
ADMINISTRATIVE TRIBUNAL

Judgement No. 957

Case No. 1041: SOKOLOV

Against: The United Nations Joint
Staff Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Mayer Gabay, Vice-President; Mr. Kevin Haugh;

Whereas, on 23 April 1998, Dimitr Konstantinovich Sokolov, a former participant of the United Nations Joint Staff Pension Fund (hereinafter referred to as UNJSPF or the Fund) filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 6 September 1998, the Applicant, after making the necessary corrections, again filed an application containing pleas which read as follows:

“II. PLEAS

A. ... *preliminary or provisional measures*

...

2. *The Applicant wants the Tribunal to hear* [the following witnesses]:

...

C. *The obligation which the Applicant is invoking ...*

...

2. ... to oblige UNJSPF through [a]decision of the Administrative Tribunal to pay [the Applicant] in full [his] pension accumulation directly ...

D. *The amount of compensation claimed ...*

The Respondent must ... compensate [the Applicant at] a rate ... which should be determined by the Administrative Tribunal. ...”

Whereas the Applicant submitted additional documents on 10 October, 21 and 30 December 1998;

Whereas the Respondent filed his answer on 25 February 1999;

Whereas the Applicant filed written observations on 31 March 1999;

Whereas the Applicant submitted further documents on 12 August 1999 and 8 May 2000;

Whereas, on 17 July 2000, the Tribunal put a question to the Respondent, to which he provided an answer on 19 July 2000;

Whereas, on 26 July 2000, the Tribunal ruled that no oral proceedings would be held in the case;

Whereas the facts in the case are as follows:

The Applicant, a former staff member of the World Health Organization (WHO), was a participant in the Fund from 23 November 1974 to 30 November 1980.

On 3 November 1980, prior to his separation from service, the Applicant submitted instructions for deferred retirement benefit. At that time, WHO was negotiating a Transfer Agreement with the Union of Soviet Socialist Republics (USSR), which was approved by the General Assembly in December 1980 and entered into effect on 1 January 1981. Accordingly, WHO did not submit the Applicant’s instructions to the Fund until after 1 January 1981.

On 28 October 1981, the Secretary, WHO Staff Pension Committee, wrote to the Applicant requesting proof of residence to enable payment of his benefits and advising him of his options under the “new system ... for Russian former staff members”.

On 22 November 1981, instructions bearing the Applicant’s signature were sent to the Fund, electing to have the Applicant’s pension remitted to the Social Security Fund of the USSR. Accordingly, in March 1984, the amount of US\$65,022 was paid to the Social Security Fund of the USSR on behalf of the Applicant.

On 5 February and 8 March 1988, the Applicant wrote to the Fund, requesting annulment of his election of 22 November 1981.

The Secretary of the Fund replied on 13 April 1998 that the Fund had been legally bound to act on his election, and had done so at that time. The Fund could not ignore or annul that election and subsequent transfer of funds as this would amount to “double payment”. On 24 May 1998, the Applicant appealed to the United Nations Joint Staff Pension Board (the Board).

On 28 July 1998, the Secretary of the Fund advised the Applicant that the Standing Committee of the Board concluded that it was not in a position to dispute the legal conclusions reached by the Secretary in the matter and agreed that the case should be presented directly to the Tribunal. Accordingly, it declined to consider on the merits his request for review of the decision taken by the Secretary of the Fund in his case on 13 April 1998.

On 6 September 1998, the Applicant filed with the Tribunal the application referred to earlier.

On 23 November 1998, the Secretary of the Fund wrote to the Applicant in reference to certain annexes to the application, containing “copies of a letter and a payment instructions bearing the date of 22 November 1981”. He stated that “these documents [had] *not* been seen before by the secretariat of the Pension Fund and their originals were obviously never received by the Fund”. The Secretary further mentioned that the copy of the payment instructions form sent to the Fund was “on a form that was first printed in 1988”, and that, therefore, it would not have been possible for the Applicant to execute that form, as the Applicant alleged, on 22 November 1981. The Applicant was invited to comment on this particular point.

