

Judgement No. 118

*(Original: English)***Case No. 124:**
Vermaat*Against:* **The United Nations
Joint Staff Pension
Board**

Request by a technical assistance expert of FAO for validation by the Joint Staff Pension Fund of service completed before his participation in the Fund.

Request for the rescission of the decision taken by the Joint Staff Pension Board refusing to validate the Applicant's prior service.—Grounds for this decision and for the original decision of the FAO Staff Pension Committee.—Legal basis of the contested decision.—How the case differs from the Young case.—Article III, paragraph 1, of the Pension Fund Regulations.—The Applicant was in neither of the situations covered by the said article and could not avail himself of the benefits provided therein.

Contention that FAO should have enrolled the Applicant in the Pension Fund earlier than it did.—In order to decide whether the Applicant was entitled to participate in the Pension Fund at an earlier date, it is necessary to establish whether his contract did not exclude his participation in the Fund.—This question can be settled only by an examination of the Applicant's contract and the legal provisions of FAO.—Agreement of 29 September 1955 extending the jurisdiction of the Tribunal to FAO in pension matters.—Competence of the ILO Administrative Tribunal to hear a dispute relating mainly to the interpretation of the contract of a FAO staff member and of the FAO regulations and rules.

The request for rescission of the contested decision is rejected.—The Tribunal is not competent to take cognizance of the Applicant's contentions relating to his participation in the Pension.—The request for costs is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; the Lord Crook, Vice-President; Mr. Louis Ignacio-Pinto; Mr. Zenon Rossides, alternate member;

Whereas, on 27 December 1967, Jan George Vermaat, a technical assistance expert of the Food and Agriculture Organization of the United Nations, hereinafter called FAO, filed an application against a decision of the United Nations Joint Staff Pension Board;

Whereas the application did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, under paragraph 10 of that article, the Executive Secretary of the Tribunal returned it to the Applicant and called upon the Applicant to make the necessary corrections not later than 25 March 1968;

Whereas, at the Applicant's request and with the Respondent's agreement, the President of the Tribunal extended by three months the time-limit for making the necessary corrections;

Whereas the Applicant, after making the necessary corrections, again filed the application on 12 June 1968;

Whereas, on 26 September 1968, the Applicant amended the pleas of his application with regard to the amount requested to be paid by FAO to the United Nations Joint Staff Pension Fund and with regard to the reimbursement of costs;

Whereas the pleas, as amended, read as follows:

"It is prayed that the Respondent be either directed to admit the facts contained in the explanatory statement [of the application] or else to put in the witness box a person authorized with the relevant documents to contradict or confirm the statement.

"It is further prayed that directions be given to the Respondent to provide the Applicant with necessary funds to visit New York as well as to grant leave for presenting his case.

"It is further prayed that directions be given that a competent counsel be ordered to be appointed to assist the Applicant in the presentation of the case and make provision for payment of counsel's fees in case a competent counsel from the United Nations is not provided.

"The Applicant craves leave to file the list of witnesses subsequently in proof of the case, as the names and addresses are not available at present and the Applicant is making an enquiry regarding them.

". . .

"The Applicant respectfully requests the United Nations Administrative Tribunal for:

"(1) An order for the rescission of the decision of the Joint Staff Pension Board excluding the Applicant from validating for the Pension Fund his years of service as an ETAP [Expanded Technical Assistance Programme] Expert from 1st of May, 1951, to 31st December 1957, based on the fact that by refusing the Applicant's request for validation the Respondents infringed the Applicant's contract and conditions of employment.

"(2) An order against FAO to pay to the U.N. Joint Staff Pension Fund an 'amount sufficient to meet its obligations resulting from the inclusion of such additional contributory service, which are not to be met by payments made by the participant' as ruled in article III-4 (1963) or 4a (January 1966) of the Regulations of the United Nations Joint Staff Pension Fund.

