



# Administrative Tribunal

Distr.: Limited  
30 September 2005

Original: English

---

## ADMINISTRATIVE TRIBUNAL

Judgement No. 1243

Case No. 1331

Against: The United Nations  
Joint Staff Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Kevin Haugh, Vice-President, presiding; Ms. Brigitte Stern;  
Mr. Goh Joon Seng;

Whereas at the request of a participant in the United Nations Joint Staff Pension Fund (hereinafter UNJSPF or the Fund), the President of the Tribunal, with the agreement of the Respondent, extended to 31 January 2004 the time limit for the filing of an application with the Tribunal;

Whereas, on 26 January 2004, the Applicant filed an Application requesting the Tribunal, inter alia, to:

“(1) ... [R]escind the decision of the Standing Committee of the [United Nations] Joint Staff Pension Board [(UNJSPB)] that [the Applicant’s] appeal ... was time-barred ...

(2) ... [I]nform the Standing Committee that the rules [which were in effect] prior to 1983 are still legally in force ... and accordingly to order the [UNJSPB] to reinstate the pre-1983 rules with effect from 1 January 1983.

(3) ... [O]rder the [UNJSPB] to apply the pre-1983 rules to the calculation of [the Applicant’s] pension, with effect from 1 October 1996, and to pay the arrears of pension, with interest at 10% per annum compound from 1 October 1996 until paid. ...”

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 21 September 2004;

Whereas, on 17 January 2005, the Applicant filed Written Observations amending his pleas as follows:

“... [T]he Tribunal is requested to allow the addition of [the following] new plea ...

- (4) The Tribunal is requested to determine that:
  - (a) The UNJSPF belongs to the participants and beneficiaries ...
  - (b) The [UNJSPB] is in the position of Trustee for the participants and beneficiaries of the Fund, to whom it owes its primary duty.
  - (c) [The UNJSPB has a duty] to invoke its powers when an actuarial deficit is found during an actuarial valuation.
  - (d) The [UNJSPB] failed in its duty as Trustee ...”

Whereas the facts in the case are as follows:

The Applicant joined the Organization on 28 September 1987, at which time he became a participant in the UNJSPF. He remained a staff member until the expiration of his last fixed-term contract, on 1 October 1996, a year after he had reached his mandatory retirement age. He has been in receipt of a UNJSPF retirement benefit since 2 October 1996. On 19 June 1997, the standard benefit letter, which informed the Applicant of the amount and details of his UNJSPF retirement benefit, was sent to him.

On 31 July 2002, the Applicant wrote to the UNJSPF, stating that the calculations of his retirement benefits had been based on a discriminatory rule and he therefore requested compensation for the shortfall in these payments from their inception. In its response of 10 December, the UNJSPF confirmed to the Applicant that his retirement benefits had been calculated in strict conformity with article 28 of the UNJSPF Regulations and that the rules which were in effect prior to 1983 were of no relevance to him.

On 24 April 2003, the Applicant lodged his appeal with the Standing Committee, requesting a determination that the rules which were in effect prior to 1983 were still legally in force, arguing that the General Assembly's amendment of 1983 contradicted the equality principle included in the Charter. The Applicant contended

that the rates of accumulation for calculating his retirement benefit constituted impermissible discrimination on the grounds of age, benefiting staff members who joined the Organization at a younger age.

On 28 July 2003, the Applicant was informed that the Standing Committee had decided that his request was time-barred, as it was brought more than six years after his retirement from service. Moreover, the Standing Committee added that even if it had considered the Applicant's request on the merits, it would have upheld the decision of the Fund, since the latter had correctly applied the relevant provisions of the UNJSPF Regulations.

On 26 January 2004, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Standing Committee erred in determining that the Applicant's claim was time-barred.
2. Article 28 of the UNJSPF Regulations, as amended in 1983, contravenes the Charter in that it discriminates against participants on the basis of age.
3. The fact that the amended provisions of article 28 have been applied uniformly to all new participants of the Fund as of 1 January 1983 does not detract from their discriminatory nature.

