962 the Applicant sent to the Chief of the Field Operations Service a letter in which, after dealing with various administrative matters, he stated:

"I am inclined however to request revalidation of my service from 2 June 1961 to 1 October 1962 for pensionable service. If this is approved, I would be grateful if arrangements could be made to apply my end of service benefits to the required contribution to the Pension Fund and advise on any credit or debit balance due.

"Your considerate assistance in clearing this business will be much appreciated. . . ."

In a reply dated 28 December 1962, the Chief of the Field Operations Service advised the Applicant that:

"With regard to your request to revalidate your pension from 1 June 1961, the Staff Pension office will be contacting you directly in this respect in view of the fact that you are now a full participant."

The Applicant having apparently declined to receive a cheque representing the end-of-service payments for his first assignment on the ground that such payments should be used to meet the Pension Fund contribution required for the validation of his earlier service, on 25 April 1963 the Personnel Officer of ECA sent the following cable to Headquarters:

" . . . ELTAWIL PREFERS TO HAVE FINAL PAYMENT WITHHELD TO COVER PENSION FUND PARTICIPATION PERIOD JUNE 1961 THROUGH SEPTEMBER 1962. PLEASE ASCERTAIN STAFF MEMBERS REQUEST AND CABLE BALANCE PAYABLE."

The Applicant eventually accepted the cheque in question. On 25 October 1979 he wrote to the Secretary-General drawing his attention to the matter and requesting him to direct the Administration to take the necessary corrective action. On 7 December 1979 the Assistant Secretary-General for Personnel Services sent him the following reply:

"Please refer to your letter of 25 October 1979 to the Secretary-General in which you drew to his attention certain instances of 'administrative error and negligence' which, if not redressed, would cause serious damage to your expected

retirement benefit. You requested that corrective action be taken for pension purposes in respect of your service during the period from 2 June 1961 to 1 October 1962, when you served as Director of the Statistical Training Centre in Addis Ababa while a Technical Assistance Expert.

“I wish to assure you that I have taken a very sympathetic view about your case but must draw to your attention the following facts:

“You were recruited in 1961 as a Technical Assistance Expert to establish a regional training centre in Addis Ababa and served as the first Director of the Statistical Training Centre from 2 June 1961 to 1 October 1962. Subsequently, on 10 October 1962, you joined the Secretariat of the ECA as Deputy Chief of the Statistical Division. Upon joining ECA, you expressed in a letter, dated 30 November 1962, addressed to Mr. Carey Seward, then Chief, Field Operations Service, that you were inclined to request revalidation of your service from 2 June 1961 to 1 October 1962 for pensionable service. You asked if arrangement could be made to apply your end of service payment to the required contribution to the Pension Fund and advise on any credit or debit balance due. In his reply, dated 28 December 1962, Mr. Seward said to you: ‘With regard to your request to revalidate your pension from 1 June 1961, the Staff Pension Office will be contacting you directly in this respect in view of the fact that you are now a full participant’.

“It should be noted in this regard that in the normal course of events, it is our understanding that the UNJSPF [United Nations Joint Staff Pension Fund] sends every participant, upon entry into the Fund, a Participant’s Declaration form in which it is clearly stated:

“ ‘In case a participant wishes to validate previous service in accordance with Articles III, XII, XVI or Supplementary Article B of the Regulations and considers that the eligibility requirements expressed in that Article are met, he may obtain the necessary application forms from the Secretary of his Staff Pension Committee. Such application must be made within the time limits prescribed by the Regulation’.

“Since it is assumed you had been notified by the UNJSPF that the application must be made within the time limits prescribed by the Regulation (one year), you should have written directly yourself to the Secretary of the Staff Pension Committee and obtained the necessary application forms. There was no reason for you to delay any action in that regard, as you had already been made aware of the time limits within which to validate your prior service.

“If the above assumption is correct, as we so believe, it would seem that the non-validation of your prior service was primarily attributable to your failure to act on the advice of the Pension Fund Secretariat by writing directly to the Secretary of the Staff Pension Committee seventeen years ago to apply for the validation of your service. In view of this, the Administration can hardly be held responsible for a situation arising out of your own failure to pursue the matter in time with the Pension Fund. I therefore regret to advise you that your request for a corrective action cannot be entertained.”

On 12 December 1979 the Applicant requested permission to submit his case directly to the Tribunal. On 27 December 1979 his request was granted and on 27 February 1980 he filed the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. The Administration has made an administrative error and/or been negligent in handling the request made by the Applicant in his letter of 30 November 1962.

2. The Applicant did make a request for validation of his former services and asked for specific action to be taken and for advice and assistance in clearing the matter. No reply was received by him. Accordingly, the Administration is now estopped from arguing that the Applicant should have taken some other action than what he took when the Administration failed at the time to advise him correctly.