"(3) An order to the Respondents to take the necessary steps to enable the Applicant to validate these years in the Pension Fund.

"(4) An order against FAO to reimburse the Applicant for costs incurred by the Applicant."

Whereas, on 19 June 1968, the application was communicated to the Director-General of FAO under article 21 of the Rules of the Tribunal;

Whereas, on 2 July 1968, the Legal Counsel of FAO reserved FAO's right to intervene in the case and requested communication of all the written submissions of the parties;

Whereas, on 11 July 1968, the Executive Secretary of the Tribunal advised the Legal Counsel of FAO that the President had agreed to have all the written pleadings communicated to FAO;

Whereas, on 13 July 1968, the Applicant confirmed, with regard to the second paragraph of the first section of the pleas of his application, that he requested that oral proceedings be held under article 15 of the Rules of the Tribunal;

Whereas the Respondent filed his answer on 8 August 1968;

Whereas, on 9 August 1968, the Executive Secretary of the Tribunal, on the instructions of the President, asked the Legal Counsel of FAO, in view of the submissions contained in the Respondent's answer, to regard the above-mentioned communication of 19 June 1968 as a communication made under article 7, paragraph 11 of the Rules of the Tribunal, it being understood that this did not prejudice in any way the question of the competence of the Tribunal in relation to FAO;

Whereas, on 14 August 1968, the Applicant submitted pleas (1) requesting the Tribunal to direct FAO "to submit to the jurisdiction of the Tribunal and put in their written statement with necessary documents expeditiously" and (2) reiterating the pleas contained in the first three paragraphs of the first section of the pleas of the application;

Whereas, on 10 September 1968, the Director General of FAO filed a statement setting forth the views of FAO with respect to the application and noting *inter alia* that "appeals relating to terms and conditions of service [of FAO staff members] ultimately fall within the competence of the Administrative Tribunal of the International Labour Organisation";

Whereas in that statement the Director-General of FAO concluded that:

- "(i) The issue before the Tribunal is the validity of the Respondent's decision to the effect that the Applicant was not entitled under the Pension Fund Regulations to validate his period of service with the Organization between 1 May 1951 and 31 December 1957;
- "(ii) The only aspect of the Applicant's appeal which may be entertained by the Tribunal is the question of validation as only this question has been the subject of the appeals procedure laid down in the Administrative Rules of the Pension Fund;
- "(iii) The Applicant is not entitled to validate his service between 1 May 1951 and 31 December 1957 because he was precluded from doing so under article III of the Pension Fund Regulations. In any case, had any such right existed, the Applicant did not request reconsideration of the decision made in 1958 by the Secretary of the FAO Staff Pension Committee within the prescribed time-limits, and consequently his claim should be considered as time-barred."

Whereas, on 23 September 1968, the Executive Secretary of the Tribunal informed the parties of the decisions taken by the President on the pleas submitted by the Applicant on 14 August 1968 and on his request for oral proceedings, as follows:

(1) As to the plea concerning the question of the competence of the Tribunal in relation to FAO: The question would be decided by the Tribunal in accordance with article 2, paragraph 3, of its Statute;

(2) (a) As to the plea contained in the first paragraph of the first section of the pleas of the application: Since the Rules of the Tribunal did not provide for such a procedure, the request could not be granted;

(b) As to the plea contained in the second paragraph of the first section of the pleas of the application: The Tribunal had no authority to order such relief and the request could not therefore be entertained;

(c) As to the plea contained in the third paragraph of the first section of the pleas of the application: The request could not be granted under United Nations

Administrative Instruction ST/AI/163/Rev.1, which provided the only possible basis for a request for the designation of counsel. However, a request for reimbursement of costs could be addressed to the Tribunal;

(3) As to the request for oral proceedings: It would not be possible to hold oral proceedings at the forthcoming session of the Tribunal. However, the Tribunal would be seized of the request and would decide on whether to hold such proceedings at a later stage;