On 21 December 1998, the Applicant replied, *inter alia*, that the text and dates on the 1988 copies of the forms were identical to those on the originals from 1980 and 1981. He added that he had been advised that the symbol on the forms (pens. E/7 (1-88) - E) did not necessarily mean that the forms were printed in 1988.

Whereas the Applicant's principal contentions are:

1. The transfer of his pension benefits to the Social Security Fund of the USSR by the Respondent was illegal and done without his consent or authorization.
2. The Transfer Agreement between the Respondent and the Social Security Fund of the USSR, under which the Respondent claimed to have acted in transferring his benefits, should not

have been applied to him as he was not in contributory service “on or after the coming into effect” of the Agreement, as required by article II (2) of the Agreement and (b) the election they claim he made was not made within six months of separation, as called for under article II (1) of the Agreement.

Whereas the Respondent's principal contentions are:

1. The Applicant himself requested the applications of the agreement to his benefits in 1981 and pursuant to that request the Respondent transferred his benefits to the Social Security Fund of the USSR. Paying him further benefit now would constitute double payment.
2. The Applicant's claim is barred by *laches*. Having elected in 1981 to transfer his entitlements, the Applicant cannot, starting some eight years later, attempt to re-open the transaction.

The Tribunal, having deliberated from 10 to 31 July 2000, now pronounces the following judgement:

- I. The Applicant contests the decision of 13 April 1998 by the Secretary of the Fund to refuse to consider nugatory the Applicant's acceptance in 1981 of the transfer of his pension entitlements to the Social Security Fund of the USSR under the 1981 Agreement between the Soviet Government and the Fund.
- II. From 23 November 1974 to 30 November 1980, the Applicant, who was at the time a citizen of the Soviet Union, was employed by WHO, under a fixed-term contract, as a departmental director at grade D-1. Shortly before his separation from service, on the expiry of his contract, the Applicant submitted to the Fund instructions to pay him a deferred retirement benefit in the form of a lump sum in United States dollars when he reached age 60 (i.e., in 1989, the Applicant having been born on 7 June 1929). Those instructions were not, however, registered by the Fund, the Applicant having failed to comply with the request made to him to provide proof of residence outside the Soviet Union. On 1 January 1981, an agreement (the Transfer Agreement) was concluded between the Soviet Government and the Fund to enable Soviet citizens entitled to United Nations pensions to

transfer their rights to the Social Security Fund of the USSR and so receive a pension under Soviet law as if they had, during their employment by a member organization of the Fund, been in the public service of the USSR.

By an application dated 22 November 1981, to which his signature is clearly appended, the Applicant formally agreed to the application to himself of the Transfer Agreement and thus the transfer to the Social Security Fund of the USSR of the sum due to him from the Fund. The application mentions that the Applicant had been informed of the material and legal situation created for him by the agreement, a situation that could, at the time, be interpreted as advantageous for Soviet civil servants who were returning to the Soviet Union after some years' secondment. The Fund accordingly transferred, albeit not until 20 March 1984, the sum of US\$ 65,022.36 to the Social Security Fund of the USSR. From the explanations provided to it at its request the Tribunal finds that the delay was not attributable to fault on the part of the Administration.

The Transfer Agreement states, in article IV, that: "when ... payment is made by the Pension Fund into the Social Security Fund of the USSR in respect of a participant ... he shall cease to be entitled to any benefit under the Regulations [of the Pension Fund]".

III. It is not known whether either the Social Security Fund of the USSR or the Soviet Government paid the Applicant monies or benefits under Soviet law; the Applicant, in fact, maintains that the Social Security Fund never existed. Be that as it may, the Applicant wrote to the Secretary of the Fund on 5 and 8 March 1998 respectively, requesting the Fund purely and simply to cancel his request of 1981 for the application to himself of the Transfer Agreement. The Secretary of the Fund informed the Applicant, by a letter dated 13 April 1998, that the request could not be accepted, as it would entail double payment for the Applicant at the expense of the other participants in the Fund.

IV. It is that decision which the Applicant is contesting before the Tribunal, after having made representations to the Standing Committee of the Pension Board, which body, noting that the request raised principally questions of law, expressed the desire that the matter should be submitted to the Tribunal should the Applicant wish to pursue it.

