

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.—

The decision is valid, as the interval between the date on which the Applicant ceased to be an associate participant and the date on which he became a participant exceeded the two years prescribed by article III of the Pension Fund Regulations.—The Applicant's real complaint is against the actual text of the Pension Fund Regulations.—The role of the Tribunal is limited to applying the Regulations as in force and passing judgement on applications alleging non-observance of the Regulations.—In the present case there has not been any non-observance.

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 17 October 1970, Ahmed Halilovic, a former technical assistance expert of the Food and Agriculture Organization of the United Nations, hereinafter called FAO, filed an application against a decision rejecting his request for validation of prior service for pension purposes;

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

Whereas the Applicant, after making the necessary corrections, again filed the application on 28 December 1970;

Whereas the pleas of the application request the Tribunal to rescind the decision by which the United Nations Joint Staff Pension Board rejected his request for validation, for pension purposes, of his period of service from 1 January 1958 to 31 December 1962;

Whereas the Respondent filed his answer on 26 May 1971;

Whereas the Applicant filed written observations on 9 August 1971;

Whereas the facts in the case are as follows:

Apart from short-term contracts not conferring pension entitlement, the Applicant, a technical assistance expert, was employed by the United Nations from 30 March 1957 to 31 December 1962 and by FAO from 28 June 1965 to 15 November 1970. During the first of these periods of service, the Applicant was an associate participant in the Pension Fund from 1 January 1958 to 31 December 1962. During the second period, he was a full participant in the Fund from 11 January 1966 until 15 November 1970, with contributory service to his credit from 28 June 1965.

By a letter dated 2 May 1968, the Applicant asked the Secretary of the FAO Staff Pension Committee whether it would be possible for him to validate for pension purposes his service with the United Nations from 30 March 1957 to 31 December 1962. On 7 June 1968, the Secretary replied that, under article III of the Pension Fund Regulations, validation was impossible because the interval between his ceasing to be an associate participant and becoming a participant exceeded two years. On 14 August 1968, the Applicant filed an application to the FAO Staff Pension Committee requesting validation of prior service from 1 January 1958 to 31 December 1962. On 23 May 1969, the Secretary of the Committee informed him that the Committee had rejected his application for the reason she had given in her reply of 7 June 1968. The Applicant having, on 25 June 1969, appealed to the Joint Staff Pension Board against this decision, the Act-

ing Secretary of the Board informed him, on 24 August 1970, that the Standing Committee of the Board had rejected his appeal for two reasons: because the request for validation had not been made within one year of the Applicant having become a full participant and because in any event the interval between the cessation of his associate participation and the commencement of his full participation had exceeded two years. On 17 October 1970, the Applicant filed the aforementioned application.

Whereas the Applicant's principal contentions are:

1. The authorities of the Respondent adopted a purely formal approach—that of time-limits to be observed—to the Applicant's request; they did not explore why the Applicant had been put in the position of not being able to claim validation and were not concerned about his fundamental rights; moreover, the Applicant submitted an oral request within the time-limit.

2. Staff members of the United Nations are entitled to the same benefits, irrespective of the hazards of their terms of employment.

3. During his first period of service, the Applicant was discriminated against because, instead of being given a contract conferring on him the status of full participant in the Pension Fund, he received a fixed-term contract which was extended from year to year; the fact that the length of service required in order to be eligible to become a full participant was subsequently shortened shows, moreover, that the earlier requirement was excessive.

Whereas the Respondent's principal contentions are:

1. The Applicant is not alleging non-observance of the Regulations of the Pension Fund; he is arguing more for the revision than for the application of the provisions in force. But the desirability of amending the Regulations is not a question of law within the competence of the Tribunal.

2. The period of time which intervened between the date on which the Applicant ceased to be an associate participant and the date on which he became a full participant, and the time interval between the cessation of his associate participation and the date from which his contributory service was reckoned exceeded the maximum period of two years laid down in article III of the Pension Fund Regulations. Accordingly, even if he had submitted his request within the prescribed period of one year, the Applicant would not have been able to obtain the validation in question.

The Tribunal, having deliberated from 28 September to 6 October 1971, now pronounces the following judgement:

I. The Applicant became a participant in the Pension Fund on 11 January 1966 and his contributory service covered the whole period of his service with FAO, which he joined on 28 June 1965. He filed an appeal against a decision of the Joint Staff Pension Board rejecting his request to validate his service as a United Nations technical assistance expert during which time he was an associate participant in the Pension Fund, namely from 1 January 1958 to 31 December 1962.

Article III of the Pension Fund Regulations in force at the time stated:

"1. When an associate participant or former associate participant becomes a participant under article II, he may, subject to the conditions set forth in paragraphs 4, 5 and 6 of this article, elect within one year to have included in his contributory service:

“(a) The period of service during which he was an associate participant, provided it was not interrupted by an interval or intervals totalling more than one year;

“(b) Any period of service as a full-time staff member of a member organization prior to his entry into the Fund as an associate participant, during which he was not eligible under article II or II *bis* to become a participant or an associate participant because his appointment was for less than one year or because he had less than one year of service, provided such period of service was not interrupted by an interval or intervals any one of which exceeded thirty days,

“provided that the interval between his ceasing to be an associate participant and becoming a participant does not exceed two years.”

The interval between the date on which the Applicant ceased to be an associate participant, namely 31 December 1962, and the date on which he became a participant, namely 11 January 1966, amounted to three years and ten days, and the interval between the cessation of his associate participation and the date from which his contributory service was reckoned, namely 28 June 1965, amounted to two years, five months and twenty-seven days. Since both these intervals exceeded the two years prescribed by the aforementioned article III of the Pension Fund Regulations, the request for validation submitted by the Applicant contravened the terms of the Regulations. The decision of the Joint Staff Pension Board is therefore valid.

II. The Applicant's real complaint is against the actual text of the Pension Fund Regulations and against the provision forbidding validation of a prior period of service after an interval of more than two years. But the Tribunal is not competent to amend the Pension Fund Regulations. The Statute of the Tribunal, as adopted by the General Assembly, merely authorizes it to hear applications alleging non-observance of contracts of employment or of the terms of appointment of staff member having access to the Tribunal, which contracts and terms of appointment include the Pension Fund Regulations.

Thus, it is clear that the role of the Tribunal is limited to applying the Pension Fund Regulations as in force and passing judgement on applications alleging non-observance of the Regulations. In the present case there has not been any non-observance.

III. The application is therefore rejected.

(Signatures)

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

Vincent MUTUALE
Member
Jean HARDY
Executive Secretary

New York, 6 October 1971