

PROVISIONAL TRANSLATION

Translated from French

Administrative Tribunal

Judgement No. 920

Case No. 1010: **Lefebvre**

Against: The United Nations
Joint Staff Pension Board

The Administrative Tribunal of the United Nations,

Composed of Mr. Hubert Thierry, President; Mr. Julio Barboza, Vice-President; Mr. Victor Yenyi Olungu;

Whereas at the request of Suzanne Lefebvre, a beneficiary of a retirement pension from the United Nations Joint Staff Pension Fund (hereinafter referred to as the Fund), the President of the Tribunal, with the agreement of the Respondent, successively extended until 31 January and 30 April 1998 the time-limit for the filing of an application with the Tribunal;

Whereas, on 18 February 1998, the Applicant filed an application requesting the Tribunal:

“(a) To adjudge and declare that the Standing Committee of the United Nations Joint Staff Pension Board committed an error by deciding on 2 July 1997, at its 180th meeting, that the moral injury suffered by the Applicant and the pain and anguish that she endured because of the mistakes and negligence of the Fund could not give rise to compensation;

(b) To award her appropriate compensation, in accordance with the Tribunal’s assessment, for moral injury, pain and anguish, responsibility for which lies with the Fund;

(c) To award her appropriate compensation, in accordance with the Tribunal’s assessment, for excessive and unwarranted delay in the consideration of her claim;

(d) To award her an appropriate sum, in accordance with the Tribunal’s assessment, for the costs that she had to incur in preparing and submitting this application.”

Whereas the Respondent filed its answer on 22 October 1998;

Whereas the Applicant filed written observations on 28 December 1998;

Whereas the facts in the case are as follows:

The Applicant, a former staff member of the United Nations Educational, Scientific and Cultural Organization (UNESCO), retired on 31 October 1984. As a participant in the Fund, she began receiving pension payments from the Fund on 1 November 1984.

On 9 February 1994, the Applicant wrote to the Secretary of the Fund, informing him that she had just received a statement of pension payments made to her from 1 October to 31 December 1993, and that:

“...

In accordance with your letter of 22 September 1993, my monthly pension payment is FF 6,121.63. Further to your letter of 20 December 1993, as I have opted for a monthly contribution to the UNESCO health insurance scheme beginning on 1 January 1994, the monthly payment should be FF 5,912.30.

The pension payment for October and for November was indeed FF 6,121.63. The payment for December was FF 4,485.33 rather than FF 6,121.63. The payment for January was FF 4,276.00, reduced by the monthly contribution of FF 209.33. This makes a difference of FF 1,636.30 X 2 for the December and January payments.

...”

On March 1994 the Respondent acknowledged receipt of the Applicant’s request for information about her benefit (annex 2).

On 17 May 1994 the Applicant wrote to the Secretary of the Fund, noting that the error had not been corrected as of that date (annex 3). On 18 July 1994 the Applicant wrote to the Bureau of the Comptroller of UNESCO to make a claim against the Fund (annex 4).

In July 1994 UNESCO ascertained that an overpayment had been made by the Fund to a UNESCO retiree, who happened to have *exactly the same name and used the same bank* as the Applicant, with the recovery having been made erroneously from the Applicant’s benefit. Full reimbursement to the Applicant of the total amount withheld was made by the Fund in October 1994, following investigations started on 18 August 1994 with respect to the banking arrangements and accounts of the two beneficiaries concerned. Thus, from December 1993 to August 1994, the Applicant received from the Fund her monthly periodic benefit in French francs (FF), reduced by FF 1,636.60 each month. The combined total so withheld was FF 14,726.70.

On 14 December 1994 the Applicant complained to the Secretary of the Fund that the Fund had unilaterally made deductions from her monthly pension benefit without giving her the opportunity to respond or comment and that, additionally, the Fund had been negligent in its operations (annex 5). She requested that the equivalent of the interest (at the rate of 9 per cent) that she claimed she would have earned on the withheld amounts be awarded to her, plus damages of FF 29,500 for the hardship which she had to suffer as a result of the Fund’s negligence.

On 13 February 1995, the Secretary of the Fund wrote to the Applicant, apologizing for the error and for the failure to respond to her prior letters. He noted that the erroneous deductions resulted from the overpayments made to a UNESCO retiree with the same name and the same bank as the Applicant, and that the Fund had mistakenly deducted the overpayments to the other participant from the Applicant’s account. He further informed her that she would be paid the amount withheld by mistake, namely FF 14,726.70, plus FF 994.05, representing 9 per cent interest on the principal amount for the nine months that the erroneous deductions were made (annex 6).