Whereas the Respondent's principal contentions are:

1. The Standing Committee properly determined that the Applicant's claim was time-barred, as it was first submitted approximately six years after the Applicant's retirement, thereby significantly exceeding the ninety-day time limit for initiating an appeal, in accordance with UNJSPF Rule K.5.
2. The Applicant's retirement benefit was calculated in strict conformity with the relevant provisions of article 28 of the UNJSPF Regulations, as in effect during the Applicant's entire UNJSPF contributory service. Provisions which had been in effect prior to the Applicant's participation in the UNJSPF and which had been amended by the General Assembly, have no relevance to the Applicant.
3. The Applicant did not suffer discrimination.

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

I. The Respondent raises arguments of receivability as a preliminary issue which, if accepted by the Tribunal, might negate the necessity of entering into the merits of the Applicant's contentions. The Tribunal will therefore first examine these procedural arguments.

II. The Applicant was born on 1 June 1935. He commenced employment in the United Nations effective 28 September 1987 and remained so employed under successive fixed-term contracts until his retirement, on 1 October 1996. Throughout the period of his said employment he was a contributor to the UNJSPF.

Section K of the UNJSPF Administrative Rules provides the procedure which is to be followed by a participant wishing to have his case reviewed and appealed. Rule K.5 stipulates that

“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 point of fact or of law contained in the decision which are disputed, and the grounds upon which the request for the review is founded ...” (Emphasis added.)

On 19 June 1997, the UNJSPF sent the Applicant the standard benefit letter, informing him of the details regarding his retirement benefits. The Applicant first raised his concerns regarding the calculation of his retirement benefits on 31 July 2002, significantly later than the 90 days' time-limit prescribed for in Rule K.5. The Applicant was informed that the Standing Committee had found his request for review time-barred, “having been brought more than six years after [his] retirement”. The Applicant argues that the Standing Committee erred, as there is no issue of time-bar in his case. According to him, the receipt by him of retirement benefits which he claims to be erroneously calculated in each instance constitutes a new appealable decision. The Tribunal rejects this contention. Acceptance of such an argument would effectively eliminate the time-limits prescribed for initiating an appeals process and would clearly violate the word and spirit of the Rule. The Tribunal finds that the “disputed decision” in the Applicant's case was contained in the benefits letter sent to him on 19 June 1997 and it was up to the Applicant to request a review of the calculation of his benefits within 90 days of receipt of same. The Applicant failed to do so and the Tribunal therefore finds that the Standing Committee was correct in determining that his case was time-barred.

III. Moreover, the Applicant's case is irreceivable as it does not fall within the jurisdiction of the Tribunal, as explained below.

Article 48 of the UNJSPF Regulations provides the basis on which the Tribunal acquires its jurisdiction over UNJSPF cases, i.e. in cases "alleging non-observance of these Regulations arising out of decisions of the [UNJSPB]". In this case, even the Applicant himself does not contend the non-observance of article 28 of the Regulations in question, but rather he takes issue with article 28 of the Regulations itself, seeking to set it aside, thus excluding his case from the Tribunal's jurisdiction. Furthermore, article 2 of the Tribunal's Statute states, *inter alia*:

"1. The Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. The words 'contracts' and 'terms of appointment' include all pertinent regulations and rules in force at the time of alleged non-observance, including the staff pension regulations.

...

3. In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the decision of the Tribunal.

..."

Whilst the Tribunal has power to decide on its own competence, it would be very hesitant to claim jurisdiction when the issue at hand involves the challenge to the legitimacy of a regulation, which had been adopted by the General Assembly. In the Tribunal's view, this would involve the expansion of its powers beyond what is permitted by the above-cited article so that for this reason the Tribunal declines jurisdiction in the instant case.

The Tribunal thus finds the Applicant's case time-barred and not receivable. In this context, the Tribunal wishes to reiterate the importance it attaches to procedural requirements, as recently stated by the Tribunal in Judgement No. 1213, *Wyss* (2004):

"IV. ... Procedural aspects of the law and the obligation upon parties to comply with them have been recognized by all legal systems, and this Tribunal is no exception, as stated in its Judgement No. 1106, *Iqbal* (2003):

'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.'

The requirement that an appeal be receivable, and the Tribunal's insistence thereon, cannot be considered as being in violation of a staff member's rights. Rules of procedure have the same legal value as substantive rules and should, therefore, be respected and not be dismissed or undermined for being 'only' procedural. Many cases have been adjudicated by many different courts following many different legal systems on the basis of procedure. Substance in those cases would have been deemed to have given way to form. ..."

