

II. The Tribunal notes that the Applicant sought review of Judgement No. 135 under article 11 of the Statute of the Tribunal and the Committee on Applications for Review of Administrative Tribunal Judgements decided that there was no substantial basis for the application for review.

III. Under article 12 of the Statute of the Tribunal "the Secretary-General or the Applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence".

IV. The Applicant has not produced in his application for revision any fact of a decisive nature which was not before the Tribunal during its consideration of the case. The Applicant has urged his case again in different words and arguments.

The Applicant's main plea that he was entitled to continued employment on the basis of an oral agreement and that he should have been granted a salary at a higher level on the basis of oral promises made to him at the time of his entering the service was fully considered and rejected by the Tribunal in its Judgement No. 135. The Tribunal also ruled that it had no competence to deal with the alleged borrowing of money by the Deputy Resident Representative.

The Applicant has elaborated arguments in the present application that oral agreements are binding and that contracts may be express or implied but he has not presented any new facts that call for the revision of the decision.

V. In the absence of the discovery of some fact of a decisive nature unknown to the Tribunal and to the Applicant when the Judgement was given, the Tribunal cannot revise the Judgement.

VI. The application is therefore rejected.

(Signatures)

R. VENKATARAMAN
President

Francis T. P. PLIMPTON
Member

Zenon ROSSIDES
Member

Jean HARDY
Executive Secretary

New York, 1 October 1971

Judgement No. 147

(Original: French)

Case No. 142:
Thawani

Against: The United Nations Joint
Staff Pension Board

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

Request for the rescission of the decision by the Respondent refusing to validate the Applicant's prior service.—Cancellation by the Applicant of his first request for validation and refund of the three monthly instalments he had already paid.—The

Applicant definitely surrendered entitlement to validating.—Circumstances in which the Applicant terminated his employment and requested the refund of his contributions.—These circumstances do not entitle the Applicant to benefit from a request for validation which he had waived.—Argument based on the fact that the Respondent had agreed to credit the Applicant with contributory service corresponding to the three monthly deductions made from his salary prior to the cancellation of his request for validation.—Legal implications of this decision.—The second request for validating submitted after the expiry of the time-limit of one year prescribed in the Regulations is inadmissible.

The application is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Francis T. P. Plimpton; Mr. Vincent Mutuale;

Whereas, on 6 October 1970, Vensi Detaram Thawani, a staff member of the Food and Agriculture Organization of the United Nations, hereinafter called FAO, filed an application against a decision rejecting his request for the validation of prior service for pension purposes;

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

Whereas, having made the necessary corrections, the Applicant resubmitted his application on 21 December 1970;

Whereas, in the pleas of the application, the Applicant requests the Tribunal to rescind:

“(1) Rejection of the appeal by the United Nations Joint Staff Pension Board for the validation of the period of my service under FAO from 31 January 1959 to 17 July 1962;

“(2) Ruling of the Standing Committee of the United Nations Joint Staff Pension Board that the request to validate the period had been made outside the time-limit of one year established under article III.1 of the Regulations of the Fund;

“(3) The argument advanced by the Board that I had cancelled my validation request;

“(4) The method of calculation by the Board in validating only the period 18 July 1962 to 31 December 1962 and not the whole period 31 January 1959 to 31 December 1962.”;

Whereas the Respondent submitted his reply on 12 July 1971;

Whereas the Applicant submitted written observations on 23 August 1971;

Whereas the facts in the case are as follows:

The Applicant entered the service of FAO as an Agricultural Statistician on 31 January 1959. On 1 November 1959, he was admitted to associate participation in the Pension Fund. On 1 January 1963, he became a participant. On 9 July 1963, he elected to validate for pension purposes his period of service from 31 January 1959 to 31 December 1962, selecting that the moneys which he owed to the Pension Fund by virtue of that election should be deducted from his salary in twenty equal monthly instalments. Pursuant to that request, FAO deducted three equal monthly instalments from the salary of the Applicant. On 17 October

1963, the Applicant cancelled his request for validation and asked that the three monthly instalments already deducted from his salary should be repaid to him, his reason being that his service was due to end on 11 November 1963 for health reasons and that, on that date, his contributory service would be less than five years, even if the period whose validation he had requested was included, so that, in any case, he would be entitled only to the return of his contributions, with interest. Consequently, the three monthly instalments in question were refunded to the Applicant. On 12 November 1963, the Applicant left the service of FAO. On 3 September 1965, he re-entered the service of FAO on receipt of an appointment entitling him to associate participation in the Pension Fund. Subsequently, having requested and obtained the restoration of his prior contributory service from 1 January 1963 to 12 November 1963, he again became a participant as of the date of his re-employment. On 15 February 1966, the Applicant again requested the validation of his period of service from 31 January 1959 to 31 December 1962, whereupon the Secretary of the FAO Staff Pension Committee informed him, on 25 March 1966, that validation of that period was no longer possible because the one year time-limit for electing to validate had elapsed. On 11 June 1968, the Applicant asked the Secretary of the FAO Staff Pension Committee whether the liberalization of the Regulations and Administrative Rules of the Pension Fund as from 1 January 1967 had not made it possible to validate the period of service in question. On 19 June 1968, the Secretary of the Committee informed him in reply that there was no provision in the new texts which would authorize such validation. Having been seized of the Applicant's case, the FAO Staff Pension Committee decided, on 12 May 1969, that under article III.1 of the Regulations of the Pension Fund the Applicant was no longer entitled to validate his period of service from 31 January 1959 to 31 December 1962 because the time-limit of one year during which he might have exercised his option had elapsed. In a letter of 23 May 1969 notifying the Applicant of this decision, the Secretary of the Committee pointed out that, as he had become a participant on 1 January 1963, the Applicant should have exercised his option at the latest on 31 December 1963. On 17 July 1969 the Applicant appealed against this decision to the United Nations Joint Staff Pension Board. On 24 August 1970, the Acting Secretary of the Joint Staff Pension Board informed him that the Standing Committee of the Board had rejected his appeal on the grounds that the request to validate the period had been made outside the time-limit established under article III.1 of the Regulations of the Fund, but that, at the same time, it had ruled that the period of prior contributory service restored to him on his return to FAO in September 1965 should have included the period corresponding to the three validation instalment payments which he had made in 1963 prior to the cancellation of his validation request. On 6 October 1970, the Applicant filed the application referred to above.