On 22 March 1995 the Applicant again wrote to the Secretary of the Fund, stating that “the payment of interest [cannot] be regarded as sufficient compensation for the injury that I suffered” and that she had proposed in her letter of 14 December 1994 that she should be paid twice the amount erroneously withheld, as compensation (annex 7). She further stated, “I am forced to conclude that your letter constitutes a decision to reject my request [for payment of compensation].” She requested that the Secretary of the Fund review that decision and, in the case of a negative response, that he submit her case to the next meeting of the Standing Committee. On 18 February 1997 she wrote again, repeating her demand for additional compensation. The Secretary of the Fund replied on 26 March 1997 (annex 9), as follows:

“...

Notwithstanding this payment you are requesting additional compensation for the error we make. While we recognized that you were entitled to compensation for lost interest earnings on the monies we had paid late, we have considerable hesitations about turning this unfortunate occurrence into one of undue gain for you. By paying you FF 994.05 as ‘lost

interest' on the moneys withheld, calculated in accordance with the Fund's established practice, we endeavoured in February 1995 to set the matter right. I am prepared, however, as a means of sparing both you and the Fund the costs of an appeal process, to increase the 'lost interest' reimbursement by an additional amount of FF 1,000. I believe this would be a fair solution for all concerned. Please advise us, in writing, whether or not you agree to accept this settlement. If you should decide to decline the offer, we will present your claim for compensation to the Standing Committee of the Pension Board for consideration; in that event, we reserve the right to maintain that you are not entitled to any additional compensation, our settlement offer having been made without admission of any further *legal* obligation on the part of the Pension Fund.

..."

On 20 May 1997 the Applicant wrote to the Secretary of the Fund, refusing the offer of FF 1,000 as further compensation and maintaining her request for compensation of FF 29,500 as originally made in December 1994, plus interest on that amount as from March 1995 (annex 10).

The case was presented to the Standing Committee at its 180th meeting held in July 1997. The Standing Committee adopted its report on 20 June 1997. Its conclusion and recommendation read as follows:

"139. The Standing Committee noted that the Fund had admitted that certain regrettable errors were committed in making deductions from the Applicant's pension for some nine months, as well as in the delayed action taken to rectify the situation and respond to the Applicant's queries. Accordingly, in February 1995 the Fund had paid to the Applicant FF 994.05 for 'lost interest', i.e. compensation for the direct loss suffered. As a further offer intended to avoid the costs and inconvenience of an appeals process, the Secretary had indicated in his letter of 26 March 1997 the Fund's readiness to remit an additional FF 1,000 to the Applicant.

140. The Applicant's demand for additional compensation had to be viewed in the context of the economic loss she suffered, for which she had already received interest at 9 per cent. No other elements of direct loss had been notified to the Fund by the Applicant. The Standing Committee stressed that the delays in dealing with the Applicant's case, although unfortunate and deeply regretted, could not lead to an award of 'punitive damages', which would be the result if she were awarded an amount equal to twice the total of the delayed payment (i.e. 200 per cent as 'lost interest'), at the expense of the Fund's other participants and beneficiaries. In the circumstances, the Standing Committee decided that the Applicant should receive the sum of FF 5,000 which, along with the lost interest at 9 per cent already remitted, should be considered satisfactory compensation for all the direct losses suffered by her (i.e. taking into account telephone calls, letters, loans, etc.). The Standing Committee did not consider it appropriate to entertain any request from the Applicant for award of damages on account of pain and suffering or as punitive damages."

On 11 July 1997 the Secretary of the Fund transmitted to the Applicant a copy of the decision of the Standing Committee and informed her as follows:

"..."

As you requested in your letter of 20 May 1997, your application for compensation from the United Nations Joint Staff Pension Fund was submitted to the Board for review on 2 July 1997. The documentation presented to the Standing Committee contained the complete texts of your letters of 14 December 1994, 22 March 1995, 18 February 1997 and 20 May 1997.

During the review of your case, the Standing Committee noted that in February 1995 you had received from the Fund the sum of FF 994.05, representing the amount of 'lost interest' on the sum erroneously deducted from your benefits over a 9-month period, calculated at an annual interest rate of 9 per cent. The Committee further noted that you did not inform the Fund of all the other elements establishing that you suffered a 'direct loss' as a result of the measures taken by the Fund. It also stressed that the delays in dealing with your case did not justify the award of 'punitive damages' at the expense of the Fund's other participants and beneficiaries.