IV. Whilst the Tribunal usually observes judicial economy and will not ordinarily deal with the merits of a claim after finding it to be time-barred or otherwise not receivable, it has nonetheless determined that in the present case it is appropriate to deal with the merits of the case, lest some person be deceived into believing that there is some merit in the Applicant's contention and seek to use the resources of the internal justice system to bring a claim such as this within the prescribed time-limits. The Tribunal notes that a similar decision was taken in Judgement No. 947, *Ibrahim* (2000), where the Tribunal, after establishing that the case was time-barred, stated in paragraph IV "[a]lthough the Tribunal does not generally review on the merits of a case after ruling that the case is time-barred, it considers that this case is so unsustainable that it deserves comment".

V. On the merits, in the opinion of the Tribunal, this claim arises from the Applicant's misconception as to the meaning, purpose and intent of the equality of treatment provision contained in Article 8 of the Charter of the United Nations.

Since his retirement, the Applicant has been in receipt of his retirement benefits which have been calculated in accordance with article 28 of the UNJSPF Regulations, which were brought into force by resolution of the General Assembly and effective since 1 January 1983.

The financial position of the UNJSPF and its reserves were, at that time, considered to be in a perilous state and the amendment made to the pension regulations by the said resolution effectively reduced the amount of benefit a contributor would be entitled to on retirement, with prospective effect. Whereas prior to the amendment, benefit was to be calculated by reference to the staff member's first 30 years of service with the Organization by using a multiplier of 2% of final average remuneration, by virtue of the said amendment as from 1 January 1983, the multiplier for the first five years of the participant's contributory service would be 1.5%, the next five years

would be 1.75% and for years in excess of 10 but not exceeding 25 it would be a multiplier of 2% of final average remuneration.

Since the Applicant became a participant some years after the changed regulation came into effect, he claims that he is disadvantaged as compared to his contemporaries who had enjoyed participating service prior to 1983, as the multiplier applied to their pre-1983 years of service is greater than the multiplier applied to his years of service, so that his benefits are calculated on terms less advantageous to him than the terms enjoyed by such contemporaries. He accordingly argues that persons such as himself who took up employment with the Organization later in life (he joined when aged 52 years) are disadvantaged when compared to his contemporaries who joined before 1983, in a manner that offends against Article 8 of the Charter of the United Nations so that the “new rules” are invalid and that the pre-1983 rules should be deemed to still apply.

Article 8 of the Charter of the United Nations reads as follows: “The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal or subsidiary organs”. This stricture does not mean that all staff members should be paid the same without reference to qualifications, experience, duties, responsibilities or other such matters. It does not mean that salaries or benefits cannot be calculated by reference to the cost of living or ordinary style of living appropriate to that part of the globe in which the staff member is required to serve. It does not mean, for instance, that rental subsidies should be the same throughout the globe rather than be fixed by reference to the ordinary cost of rental accommodation in the area where the staff member is located. It does not mean that separate and distinct washroom facilities should not be provided for male and female staff members. What is prohibited by the said Article is invidious or arbitrarily unfair discrimination of a sort where those selected for disadvantage are selected on abhorrent or impermissible criteria, so that the person who claims that he has suffered impermissible discrimination can demonstrate that the selection process cannot be justified on rational or acceptable grounds.

In particular, where the General Assembly was persuaded that the financial position of the UNJSPF was such that it determined that the method to be applied for the calculation of pension benefits should be changed, and when in such circumstances it altered the regulation so that all persons contributing after 1 January 1983 were to be treated similarly, this new regime did not contravene the equality provisions set forth in Article 8 of the Charter of the United Nations.

What is meant by equality of treatment is that persons in similar situations should be treated alike. As stated in Judgement No. 268, *Mendez* (1981), “[t]he principle of equality means that those in like case should be treated alike, and that those who are not in like case should not be treated alike”. (See also Judgement No. 1221, *Sharma* (2004).)

VI. In view of the foregoing, the Application is rejected in its entirety.

*(Signatures)*

**Kevin Haugh**  
Vice-President, presiding

**Brigitte Stern**  
Member

**Goh Joon Seng**  
Member

Geneva, 22 July 2005

**Maritza Struyvenberg**  
Executive Secretary