



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1241

Case No. 1327

Against: The United Nations
Joint Staff Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Spyridon Flogaitis, Vice-President, presiding; Ms. Brigitte Stern; Mr. Dayendra Sena Wijewardane;

Whereas, on 23 and 27 October 2003, a former participant of the United Nations Joint Staff Pension Fund (hereinafter referred to as UNJSPF or the Fund) filed applications that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 10 November 2003, the Applicant, after making the necessary corrections, again filed an Application requesting the Tribunal, *inter alia*, to order:

“12. ...

that the UNJSPF [pay the Applicant] compensation [equivalent to his] ‘withdrawal settlement’ which was not received by [the Applicant] in 1973 in lump sum”.

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent’s answer until 30 June 2004 and once thereafter until 30 September;

Whereas the Respondent filed his Answer on 29 September 2004;

Whereas, on 3 November 2004, the Applicant filed Written Observations and on 20 December, the Respondent commented thereon;

Whereas, on 11 January and 7 May 2005, the Applicant submitted additional communications;

Whereas the facts in the case are as follows:

The Applicant was a national of the Union of Soviet Socialist Republics (USSR) when he joined the United Nations Industrial Development Organization (UNIDO) and became a participant in the UNJSPF, on 19 September 1968. From 7 through 28 October 1968, the Applicant was on special leave without pay. The Applicant separated from service on 30 September 1973.

At the time, all USSR international civil servants were required to surrender to the USSR Ministry of Foreign Affairs (the Ministry) their salaries and remunerations in foreign currency received from the United Nations or its subsidiary bodies, including “one-time pension benefits”, through the Russian Permanent Missions. Accordingly, one month before his separation from UNIDO, in August 1973, the Applicant instructed the UNJSPF to remit his withdrawal settlement into his *Creditanstalt-Bankverein* bank account in Vienna, in order that he could withdraw this money for transmission to the Ministry. According to the Applicant, he was unable to withdraw the “withdrawal settlement” from his account as he had lost his cheque book. He claims that as he was about to depart Vienna, he authorized a colleague to withdraw the money and bring it to the Russian Permanent Mission in Vienna for transmission to the Ministry, but there is no record that such transactions actually occurred.

In 1994, the Applicant reached the age of 60 and apparently requested the Russian Authorities to restore his pension rights and to start paying him his pension. According to the Applicant, he was at that time informed that the Russian Government was negotiating with the UNJSPF “about possible compensation”. The Applicant claims that, in March 2001, an agreement was reached and that the Russian Government started to pay compensation to former staff members who had remitted over their withdrawal settlements to the authorities of the USSR, but only to those who had separated from service after 1980. When the Applicant subsequently brought a claim against the Government before a Russian Court, regarding its refusal to pay him a pension, he was informed that it could not be confirmed that the Ministry had actually received his “withdrawal settlement”.

In June 2001, the Applicant requested the Fund to confirm “the sum in US\$ which was transferred on my request from the UNJSPF to my account”. The Applicant again wrote to the UNJSPF on 14 July, claiming, inter alia, that due to the lack of documentation which would prove that his UNJSPF withdrawal settlement was paid to him, he was now unable to claim pension payments from the Government.

On 5 September 2001, the Applicant was informed that the Fund, with the assistance of UNIDO, had re-created his pension file, confirming his period of participation as well as the fact that the amount of his one-time withdrawal settlement entitlement totalled US\$ 5,893.35. According to the Fund, “the withdrawal settlement would have been remitted in strict conformity with payment instructions submitted by you to the UNJSPF secretariat”. It offered to provide the Applicant with a formal, signed certification attesting to these facts. This was reiterated in a further communication, dated 26 November, in which the UNJSPF also informed the Applicant that, given the time that had elapsed since the payment of his withdrawal settlement, it could not provide him with written confirmation of the actual banking transaction. Further correspondence ensued in which the Applicant asked that the UNJSPF re-pay him the withdrawal settlement. On 3 December 2002, the Fund rejected the Applicant’s request and advised him that he could request a review of the decision by the Standing Committee of the United Nations Joint Staff Pension Board. The Fund again offered to confirm to the Russian Government the amount of the withdrawal settlement.

The Applicant appealed to the Standing Committee. On 28 July 2003, he was informed that the Standing Committee had considered his case at its 186th meeting, held from 7 to 11 July 2003, and had decided that his request for review was time-barred, since the matter had not been raised until some 28 years after his separation from service. The Applicant was once again informed that

“[t]he UNJSPF secretariat remains ready to confirm to the appropriate Russian authorities the amount of your UNJSPF withdrawal settlement ... and that it had been remitted in Fall 1973 into your account ... in conformity with your payment instructions of 31 August 1973”.