Whereas, on 16 September 1968, the Applicant requested that FAO be asked to grant him additional leave for the days he would spend in Rome for the purpose of inspecting his personnel file before its communication to the Tribunal;

Whereas, on 25 September 1968, the Executive Secretary of the Tribunal, on the instructions of the President, informed the Applicant that the Tribunal had no authority to order such relief and that the request therefore could not be entertained;

Whereas the Applicant filed written observations on 27 September 1968;

Whereas, on 30 September 1968, the Legal Counsel of FAO submitted additional information and documents at the request of the President of the Tribunal;

Whereas the Applicant filed a reply to the FAO statement on 11 October 1968;

Whereas the Respondent submitted an additional statement on 21 October 1968 in reply to questions put by the Tribunal;

Whereas the facts in the case are as follows:

The Applicant entered the service of FAO on 1 May 1951 as a technical assistance expert under a one-year appointment subject to the provisions of the staff regulations for staff members assigned to technical assistance field missions; the letter of appointment contained no provision concerning participation in the United Nations Joint Staff Pension Fund but stipulated that there would be no deductions from his salary by the Organization for any purpose. On 1 May 1952 the appointment was extended for two years. Effective 1 January 1954 the conditions of service for technical assistance experts were revised and the Applicant accepted the revised conditions, which had been stated to him in a letter of 10 July 1953 sent on behalf of the Chief of the Personnel Branch; participation in the Pension Fund was not mentioned in that letter. On 1 May 1954 the Applicant's appointment was extended to 30 June 1955 and, thereafter, successive extensions were granted up to 1 November 1961, when the appointment was converted into a programme appointment.

When the Applicant received his initial appointment, the employment of technical assistance experts was governed by Administrative Memorandum No. 233 (Supplement 15) dated 30 January 1951, paragraph 20 of which read: "*Pension Fund*. Employees, because of their short-term employment, cannot be included in the United Nations Joint Staff Pension Fund." This Administrative Memorandum was superseded by Administrative Memoranda Nos. 6 and 16 dated 13 and 3 October 1952 respectively, which contained no provision relating to the Pension Fund. As of 1 January 1954 Administrative Memoranda Nos. 6 and 16 were superseded by Manual Sections 370 and 371, which again contained no provisions concerning the Pension Fund. Effective 1 December 1956, however, the following provision was inserted into these Sections:

“370.347 Subject to action by the General Assembly on amendment of the Regulations of the United Nations Joint Staff Pension Fund and to T.A.B. approval, it is contemplated that holders of Programme Appointments will become eligible for participation in the United Nations Joint Staff Pension Fund from the effective date of the Programme Appointments, without retroactivity.”

Effective 1 January 1958, Sections 370 and 371 were further revised; the above provision was amended to read:

“370.338 Holders of Programme Appointments are eligible for participation in the United Nations Joint Staff Pension Fund from the effective date of such appointments, without retroactivity (see also Manual Section 341—United Nations Joint Staff Pension Fund).”

and the following provision was inserted as paragraph 370.94:

“370.94 PENSION FUND

“.941 Experts in short-term appointment status shall not be eligible for participation in the United Nations Joint Staff Pension Fund unless such eligibility is explicitly provided for in the letter of appointment following previous participation in the Fund.

“.942 Experts under 60 years of age in intermediate-term appointment status shall be eligible to be associate participants in the Fund, unless the Regulations of the Fund provide otherwise.

“.943 Experts in long-term status shall be full participants in the Fund provided the Regulations of the Fund permit such participation.”

On the same date the Applicant, being on long-term appointment status (five years or more) became a full participant in the Pension Fund.