3. The Administration having already admitted to the error made, it is now estopped from denying such error.

4. It is an established principle that an employee should not be victimized by the administrative error of the employer.

Whereas the Respondent's principal contentions are:

1. The application, which was filed more than fifteen years after the occurrence of the events in issue, is untimely, regardless of whether the delay in filing is measured against the specific limitations established under article 23 of the Pension Fund Regulations, Staff Rule 103.15, Staff Rule 111.3 (a) or the general limitation inherent in the doctrine of laches.

2. No administrative error was committed giving rise to any entitlement on the Applicant's part to pension in excess of that payable by the Pension Fund based on years of service calculated in accordance with the Regulations of the Fund. There is no justification for imposing an inordinate burden on the Organization in an effort to afford relief to the Applicant who has no legally recognizable explanation for the delay in seeking such relief.

The Tribunal, having deliberated from 27 October 1980 to 6 November 1980, now pronounces the following judgement:

I. The Respondent contends that the application is untimely when measured against the limitations under article 23 of the Pension Fund Regulations and Staff Rules 103.15 and 111.3 (a). However, none of these provisions relates to the filing of an application to the Tribunal. Article 23 of the Pension Fund Regulations is concerned with the period within which election may be made for validation of non-contributory service; Staff Rule 103.15 with retroactivity of payments; and Staff Rule 111.3 (a) with the procedure of the Joint Appeals Board. The Respondent has agreed to the submission of the case to the Tribunal, without making any reservation as to the application being time-barred. For all these reasons the Tribunal finds that the application to the Tribunal is not time-barred.

II. Election for validation of prior service was required to be made by the staff member within one year of the commencement of his participation, by notice in writing given to the Secretary of the relevant Staff Pension Committee. These requirements were in substance the same as those at present in force under article 23 (a) of the Pension Fund Regulations and Rule E.1 of the Administrative Rules, which are referred to by the Applicant and the Respondent. Reference to the Regulations then in force was made in a Note appended to Form JSPB/G.6/Rev.3 (Participant's Declaration). That form was in the hands of, and was signed by, the Applicant on 23 November 1962. Although the note was not part of what he signed, the Applicant must have had notice of what it contained, appearing as it does in large print and immediately below his signature.

III. According to the note, the Applicant should have obtained an application form from the Secretary of the Staff Pension Committee and applied within the time-limit

provided by the Regulations referred to (which time-limit was not specified in the note). The Applicant did not ask for or receive the form, and did not give notice in writing in any form whatsoever to the Secretary of the Staff Pension Committee: the non-use of a form is not material, since under the Regulations and Rules no specific form was obligatory, but the omission to indicate his wishes specifically and in writing was material.

IV. This would be the end of the matter and would require dismissal of the application, were not subsequent events to be taken into account. The Applicant, who was stationed in Addis Ababa, wrote to the Chief, Field Operations Service, in New York on 30 November 1962, seven days after he had signed form JSPB/G.6/Rev.3. His letter states among other things that:

“I am *inclined* however to request revalidation of my service from 2 June 1961 to 1 October 1962 for pensionable service. If this is approved, I would be grateful if arrangements could be made to apply my end of service benefits to the required contribution to the Pension Fund”. [Emphasis added.]

V. The use of the word “inclined” may be taken to indicate a tendency rather than a final decision by the Applicant, though the subsequent sentence appears to indicate that he had in effect made a final decision. That, in any event, was the meaning given to it by the Chief, Field Operations Service, who replied from New York on 28 December 1962 as follows:

“With regard to *your request* to revalidate your pension from 1 June 1961, the Staff Pension office will be contacting you directly. . . .” [Emphasis added.]

VI. If, therefore, the Applicant’s letter of 30 November 1962 is to be regarded as a firm request rather than a statement of inclination, the question arises whether, in all the circumstances, it amounts to the required notice in writing given to the Secretary of the Staff Pension Committee. Had it been forwarded by the Chief, Field Operations Service, to, and actually reached, the Secretary of the Staff Pension Committee, whether in the original or in copy, it could have amounted to such notice, but it is not asserted by the Applicant that the letter ever reached the Secretary of the Committee.

VII. According to the Applicant, he heard nothing about the matter subsequently to the reply dated 28 December 1962 and was presented with a cheque in January 1963 by the Finance Officer of the Economic Commission for Africa (ECA) of whose secretariat the Applicant was then a member. The Finance Officer said this cheque represented end-of-service payments for his first assignment. The Applicant declined to receive it, drawing attention orally to his request for revalidation of his earlier service and for the use of the end-of-service payment to meet the required pension fund contribution for that revalidation. Similarly in April 1963 the Applicant refused to accept a cheque presented to him by the Personnel Officer of ECA, giving the same explanation as before, and asking for the officer’s assistance in clearing up the matter. In consequence the officer sent a cable to Headquarters in New York on 25 April 1963, reading as follows:

“ . . . ELTAWIL PREFERS TO HAVE FINAL PAYMENT WITHHELD TO COVER PENSION FUND PARTICIPATION PERIOD JUNE 1961 THROUGH SEPTEMBER 1962. PLEASE ASCERTAIN STAFF MEMBERS REQUEST AND CABLE BALANCE PAYABLE”.