On 10 November 2003, the Applicant filed the above-referenced Application with the Tribunal.

On 6 January 2004, *Bank Austria Creditanstalt* officially confirmed that an account had been maintained in the name of the Applicant at the Vienna International Centre Branch of *Creditanstalt Bankverein* and that the account had been closed on 31 March 1974. It further stated that there was “no way to trace or confirm specific individual transactions into or out of that account”.

Whereas the Applicant's principal contentions are:

1. The Respondent cannot prove that it had paid the Applicant his withdrawal settlement and, consequently, the Applicant cannot achieve restoration of his pension rights in a Russian Court. It is therefore the responsibility of the Fund to restore the Applicant's pension, by paying him the withdrawal settlement, with interest.
2. The Applicant's case is not time-barred. The withdrawal settlement was "property of the Foreign Affairs Ministry" and the Applicant was not in a position to address the issue until 1994, when he reached the age of 60. Moreover, he had been informed by the Russian Authorities of the ongoing negotiations with the Fund. It was only in March 2001, when an agreement which excluded staff members who separated before 1980 was reached, that the Applicant had to obtain confirmation of payment of his withdrawal settlement as part of proceedings before a Russian Court aimed at securing his pension. Thus, prior to 2001, the Applicant was not in a position to initiate the request from the Fund.
3. The Applicant was the only Russian former United Nations staff member who did not get confirmation from the UNJSPF of his withdrawal settlement payment.
4. The "time-barred factor" cannot be applied to cases of violation of human rights, as is the Applicant's case.
5. The Applicant had more than five years of contributory service and thus the decision to pay him only one third settlement is discriminatory.

Whereas the Respondent's principal contentions are:

1. The Application is time-barred since the matter was not raised until some 28 years after the Applicant's separation from UNIDO in 1973, or within a reasonable period thereafter, when all the records would have been freely and fully accessible.
2. Banking records are not normally retained for 20-30 years after completion of a particular transaction. There is no reason to believe that the withdrawal settlement payable to the Applicant was not in fact duly remitted by the UNJSPF to his Austrian bank in the fall of 1973, in conformity with his payment instructions.
3. The UNJSPF would have no legal basis or justification to remit another withdrawal settlement payment to the Applicant, which in fact would constitute double payment.

4. The Applicant completed nine days less than five years of contributory service. Even if he had completed five or more years, since he opted for a one-time withdrawal settlement this would only affect the amount of withdrawal settlement.

The Tribunal, having deliberated from 1 to 22 July 2005, now pronounces the following Judgement:

I. The Applicant, a national of the former USSR, was a UNIDO staff member from 19 September 1968 to 30 September 1973, with a short period of special leave without pay from 7 through 28 October 1968.

At the time, all USSR international civil servants were required to surrender to the USSR Ministry of Foreign Affairs, through the Russian Permanent Missions, their salaries, remunerations and pension withdrawal settlements in foreign currency received from the United Nations or its subsidiary bodies. Accordingly, one month before his separation from UNIDO, in August 1973 the Applicant instructed the UNJSPF to remit his withdrawal settlement into his *Creditanstalt Bankverein* bank account in Vienna, for transmission to the Ministry. According to the Applicant, in September, just before leaving Vienna, he lost his cheque book and was therefore unable to withdraw the withdrawal settlement amount from his account. He claims that he gave “a letter of attorney” to a colleague to withdraw the money and bring it to the Russian Permanent Mission for transmission to the Ministry, however, there is no record of these transactions.

It was only in June 2001, that the Applicant first requested the Fund to confirm the amount transferred to his account. He claims that he had waited until he reached the age of 60, which happened in 1994, and after 1994, until 2001, because the Russian authorities were conducting negotiations with the UNJSPF on payment of pensions. The agreement ultimately reached excluded any former staff whose service with the United Nations ended prior to 1980. Therefore, he had to go to a Russian Court to obtain “restoration of his pension”. He alleges that it was on this occasion that he was informed that there was no record of the withdrawal settlement having been received by the Ministry, and, therefore, it was only then that he made his request to the UNJSPF to provide him with a copy of a voucher proving payment of such settlement.

On 5 September 2001, the Applicant received confirmation from the UNJSPF of his period of participation in the Fund, as well as of the amount of his one-time withdrawal settlement (US\$ 5,893.35). According to the UNJSPF, the settlement would have been remitted in accordance with the Applicant’s payment instructions. It

offered to provide the Applicant with a certification attesting to these facts. At the same time, the Applicant was informed that, given the time that had elapsed, the UNJSPF was unable to provide him with written confirmation or a copy of the actual banking transaction. The Applicant's subsequent request that the UNJSPF re-pay him the entire withdrawal settlement was rejected on 3 December 2002. The matter was referred to the Standing Committee which, on 28 July 2003, decided that his request for review was time-barred.