While the regulations outlined above defined the general terms of employment of technical assistance experts, regulations dealing specifically with the Pension Fund were issued from time to time. Manual Section 331, dated 12 July 1950 and entitled “Pension Fund”, contained the following provision:

“331.021 *Eligibility for Participation.* The term ‘every full-time member of the staff of each member organization’ as used in article 2 of the Pension Fund Regulations (hereinafter called the ‘Regulations’) means, with reference to staff members of FAO, all persons who enter the employment of FAO with fixed-term appointments of one year or more. It does not include part-time employees, consultants, or those paid on a ‘when-actually-employed’ or honorarium basis.”

As of 2 August 1951 the above provision was amended to read:

“331.2 *Eligibility for Participation.* The term ‘every full-time member of the staff of each organization’ as used in article 2 [of the Pension Fund Regulations] means, with reference to staff members of FAO, all persons who enter the employment of FAO under sixty years of age with fixed-term appointments

of one year or more and whose participation is not excluded by the terms of their employment. It does not include part-time employees, consultants, or persons paid on a 'when-actually-employed' or honorarium basis. It also does not include experts paid from ETAP project funds who are appointed for periods of less than two years."

On 20 September 1954, Section 331 was replaced by Manual Section 341; paragraphs 12 and 21 read as follows:

"341.12 *Applicability*

“.121 The provisions of this Section apply to all staff members of the Organization (whether charged to Regular Program of ETAP funds) who are eligible to participate in accordance with FAO Staff Regulation 301.061 and FAO Staff Rule 302.61. . .”

“.122 These provisions do *not* apply to ETAP experts (except when continuing previously established participation in the Fund), persons engaged as consultants, short-term conference staff, and other short-term staff. . . .”

"341.21 *Eligibility for Participation*

“.211 In article II of the JSPF [Joint Staff Pension Fund] Regulations, 'every full-time member of the staff' means, *with the exception of Technical Assistance experts*, all persons under 60 years of age who enter the employment of the Organization under Permanent or Indefinite appointments, or fixed-term appointments for one year or more.

“.212 A staff member under 341.211 above, who was *not* previously eligible to participate in the Fund on appointment, becomes a member of the Fund after completion of one year's service, provided he was under sixty years of age when entering employment. Such a staff member may have his membership take effect as of the day he entered on duty by making the appropriate contributions as stated in article III of the JSPF Regulations.”

Effective 11 April 1957 those provisions were amended to read:

"341.12 *Applicability*

“.121 [no change]

“.122 These provisions also apply, effective 1 January 1957, to ETAP experts in *program appointment* status. . . . They also apply to experts who continue previously established participation in the Fund.

“.123 ETAP experts *other* than those specified in .122 above, persons engaged as consultants, temporary conference staff, and other short-term staff are *excluded* from participation in the Fund.

“. . .”

“341.21 *Eligibility for Participation*

“.211 In article II of the JSPF Regulations, ‘every full-time member of the staff’ means, *with the exception of Technical Assistance experts holding other than Program Appointments* all persons under 60 years of age who enter the employment of the Organization under Permanent or Indefinite appointments, or fixed-term appointments for one year or more.

“.212 A staff member under 341.211 above, who was *not* previously eligible to participate in the Fund on appointment, becomes a member of the Fund after completion of one year’s service, provided he was under sixty years of age when entering employment. Except as provided by .213 below, such a staff member may have his membership take effect as of the day he entered on duty by making the appropriate contribution as stated in article III of the JSPF Regulations.

“.213 Under 341.212 above, a staff member whose previous terms of appointment specifically excluded him from participation in the Fund is *not* entitled to have that period of service validated at a later date.”