Whereas the principal contentions of the Applicant are as follows:

1. Not only did he request the validation of his services within the stipulated time-limit of one year, i.e. before 31 December 1963, but in fact his request was accepted and he paid three of the agreed twenty monthly instalments before leaving FAO.

2. Not having completed five years' service at that point, he was not entitled to a pension and there was no option open to FAO or to him other than the refund of his contributions on his separation; the refund of his contributions in the circumstances cannot, therefore, be treated as cancellation; the question of

cancellation could have arisen only if he had applied for it while continuing in service.

3. The three monthly instalments paid by the Applicant related to the entire validation period and not to the period from 18 July 1962 to 31 December 1962 which the Joint Staff Pension Board agreed to validate. The Applicant should therefore benefit from the validation of the entire period. In agreeing to the validation of a part of that period, the Board implicitly conceded that the objections grounded in the time-limit or cancellation were invalid. Furthermore, the Applicant might have paid the whole sum in a single instalment, in which case, according to its own principles, the Board would have been obliged to validate the entire period.

Whereas the principal contentions of the Respondent are as follows:

1. Considering that the requests for validation made by the Applicant in 1966 and 1968 were not made within the stipulated time-limit of one year, the organs of the Pension Fund took the only possible position consistent with the right claimed by the Applicant to cancel his first request for validation.

2. The decision to credit the Applicant with contributory service to the extent of the three deductions which had been made from his salary prior to the cancellation was taken by analogy with the case of a participant whose validation payments are interrupted.

3. The Applicant's contention that his request for validation and the cessation of payments should be disregarded because they were not voluntary actions has no merit. As in all other cases where validation payments are not completed, the circumstances leading to such discontinuance cannot be taken into account.

The Tribunal, having deliberated from 27 September to 6 October 1971, now pronounces the following judgement:

I. The purpose of the application is to obtain the rescission of the decision by the Respondent to reject the request of the Applicant for the validation of his period of service from 31 January 1959 to 31 December 1962. In other words, the Tribunal is asked to rule on the question of whether the Applicant is entitled to the validation of this period.

II. The Tribunal takes note that the Applicant was employed by FAO from 31 January 1959 to 12 November 1963 and then re-employed from 3 September 1965. During his first period of service, he was first an associate participant and then became a participant as from 1 January 1963. On becoming a participant, he requested the validation of his period of service from 31 January 1959 to 31 December 1962 in accordance with the provisions of article III.1 of the Regulations of the Pension Fund. He undertook to make twenty monthly payments for that purpose.

III. On 17 October 1963, the Applicant cancelled his request for validation. As a result, he requested and obtained a refund of the three monthly instalments which had already been paid. He left the service of FAO on 12 November 1963 and was re-employed on 3 September 1965. On 15 February 1966, he again requested validation of his period of service from 31 January 1959 to 31 December 1962.

IV. In the view of the Tribunal, the Applicant definitely surrendered entitlement to validation of this period of service when, having begun to pay the moneys due to that end, acting on his own initiative and for personal reasons he

withdrew his request for validation and sought and obtained the refund of the instalments which he had already paid.

Although upon re-employment the Applicant obtained, in accordance with the Regulations of the Pension Fund, restoration of his contributory service as a participant from 1 January 1963 to 12 November 1963, the question of validation did not arise in connexion with this period.

V. The Applicant contends that, as he had not completed five years' service with FAO on 12 November 1963, he was not entitled to a pension so that there was no option open to FAO or to him other than the refund of his contributions upon his separation from service. While it understands the circumstances in which the Applicant terminated his employment and requested the refund of his contributions, the Tribunal considers that these circumstances do not entitle the Applicant to benefit from a request for validation which he had waived.

VI. The Applicant invokes the fact that the Respondent agreed to validate part of the period under consideration as an argument to establish his entitlement to validation of the whole of this period. The decision to credit the Applicant with contributory service corresponding to the three monthly deductions made from his salary prior to the cancellation of his request for validation cannot have the implications attributed to it by the Applicant. Assuming that it is validly based on the legal grounds invoked by the Respondent, it cannot have any effect other than that set forth, in rule B.24 of the Administrative Rules of the Pension Fund, as applicable in an analogous situation. If the contrary is the case, the decision would represent an *ex gratia* measure whose effects it would not be for the Tribunal to extend.

VII. The request for validation submitted on 15 February 1966 and again on 11 June 1968 was clearly inadmissible since it was submitted after the time-limit of one year prescribed in article III.1 of the Regulations of the Pension Fund had elapsed.

VIII. The application is accordingly rejected.

(Signatures)

S. BASTID
Vice-President, presiding
Francis T. P. PLIMPTON.
Member

Vincent MUTUALE
Member
Jean HARDY
Executive Secretary

New York, 6 October 1971

Judgement No. 148

(Original: French)

Case No. 143
Halilovic

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 of the Joint Staff Pension Board refusing to validate the Applicant's prior service as a United Nations technical assistance expert.—