On 6 January 2004, *Bank Austria Creditanstalt* officially confirmed that an account had been maintained in the name of the Applicant at the *Creditanstalt Bankverein* Branch at the Vienna International Centre; that the account had been closed on 31 March 1974; and that it was no longer possible to trace or confirm specific individual transactions into or out of that account.

II. The Tribunal needs to first examine the receivability of the case especially in view of deadlines. No matter what sympathy one might have for anyone who retires and then cannot enjoy the privileges of a life's work, the Tribunal notes that deadlines are in the public interest and must be respected at all times.

In the present case, the Applicant had to perform a transaction in 1973, one which would have added to the enjoyment of his retirement scheme. He alleges various reasons why he did not monitor events back then, but fails to support his reasons, or to explain his negligence in verifying whether this transaction which is so important for his retirement rights had actually taken place. Moreover, when he reached retirement age, in 1994, he did not ascertain whether the 1974 transaction had actually transpired, which, if it had not, could prevent him from enjoying those important rights: he first presented his claim in 2001. At that time, the UNJSPF could confirm his period of participation as well as the fact that the amount of his one-time withdrawal settlement entitlement totalled US\$ 5,893.35. However, the Fund could only speculate that in 1973 "the withdrawal settlement would have been remitted in strict conformity with payment instructions submitted by [the Applicant] to the UNJSPF secretariat", but was naturally unable to produce any evidence or copy of the specific transaction.

III. Section K.5 of the Pension Fund Regulations and Rules provides for the review procedure. Rule K.5 provides time limits:

“A review shall be initiated by delivery to the secretary of the staff pension committee, or to the Secretary of the Board if the review is by the Standing Committee, within ninety days of receipt of notification of the disputed decision, of a notice in writing stating the points of fact or of law contained in the decision which are disputed, and the grounds upon which the request for the review is founded; the staff pension committee, or the Standing Committee as the case may be, may nevertheless, upon good cause shown, accept for review a request of which notice was delivered after the expiry of the period prescribed above.”

The Tribunal notes that the Applicant asked for the payment to be made in 1973 and that he reached retirement age in 1994. However, the Applicant did not request review by the Standing Committee until 2001, i.e., years after any possible date on the basis of which procedures should have been initiated by him.

The Tribunal also notes that in the present case there are no “exceptional circumstances” which would justify a waiver of the time limits, a concept recognized by the Tribunal throughout its jurisprudence (see Judgement No. 1046, *Diaz de Wessely* (2002), para. XV) as the situation was merely due to the Applicant’s negligence:

“The delay in submitting the request is the result of a choice freely made by the Applicant, on the basis of her own assessment of the situation and her chances of making a successful appeal, and can in no way be attributed to exceptional circumstances beyond her control. The Applicant is solely responsible for the delay in submitting her appeal.” (See also Judgement No. 560, *Claxton* (1992).)

IV. In its jurisprudence, the Tribunal has consistently emphasized the importance of complying with the mandatory time limits as set out in the Staff Rules. (See Judgement No. 596, *Douville* (1993).) In Judgement No. 498, *Zinna* (1990), para. V, the Tribunal held that “the various time-limits provided in the Staff Rules are to ensure that remedies are sought from contested administrative decisions in a timely and proper manner”. This rationale was reaffirmed in para. XVI of *Diaz de Wessely*, (*ibid.*), where the Tribunal stated:

“In the Tribunal’s view, it is of the utmost importance that time limits should be respected because they have been established to protect the United Nations administration from tardy, unforeseeable requests that would otherwise hang like the sword of Damocles over the efficient operation of international organizations. Any other approach would endanger the mission of the international organizations, as the Tribunal has pointed out in the past: ‘Unless such staff rules [on timeliness] are observed by the Tribunal, the Organization will have been deprived of an imperative protection against stale claims that is

of vital importance to its proper functioning’ (see Judgement No. 579, *Tarjouman* (1992), para. XVII).)”

The Tribunal reiterates the importance it attaches to complying with procedural rules, as they are of utmost importance for ensuring the well-functioning of the Organization. It concurs with the finding of the Standing Committee that the case is time-barred.

V. Accordingly, the Tribunal rejects the Application in its entirety.

(Signatures)

Spyridon **Flogaitis**
Vice-President, presiding

Brigitte **Stern**
Member

Dayendra Sena **Wijewardane**
Member

Geneva, 22 July 2005

Maritza **Struyvenberg**
Executive Secretary