V. The Applicant bases his appeal on three pleas. First, he contends that the Fund should, in 1981, have refused his request for the application to himself of the Transfer Agreement since he had not at the time met the requirements set forth in the Agreement for such application. It is noteworthy in this regard that the Agreement states, in article II, that it is applicable to participants in the Fund who are in contributory service on or after its coming into effect and that persons wishing to have it applied to themselves must so request within six months of separation from an organization participating in the Fund. The Applicant separated from service on 30 November 1980 (prior to the Agreement's entry into force on 1 January 1981) and made his request on 22 November 1981 (more than six months after his separation from service), and therefore did not meet either of those conditions.

The Respondent agrees that this was the case. It writes: "Respondent admits that, at a strictly formal level, the Applicant should not have been considered to be covered under the terms of the Transfer Agreement".

Second, it appears from the Applicant's explanations that he has, in practice, been totally or partly deprived of his pension entitlements and that he considers it incumbent on the Fund to repair that injury. Although the Applicant provides no evidence of the benefits that he should have received under Soviet law by reason of the fact that he ought, pursuant to the Transfer Agreement, to have been considered as having been in the public service of the USSR during his period of employment by WHO, there can be little doubt that the benefits resulting from the application (or non-application) of the Transfer Agreement by the Soviet Union would be less generous than those payable to persons receiving a pension from the Fund in the usual way. The Applicant unquestionably made a bad choice in asking to be covered by the Agreement.

Third, but of secondary importance in the case, is that, by providing the Tribunal with backdated documents, the Applicant seems to have tried to give the impression that, on the same day that he asked to be covered by the Transfer Agreement, he sent the Fund contrary instructions calling for the payment directly to his personal bank account of a lump sum in United States dollars.

VI. Regarding the first of the above points, the Respondent contends that, although some irregularity was involved in applying the Transfer Agreement regime to the Applicant, the latter's formal acceptance of that regime cannot be questioned, given that he himself was an accomplice to

that irregularity. That is an effect of the adage: “*nemo auditur turpitudinem suam allegans*”. Above all, however, it was on 28 May 1998 that the Applicant wrote to the Standing Committee of the Pension Board disputing his acceptance in 1981 of the Transfer Agreement regime. Thus, 17 years elapsed between that acceptance and the Applicant’s denial of it to the Fund. The Respondent rightly argues that, if the Applicant had had any doubt about the propriety of the application to himself of the Transfer Agreement, he should have raised those doubts in 1982 or 1983, and not 17 years after the event. The Respondent justly refers in this regard to the Tribunal’s case law declaring inadmissible the questioning after lengthy delays of situations that could have been contested in good time (Judgements No. 818, *Paukert* (1997), No. 549, *Renninger* (1992) and No. 302, *Zemanek* (1983). See also ILOAT Judgment 1735, in re *Trofimov* (1998)).

The Tribunal endorses the Respondent’s argument. That is a major and sufficient reason for rejecting the application.

VII. Regarding the third point, the Tribunal will take no account of the documents which appear to have been backdated. Their production was not really useful for the assessment of the truly pertinent evidence in this case.

VIII. The Respondent has notified the Tribunal of negotiations regarding a proposed new agreement aimed at resolving equitably the pension status of Soviet civil servants in situations identical or similar to the Applicant’s. The Tribunal earnestly hopes that those negotiations will be completed as soon as possible and that any such new agreement will be applicable to the Applicant. In the meantime, there can be no question of the Fund’s breaching the rules under which it operates by making a payment to the Applicant when, in 1984, it surrendered the capital giving rise to his entitlements. Such a payment would be a double payment and would be both unlawful under the rules of the Fund and prejudicial to the rights of the other participants in that Fund. This consideration is additional to that set out above regarding undue delay in questioning a situation that arose from an application made by the Applicant himself and for which he himself was therefore responsible.

IX. For these reasons, the Tribunal rejects the application.

(Signatures)

Hubert THIERRY
Président

Mayer GABAY
Vice-Président

Kevin HAUGH
Membre

Genève, 31 juillet 2000

Maritza STRUYVENBERG
Secrétaire