On 19 August 1958, the Applicant made an application to have his period of service from 1 January 1954 to 31 December 1957 validated for pension purposes under article III of the Pension Fund Regulations. As in force at the time that article read as follows:

“ARTICLE III

“*Validation of non-pensionable service*

“1. A participant who has been in the employment of a member organization as a full-time staff member and whose participation in the Pension Fund was at that time excluded by article II of these regulations because he entered employment under a contract for less than one year, or had completed less than one year of service, may, subject to paragraph 4 of this regulation, elect within one year of the commencement of his participation to have the period of such prior employment included in his contributory service to the extent to which he pays into the Pension Fund, in accordance with the administrative rules established for this purpose by the Joint Staff Pension Board, a sum or sums equal to the contributions which he would have paid had he been subject to these regulations throughout this period, with compound interest at the rate designated in article XXIX, and provided that there has been continuity of employment. For the purposes of this article, intervals of not more than thirty calendar days in the period of employment shall not be considered as breaking the continuity of employment. The time covered by these intervals shall not be included in the period of contributory service.

“2. Payment into the Pension Fund of amounts equal to twice the amount of the payment so made by the participant shall be made by the member organization designated for that purpose in accordance with arrangements concluded by the member organizations.

"3. The earliest date from which employment with the United Nations can be validated is the first day of February 1946.

"4. Notwithstanding the provisions of paragraph 1 of this article, a participant may not make pensionable a period during which he was employed under a contract of employment which specifically excluded his participation in the Pension Fund."

On 30 September 1958, the Secretary of the FAO Staff Pension Committee informed the Applicant that since he had been excluded from participation in the Pension Fund prior to 1 January 1958, in accordance with paragraph 4 of article III he could not make pensionable that period. On 13 July 1964, after the Administrative Tribunal had rendered its judgement (No. 89) in the Young case, the Applicant made a second application, for validation of his period of service from 1 May 1951 to 31 December 1957. On 9 June 1966, the Secretary of the FAO Staff Pension Committee informed him as follows:

"... the Staff Pension Committee at its meeting on 5 May 1966 considered your application and arrived at the following conclusions, taking into account the opinion of the Organization's Legal Counsel:

"(a) You did not have recourse to the appeals procedure laid down in Administrative Rules G.9-11 and therefore you did not observe the time limits provided therein for reviewing decisions of the Staff Pension Committee.

"(b) Eligibility for validation did not exist since participation of EPTA [Expanded Programme of Technical Assistance] experts had been specifically excluded, under certain conditions, by the provisions of the FAO Manual during the years 1951 to 1957. The ILO Tribunal which is competent to consider complaints relating to the application of the Staff Regulations and Rules and the Manual of FAO had always considered the provisions of the FAO Manual as binding on both the Organization and the Staff member.

"(c) The amendment to the Regulations which took effect in December 1956 and which in accordance with the interpretation given by the Administrative Tribunal of the United Nations required in the contract a specific exclusion from participation in the Pension Fund, could not be applied retroactively.

"In view of the question of principle involved and of the importance of the issue for the Pension Fund, the Staff Pension Committee decided to submit the matter to the Joint Staff Pension Board's Standing Committee for an opinion. Your case will accordingly be referred to the Standing Committee for consideration at its next meeting..."

On 14 December 1966, the Secretary of the FAO Staff Pension Committee advised the Applicant as follows:

"..."

"The Standing Committee considered your application at its 109th meeting on 20 October and declined to give a formal opinion in order not to deprive you of the benefit of Administrative Rules G.10 and G.11. The matter was therefore considered again by the FAO Staff Pension Committee at its 72nd meeting held on 1 December. The Committee decided to confirm its earlier decision that for the reasons already communicated to you in my letter of 9 June you are not entitled to validate the period in question.

"If you wish to pursue the matter further your attention is drawn to Administrative Rules G.10 and G.11..."

By two letters dated 8 February 1967 and 22 August 1967 respectively, the Applicant appealed from the decision to the Joint Staff Pension Board under Administrative Rules G.10 and 11 [G.7 and 8 in the 1967 Edition of the Rules]. On 24 October 1967, the Secretary of the Pension Board informed him that the Standing Committee of the Board had rejected his appeal on the ground that:

“Article III [of the Pension Fund Regulations] at the relevant times provided only for the inclusion of service during which the staff member had not been eligible for participation because his appointment was for less than a year or because he had completed less than one year’s service.”