In view of these circumstances, the Standing Committee decided that you should receive the sum of FF 5,000, which, along with the amount of FF 994.05 already remitted to you for lost interest, constituted sufficient compensation for the direct losses suffered by you (taking into account the need to make telephone calls and write letters, interest on loans, and so on). The Standing Committee did not consider it appropriate to entertain any new request for award of damages that you might submit.

In accordance with the decision of the Standing Committee, a sum of FF 5,000 will be remitted to you by the Pension Fund.

..."

On 18 February 1998 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

The Applicant is entitled to damages for the anguish that she suffered during the 10-month period during which the Respondent made erroneous deductions from her pension entitlement and failed to correct its error. The amount that the Respondent has paid to the Applicant is insufficient to compensate her for the moral injury she suffered.

Whereas the Respondent's principal contention is:

The Applicant is not entitled to further compensation from the Respondent. The Respondent has admitted its errors, apologized to the Applicant, and restored the *status quo ante*. In addition, the Standing Committee has already awarded the Applicant the fair and reasonable sum of FF 5,000 as additional compensation.

The Tribunal, having deliberated from 7 to 23 July 1999, now pronounces the following judgement:

- I. In her application dated 18 February 1998, the Applicant requests a judgement from the Tribunal ruling on the error of law committed on 20 June 1997 by the Standing Committee of the United Nations Joint Staff Pension Fund in deciding at its 180th meeting that the moral injury suffered by her, and the pain and anguish endured as a result of the Fund's fault and negligence, could not give rise to compensation. She therefore requests that appropriate compensation be awarded to her.
She further requests appropriate compensation for excessive and unjustifiable delay in the consideration of her claim.
Lastly, the Applicant also claims compensation for the costs that she incurred in preparing and filing the application with the Tribunal.
- II. The Respondent, which acknowledges that errors were made in this case, is nonetheless opposed to the various claims made by the Applicant and seeks to have them dismissed on the ground that the Fund restored the *status quo ante* through the payment of 9 per cent interest on the sums withheld and the award of FF 5,000 as compensation for the direct losses suffered.

- III. The Tribunal notes that the Respondent does not deny the facts alleged by the Applicant, but believes, nonetheless, that through the above-mentioned initiatives the Fund has done what must be regarded as fair and reasonable, and the Respondent therefore concludes that no compensation can be awarded for moral injury.
- IV. The Tribunal recalls from its extensive jurisprudence concerning moral injury that such injury exists where a subjective right that affects the victim's sensitivity and feelings is infringed. For example, the Tribunal took a position on compensable moral injury in its Judgement No. 215 (*Ogley*, 1976), where the uncertainties to which the Applicant had been subjected were considered to be compensable moral injury. Furthermore, in its Judgement No. 442 (*Motamedi*, 1989), the Tribunal awarded compensation to the Applicant for having been treated inequitably by the Administration. Lastly, in its Judgement No. 289 (*Talan*, 1982), the Tribunal awarded the Applicant substantial compensation after recognizing that the Administration's conduct had been the direct cause of a real disturbance in her life at a time when she had had to deal with a situation that was difficult in many respects and to earn her living under arduous circumstances.
- V. The Tribunal notes that through the unmonitored withholding of a part of the Applicant's modest retirement pension, the Respondent impaired the peaceful enjoyment of that pension. In doing so it affected not only her material livelihood but also her feelings and her self-respect. The hardships, pain and suffering endured by the Applicant because of the error committed by the Fund constitute a moral injury which should be compensated. The Tribunal has, therefore, decided to award her compensation of \$5,000.
- VI. With regard to the alleged excessive and unwarranted delay, the Tribunal believes that the various payments made to the Applicant by the Respondent are satisfactory and that, accordingly, this argument is invalid.
- VII. With regard to the claim of compensation as costs, the Tribunal, taking into account the efforts made by the Applicant's counsel, a retired United Nations staff member, as well as the memoranda introduced into the case file, orders the Respondent to pay to the Applicant the sum of \$600 to cover the costs incurred in the preparation of her application.
- VIII. For these reasons, the Tribunal:
1. Decides that the moral injury suffered by the Applicant should be compensated;
 2. Orders the Respondent to pay to the Applicant, for injury suffered, compensation of \$5,000;
 3. Orders the Respondent to pay to the Applicant \$600, as costs;
 4. Rejects all other pleas of the Applicant.

(Signatures)

Hubert **Thierry**
President

Julio **Barboza**
Vice-President

Victor **Yenyi Olungu**
Member

Geneva, 23 July 1999

Maritza **Struyvenberg**

Secretary