

## Judgement No. 190

*(Original: English)*Case No. 183:  
SmithAgainst: The United Nations  
Joint Staff Pension  
Board

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*Request for revision of Judgement No. 186.*

*Request that the Tribunal not proceed to give a judgement against the Applicant without first inviting additional statements from him.—Request rejected, because article 10 of the Rules of the Tribunal does not provide for this kind of procedure.*

*Request for revision.—Applicant's argument that as a participant in the Joint Staff Pension Fund his daughter could not claim a benefit as a child.—The question raised by the Applicant is not a decisive factor which may affect Judgement No. 186.—This question constitutes rather the discovery of a new argument than the discovery of a new fact.—Requirements of article 12 of the Statute of the Tribunal.—Since those requirements have not been met, the application is rejected.*

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## THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Madame Paul Bastid, Vice-President; Mr. Francisco A. Forteza; Mr. Mutuale Tshikankie, alternate member;

Whereas, on 31 May 1974, the Applicant filed with the Tribunal an application requesting, under article 12 of the Statute, revision of Judgement No. 186, rendered in his case on 26 April 1974, on the following grounds:

*“Can a child's benefit claimed by a ‘participant’ be paid to another ‘participant’?”*

*“Since forwarding his Application and Written Observations to the Administrative Tribunal, Applicant has had the opportunity to show the papers in the case to a barrister specializing in international law. This gentleman was able to make only a brief examination of the papers in the case, after which, however, he mentioned a point which had struck him as being important, which is this:*

*“In both of the relevant legal texts relating to this matter, Article 37 (a) and Administrative Rule J.2 (e) of the Regulations and Rules of the United Nations Joint Staff Pension Fund, there are specific references to both ‘participant’ and ‘child’.*

*“Normally, there would be no difficulty in distinguishing between the two parties designated by this terminology.*

*“In this present case, however, a complication is introduced into the matter by virtue of the fact that the ‘child’ in this case—i.e., generally accepted to be Applicant's daughter, Penelope Tula Smith—is also a ‘participant’ within the terms of the said Regulations and Rules, the said ‘child’ having become such a ‘participant’ only a few weeks after the commencement of the relevant period of the case, 1 April 1970—20 May 1972, on her being granted a fixed-term contract of employment by the World Meteorological Organization, which employment she is still engaged in.*

*“This situation therefore raises several points, such as:*

“(a) Can Penelope Tula Smith be considered as both ‘child’ and ‘participant’ in this matter?”

“(b) Can she, within the meaning of these terms in *Article 37* (a) and *Administrative Rule J.2* (e), claim entitlement to ‘a child’s benefit’?”

“(c) Can she, as a ‘participant’ herself, legally be entitled to lay claim to a child’s benefit claimed by another ‘participant’ (i.e., her father)?”

“(d) To which ‘participant’ can *Article 37* (a) and *Administrative Rule J.2* (e) be said to be referring, in definite, legal terms?”

“(e) Does not the mere fact that the ‘child’ has become, herself, a ‘participant’ (and had thus become during virtually all the relevant period) not, on its own, disqualify her as being entitled to receive payment of the ‘child’s benefit’ which the other participant, her father, claims in respect of her?”;

Whereas the Respondent filed the following answer on 18 June 1974:

“ . . .

“2. The new fact which Applicant has raised as giving grounds for revision is that his daughter Penelope Smith was a participant of the Fund at the same time as she was a child and that as a participant herself she cannot legally be entitled to a child’s benefit.

“3. Even if the alleged participation of Penelope in the Fund was not known when the judgement was given, it cannot constitute the discovery of a fact relevant under article 12.

“4. For the fact alleged to have been discovered by the Applicant cannot be ‘a decisive factor’ within the meaning of article 12 of the Statute of the Tribunal as it could not have played any role, decisive or otherwise, in the disposal of the Applicant’s claim for payment to him of a child’s benefit with respect to his daughter Penelope.

“5. Indeed, the only claim the Applicant bases on the allegedly newly discovered fact is that a child’s benefit be denied to someone else. However, if as the Applicant argues, as a result of the discovery of the fact that the child was a participant, the child is disqualified from being considered as a child for the purposes of the Regulations of the United Nations Joint Staff Pension Fund governing a child’s benefit, no child’s benefit would be payable to anyone, not even to the father of such a participant.

“6. For the reasons stated in this memorandum, Respondent contends that Applicant’s request for revision should be denied; should the case nevertheless be reopened, Respondent reserves the right to address more fully all of the relevant issues including the question whether Penelope’s participation in the Fund disqualified her from claiming rights due her as a child under the Fund.”;

Whereas the Applicant submitted written observations on 24 June and 23 July 1974;

Whereas, in a letter dated 9 September 1974, the Applicant addressed the following request to the President of the Tribunal:

“I request that, should the Tribunal have the slightest doubt as to the rightness and justification of my application, you will, either on your own initiative or as per this request that I am now making to you, avail yourself of your powers under *Article 10* of the *Rules*, to order me (and, if necessary the Respondent also) ‘to submit additional written statements or additional documents’ on the basis of specific questions which originate in regard to any such aforementioned doubt.