On 27 December 1967, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. The original appointment conferred on the Applicant the right to participate in the Pension Fund. The first extension of the appointment, for two years, also made the Applicant eligible for participation.

2. The Applicant was misled by the representations made by the personnel officers of FAO, that the Pension Fund was not available to ETAP experts. There was a duty upon the Respondent to communicate to the Applicant that he had the right to participate in the Pension Fund, and the Respondent failed in that duty till 1958.

3. The Applicant’s contract did not specifically exclude him from the Pension Fund.

4. The Applicant is entitled to get retrospective validation not only in law but also in equity. The fact, in particular, that the new experts joining FAO are now being granted the right to participate in the Pension Fund while the original pioneering experts are being denied this right is arbitrary and violates the ILO Convention and Recommendation concerning discrimination in respect of employment and occupation.

5. While the claim for belated recognition of qualifying service is admittedly different from a claim for validation of previous non-qualifying service, the principle “*Ubi jus ibi remedium*” is applicable. The purpose of the proceedings being to enable the Applicant to obtain at the age of sixty a pension over his full period of employment, he claims to have the right to a full pension under article II as well as article III of the Pension Fund Regulations. The “remedy” in both cases being the same, both these matters have to be considered together.

Whereas the Respondent’s principal contentions are:

1. The arguments put forward in the application are primarily directed, not to the question of validation of non-pensionable service after the Applicant had in fact become a participant, but rather to the contention that his employing organization had an obligation to secure his admission as a participant on an earlier date. Such a claim can only be addressed to the Applicant’s employing organization.

2. In so far as the appeal impugns the decision taken by the Respondent, it should be rejected on the ground that this decision only concerned the application of article III of the Pension Fund Regulations, and that this decision complied fully with the Pension Fund Regulations.

3. Since the Applicant did not satisfy the prerequisites for validation set out in paragraph 1 of article III of the Pension Fund Regulations and for this reason

alone could not qualify under the article, it was unnecessary to consider whether the Applicant's previous contracts of employment had "specifically excluded" his participation in the Fund for the purposes of paragraph 4 of the same article.

4. The Applicant's pleas requesting admissions of facts and facilities and professional services and concerning his contractual rights pertain to issues concerning which the Respondent is not the responsible party, nor a party to the dispute which has arisen in respect thereof.

The Tribunal, having deliberated from 15 to 24 October 1968, now pronounces the following judgement:

I. Some of the Applicant's requests concerning the procedure before the Tribunal have been the subject of decisions by the President, which were communicated to the parties on 23 September 1968. It is therefore not necessary for the Tribunal to rule on them. As to the request for oral proceedings, the Tribunal rules that the circumstances of the case do not justify the holding of such proceedings.

II. The Applicant requests the Tribunal to rescind the decision taken by the Standing Committee of the Joint Staff Pension Board and notified to the Applicant on 24 October 1967 refusing to validate the Applicant's service as an expert of the Expanded Programme of Technical Assistance from 1 May 1951 to 31 December 1957. The Applicant also maintains that he was entitled to participate in the Joint Staff Pension Fund from the time when he joined FAO as an expert and that by not enrolling him FAO failed to fulfil its obligations under article 2 of the Agreement for the admission of FAO into the United Nations Joint Staff Pension Fund. The Applicant considers that the Tribunal is competent to take a decision on this request.

III. The contested decision rejecting the Applicant's appeal against a decision of 1 December 1966 by the FAO Staff Pension Committee is based on the grounds that article III of the Pension Fund Regulations in force at the relevant date only provided for the validation of service during which the staff member had not been entitled to participate in the pension system, either because the contract was for less than one year or because he had completed less than one year of service. The decision adds that the equity of the decision to bar certain categories of staff from participation in the Pension Fund prior to 1958 was not entered into by the Standing Committee.