Headquarters sent no reply to that cable.

VIII. The Tribunal is satisfied that none of these developments justified an assumption by the Applicant that the required notice could be given otherwise than in writing addressed to the Secretary of the Staff Pension Committee, or that the Chief, Field Operations Service, or any other official of the United Nations was a person who could receive notice on behalf of the Secretary of the Staff Pension Committee, or had authority to waive or vary the requirements of the Regulations and Rules. The Respondent is therefore not estopped from contending that these requirements apply.

IX. The apparent failure of the Chief, Field Operations Service, to forward the Applicant's letter of 30 November 1962, or a copy of it, to the Secretary of the Staff Pension Committee, or to draw the attention of the Applicant to the need to send his request directly to the Secretary, may not have met the requirements of good administration: likewise, the omission of Headquarters to reply to the cable of 25 April 1963 or to take any action in consequence of it. On the other hand the Applicant himself had failed to comply with the relevant Regulations and Rules by not giving notice in writing to the Secretary of the Staff Pension Committee. Besides, he ought to have inquired further when no acknowledgement of his request or other direct communication came from the Secretary of the Staff Pension Committee. Even if there was some negligence on the part of the Administration, the negligence of the Applicant in not following the required procedure was the determining factor in depriving him of the validation of his non-contributory service.

X. The Applicant took no action for the next fifteen years. He alleges that, at an unspecified date in 1964, the Head of the Division of Administration, ECA, came to his office and "embarrassed him" (the Applicant) into accepting a cheque for end-of-service payments, by charging that he was obstructing official business and causing a serious problem by making it impossible to close the United Nations accounts for a whole financial year. The Applicant again raised the point that his acceptance of payment might prejudice his request for validation and asserts that he was orally assured by the Head of the Division of Administration, ECA, that "the question of revalidation of his earlier service for pension service could be easily handled *at any time later* with New York" [Emphasis added]. This assurance was not recorded in writing and, even if the Applicant's unsubstantiated statement is accepted, it does not, in the Tribunal's view, entitle the Applicant to compensation.

XI. The Tribunal holds that

(a) the Applicant was bound by the Regulations and Rules to give notice in writing of his request to the Secretary of the Staff Pension Committee within the period of one year allowed by Administrative Rule E.1;

(b) the Applicant failed to do so, despite the reminder in the note on Form JSPB/G.6/Rev.3;

(c) his transactions with the Chief, Field Operations Service, and the Head of the Division of Administration of ECA did not amount to notice in writing to the Secretary of the Staff Pension Committee;

(d) the conduct of the officials of the Administration did not dispense with the requirement of the Regulations and Rules that notice in writing be given to the Secretary of the Staff Pension Committee.

XII. The application is therefore rejected.

(Signatures)

Endre USTOR
Vice-President, presiding

Arnold KEAN
Member

Samar SEN
Member
New York, 6 November 1980

Jean HARDY
Executive Secretary

Judgement No. 259

(Original: English)

Case No. 250:
Hoppenbrouwer

**Against: The Secretary-General
of the United Nations**

Claim of a former technical assistance expert for payment of compensation for loss of personal effects.

Staff Rule 206.6 and article 3 (a) of Administrative Instruction ST/AI/149.—Question whether, at the time of a burglary in his hotel, the Applicant was "travelling" within the meaning of the Administrative Instruction and whether the burglary was the direct result of the travelling.—Conclusion in the affirmative.—Question whether the travel was in connexion with the performance of official duties within the meaning of the Administrative Instruction.—Conclusion in the affirmative.—Respondent's contention that the liability of the Organization is restricted to cases where a common carrier or innkeeper is liable is rejected.—Respondent's contention based on the policy of the Claims Board is rejected.—Irrelevance of Judgement No. 209.—Absence of negligence or misconduct on the part of the Applicant.—Rescission of the decision of the Secretary-General denying the claim for compensation.—Payment to the Applicant, as compensation, of an amount to be assessed by the Claims Board.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Francis T. P. Plimpton, Vice-President, presiding; Mr. Endre Ustor, Vice-President; Mr. Arnold Kean;

Whereas, on 3 April 1980, Laurentius M. A. Hoppenbrouwer, a former associate expert of the United Nations, filed an application the pleas of which read as follows:

“ . . .

“I contest the decision of the Secretary-General . . . to maintain the decision of the Claims Board to deny my claim for compensation of personal effects under Staff Rule 206.6.

“I request that the above-mentioned decision of the Secretary-General be rescinded and that the Secretary-General be obliged to carry out the recommendation,