“ . . .

"I trust therefore that . . . should the Tribunal have any doubts that my present application is well-founded and should be granted, that you will grant the request I am now renewing by means of this present letter—and that the Tribunal will not proceed to give a Judgement against me, again, without, first, your having approached me, as stated, under the terms of Article 10 of the Rules, which I now formally request you to do, should the Tribunal not grant my present application without any such approach to me therefore being necessary."

Whereas the facts in the case have been set forth in Judgement No. 186.

The Tribunal, having deliberated from 26 September to 9 October 1974, now pronounces the following judgement:

I. By his letter dated 9 September 1974, the Applicant requested the Tribunal "not [to] proceed to give a Judgement against" him without first inviting additional statements from him under article 10 of the Rules of the Tribunal. The Tribunal observes that the documentation in the case is complete and that no additional written statements or documents have been requested by either party under article 10 of the Rules. The Tribunal rejects the Applicant's plea as article 10 of the Rules does not provide for the kind of procedure requested by him.

II. The Applicant contends that after Judgement No. 186 was rendered, he discovered that his daughter was a participant in the Joint Staff Pension Fund as a staff member of the World Meteorological Organization during the relevant period when the child's benefit accrued, that as she was a *participant* she could not claim benefit as a *child* and that, consequently, Judgement No. 186 should be revised.

III. In its Judgement No. 186 the Tribunal, relying on Administrative Rule J.2 (e) of the Pension Fund which reads as follows:

"Benefits payable under the Regulations to the children of a participant shall, unless there are exceptional circumstances, be paid on their behalf to him and, upon his death, to the surviving parent or legal guardian of each child, in accordance, *mutatis mutandis*, with (a), (b), (c) and (d) above."

observed that "sufficient material has been placed before the Standing Committee and before the Tribunal to show that the financial relationship between the Applicant and his daughter was so unusual as to make the exception contained in Administrative Rule J.2 (e) applicable to the case". The Tribunal concluded that in the exceptional circumstances of the case, payment of the child's benefit should not be made to the Applicant. The questions raised by the Applicant, namely, whether a person can be both a *participant* and a *child*, or whether under the Pension Fund Regulations and Administrative Rules a *participant* can lay claim to a *child's* benefit claimed by *another* participant, are not "decisive factors" which may affect Judgement No. 186 since in that judgement the Tribunal confined itself to the question of the entitlement of *the Applicant* to the payment to him of the child's benefit.

IV. The Tribunal also observes that the fact that the Applicant's daughter was a staff member of the World Meteorological Organization was brought out in the records of the case and was known to the parties and to the Tribunal. The point now raised, namely, whether under the Pension Fund Regulations and Administrative Rules a participant can lay claim to a child's benefit claimed by another participant is rather a discovery of a new argument than a discovery of a new fact.

V. Article 12 of the Statute of the Tribunal reads as follows:

"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. The application must be made within thirty

days of the discovery of the fact and within one year of the date of the judgement. Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties.”

As the issue whether the Applicant's daughter, who was a participant in the Pension Fund in her own right, could lay claim to a child's benefit as beneficiary of another participant is not a “decisive factor” in determining the Applicant's claim to the payment to him of the child's benefit and as the point now raised is more a fresh argument than a new fact, the Tribunal holds that the application does not meet the requirements of article 12 of the Statute.

VI. The application is therefore rejected.

*(Signatures)*

R. VENKATARAMAN  
*President*

Suzanne BASTID  
*Vice-President*

Francisco A. FORTEZA  
*Member*

*New York, 9 October 1974*

MUTUALE TSHIKANKIE  
*Alternate member*

Jean HARDY  
*Executive Secretary*

## Judgement No. 191

*(Original: English)*

**Case No. 188:**  
**de Olagüe**

**Against: The Secretary-General of the Inter-Governmental Maritime Consultative Organization**

*Non-renewal of the fixed-term appointment of an IMCO technical assistance expert.—Request for the payment of various indemnities.*

*Request for the hearing of a witness.—Request rejected as being unrelated to the Respondent and extraneous to the subject-matter of the application.*

*Article 1 of the agreement extending the competence of the Tribunal to IMCO.*

*Request for reimbursement of the cost of transportation of personal effects and household goods.—Request incompatible with Staff Rule 207.20 (i) (i).—Request for reimbursement of the cost of travel of a dependant.—Condition contained in Staff Rule 207.9 (a) (ii) not fulfilled.—Request for reimbursement of the cost of travel by road.—Applicability of Staff Rule 207.5 (c).—Request for payment of daily subsistence while travelling.—Applicability of Staff Rule 207.24 (c).—These requests as a whole are rejected.*

*Request for payment of overtime.—Professional staff not covered by the rules relating to overtime.—No provision in the contract entitling the Applicant to overtime payments.—Request rejected.*

*Requests for compensation based on the Applicant's claim that IMCO had a duty to support him by appointing him to another post.—Statements invoked by the Applicant to sustain his claim that he*