The decision of the FAO Staff Pension Committee which is thus confirmed was based on other grounds: the Applicant was not entitled to validate his service because participation of experts of the Expanded Programme of Technical Assistance had been specifically excluded, under certain conditions, by the FAO Manual during the years 1951-1957. It was also stated that the amendment to the Regulations which took effect in December 1956 and which, in accordance with the interpretation given by the Administrative Tribunal of the United Nations, required in the contract a specific exclusion from participation in the Pension Fund could not be applied retroactively.

Thus the Standing Committee, while upholding the refusal to validate, based itself on quite different considerations from those advanced by the FAO Staff Pension Committee.

IV. The contested decision taken by the Standing Committee of the Joint Staff Pension Board concerns the request for validation of service prior to the enrolment of the Applicant in the Fund. This decision is based on article III,

paragraph 1, of the Pension Fund Regulations as it applied on 1 January 1958, the text having been established in its essentials on 7 December 1956.

The Tribunal notes that there was no other generally applicable provision concerning validation, as there had been in the Young case (Judgement No. 89), on which the Applicant could have relied at the time when, having been admitted to the Pension Fund, he was seeking to have his previous service validated.

In the present case the Tribunal notes that article III, paragraph 1, of the text then in force—unlike previous and subsequent texts—only provided for validation of previous service in the case of persons whose participation in the Pension Fund had been excluded because they had entered employment under a contract for less than one year or had completed less than one year of service. This is linked to the provisions of article II on participation in the Fund and to the conditions which this text stipulated in the wording which was in force until 31 December 1957. The facts of the case, however, show that the Applicant was in neither of the situations covered by article III, paragraph 1. Accordingly the Applicant could not avail himself of article III concerning validation at the time of his enrolment in the Fund on 1 January 1958 under the new article II.

V. With regard to the Applicant's claim that, as soon as he joined FAO as an expert of the Expanded Programme of Technical Assistance, he was entitled to enrolment in the Joint Staff Pension Fund and that FAO, by failing to ensure this enrolment, had not fulfilled its contractual obligations, the Respondent maintains that this question concerns FAO and the interpretation given by that organization to the Applicant's contract, and that the Respondent has no direct responsibility in this respect.

In the statement presented to the Tribunal by FAO, that organization pointed out that the question whether the Applicant was entitled prior to 1 January 1958 to be enrolled in the Pension Fund is unrelated to the contested decision. No appeal was lodged on this subject and at no time has the organization waived the obligation to follow the appeal procedure. Moreover, this question concerning the interpretation of the Applicant's conditions of employment could be subject only to the internal appeal procedure of the organization, which provides for ultimate recourse to the Administrative Tribunal of the International Labour Organisation.

VI. The Tribunal notes that, since the Applicant entered the service of FAO, the Pension Fund Regulations on conditions of participation have always contained the reservation "provided that . . . participation is not excluded by [the staff member's] contract of employment" (article II).

Thus, in order to decide whether the Applicant was entitled between 1951 and 1958 to participate in the Joint Staff Pension Fund, it is necessary to establish *inter alia* whether the contract did not exclude his participation in the Fund.

In claiming that he was entitled to participation, the Applicant referred to the initial letter of appointment and to the extensions and subsequent engagements. He also based his case on the administrative manuals applicable to all FAO staff or to experts.

An examination of these documents shows that the initial letter of appointment did not contain any explicit provision excluding the right to participate in the Pension Fund. Moreover, the applicable regulations and rules did not establish a uniform system for all the experts of the Expanded Programme of Technical Assistance. Thus, Manual Section 331, revised on 2 August 1951, provided as to the right to participate in the Fund that the term "every full-

time member of the staff of each organization" did not include "experts paid from ETAP project funds who are appointed for periods of less than two years", and there is a question whether, on the basis of this text, the Applicant, having had his contract extended for two years on 1 May 1952, was entitled to participate in the Pension Fund.

The Tribunal reaches the conclusion that the question of whether or not the contract excluded participation can be settled only by an examination of the contract of the staff member and of the legal provisions in force in the organization concerned.

In the file before the Tribunal there is nothing to indicate that the legal problems which have been raised by the Applicant in the present case and which concern his contractual situation before 1958 either received administrative consideration or have been the subject of any decision open to appeal.

Moreover, if there had been a decision subject to appeal, the question would arise as to what jurisdiction would be competent.

VII. According to the preamble of the Special Agreement of 29 September 1955 between the United Nations Secretary-General and the Director-General of FAO extending the jurisdiction of the Administrative Tribunal of the United Nations to FAO with respect to applications by FAO staff members alleging non-observance of the Pension Fund Regulations, the Joint Staff Pension Board recorded its understanding that "for matters involving the Regulations of the United Nations Joint Staff Pension Fund full faith, credit and respect shall be given to the proceedings, decisions and jurisprudence of the Administrative Tribunal, if any, of the agency concerned relating to the staff regulations of that agency, as well as to the established procedures for the interpretation of such staff regulations".

When, in a case involving participation of a FAO staff member in the Fund, the dispute relates mainly to the interpretation of his contract and of the FAO regulations and rules applicable to him, it would appear from article XI of the Staff Regulations of FAO that the International Labour Organisation Administrative Tribunal would be the competent jurisdiction.

The Tribunal observes that while it is the Staff Pension Committee of the organization which is responsible for transmitting every month notifications of new enrolments to the Secretariat of the Joint Staff Pension Fund, it is the Personnel Branch of the organization which, according to the FAO Manual, is responsible for determining who is entitled to participate in the Fund.

In the present case, the Applicant has availed himself of an application within the competence of the United Nations Administrative Tribunal to add a specific request which, if it could be accepted, would in practice lead to the same result as the application.

However, this specific request—which in any event has not been the subject of prior administrative procedure—does not come within the competence of the United Nations Administrative Tribunal for the reasons indicated above.

VIII. The Tribunal recognizes that it is clear from the file that the reason why the right to participation was not the subject of an appeal at an earlier stage is that the Applicant accepted what he was told about his legal position by the FAO Administration. He was not informed over a long period of all remedies open to the staff, and the nature of his activities, as well as the fact that he was

stationed away from Headquarters, made it particularly difficult for him to establish his rights.

This is a situation in which the Applicant, because of certain delays, the conditions in which his case was handled in its earlier phase and his lack of services of counsel, may have the impression of an injustice, even though his uninterrupted service as an expert since 1951 and his devotion to duties were not open to question. However, these considerations cannot affect the conclusions which the Tribunal reaches on the basis of the applicable texts.

IX. For these reasons, the Tribunal rejects the pleas of the application concerning the decision of the Standing Committee of the Joint Staff Pension Board notified to the Applicant on 24 October 1967 and decides that it is not competent to take cognizance of the contentions relating to the right of participation which might have been conferred upon the Applicant prior to 1958. The request for costs is accordingly rejected.

(Signatures)

Suzanne BASTID
President

CROOK
Vice-President

L. IGNACIO-PINTO
Member

Z. ROSSIDES
Alternate Member

Jean HARDY
Executive Secretary

New York, 24 October 1968.

Judgement No. 119

(Original: English)

Case No. 120:
West

Against: **The United Nations
Joint Staff Pension
Board**

Request by a staff member of FAO for validation by the Joint Staff Pension Fund of service completed before his participation in the Fund.

[For the remainder, see the summary of Judgement No. 118, minus the last sentence.]

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, President; the Lord Crook, Vice-President; Mr. Zenon Rossides; Mr. Louis Ignacio-Pinto, alternate member;

Whereas, on 5 December 1967, Burnell G. West, a staff member of the Food and Agriculture Organization of the United Nations, hereinafter called FAO,