

sides in the handling of the case" has some validity and therefore the Tribunal decides not to order any compensation for procedural delays.

XXII. The Applicant claims in his plea (*g*) compensation for misleading statements regarding the ground for rejection of his candidature by ILO which led him to believe that the rejection was due to his tuberculosis condition while it transpired during the consideration of the case by the Joint Appeals Board that the rejection was on other medical grounds. The Tribunal observes that the statements complained of by the Applicant, although erroneous, do not, in the absence of other elements like a duty to disclose, misrepresentation, or fraud, give rise to legal claims for damages. The claim is therefore rejected.

XXIII. For the foregoing reasons:

(1) The Tribunal rescinds the decision of the Secretary-General dated 29 January 1969 refusing to reopen the Applicant's case;

(2) Should the Secretary-General, within 30 days of the notification of the judgement, decide, in the interest of the United Nations, that the Applicant shall be compensated without further action being taken in his case, the Tribunal orders the Respondent to pay to the Applicant compensation in the amount of three years' net base salary as specified in paragraph XX above;

(3) The Tribunal rejects the Applicant's other pleas.

(Signatures)

R. VENKATARAMAN

President

Suzanne BASTID

Vice-President

New York, 24 April 1975

Roger STEVENS

Member

Jean HARDY

Executive Secretary

Judgement No. 201

(Original: French)

Case No. 182:
Branckaert

**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.

Decision by the Tribunal to disregard in its consideration of the case a page which was missing from the copy of the Respondent's answer sent to the Applicant.

Request for rescission of the decision of the Joint Staff Pension Board rejecting the Applicant's request for validation on the ground that it was submitted after the expiration of the statutory one-year time-limit.—Article 23 (a) of the Pension Fund Regulations.—The Applicant's failure to take action regarding the notice at the bottom of his "Participant's Declaration".—Applicant's acknowledgement of his own negligence.—Seriousness of this negligence.—Conclusion of the Tribunal that the aforementioned notice was sufficient to inform the Applicant of the existence of time-limits for the submission of

requests for validation.—Irrelevance of the fact that the Applicant allegedly did not receive a letter from the Secretary of the FAO Staff Pension Committee drawing his attention to article 23 of the Pension Fund Regulations.—Irrelevance of the fact that the Secretary sent the Applicant a copy of the validation application form after expiry of the time-limit.—Imperative character of the time-limit set by article 23 (a) of the Pension Fund Regulations.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Zenon Rosides; Mr. Francisco A. Forteza;

Whereas, on 5 November 1973, René Branckaert, a technical assistance expert of the Food and Agriculture Organization of the United Nations, hereinafter called FAO, filed an application which did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, after making the necessary corrections, the Applicant again filed his application on 12 February 1974;

Whereas in the pleas of his application the Applicant

“Requests that it may please the United Nations Administrative Tribunal, in accordance with article 9, paragraph 1, of its Statute:

“(1) To order the rescinding of the contested decision of the United Nations Joint Staff Pension Board, rendered against the Applicant at its 136th meeting held in the month of July 1973, since it injures him by denying him the right to validate his service as an FAO expert from 4 April 1965 to 31 January 1970, in order to establish his pension entitlement, in accordance with the provisions of articles 23 (a) and 25 (c) of the Regulations of the United Nations Joint Staff Pension Fund;

“(2) Furthermore, should the said decision be rescinded, to order the validation, for the purpose of establishing his pension entitlement as an associate participant in the United Nations Joint Staff Pension Fund, of the Applicant’s service as a FAO expert from 4 April 1965 to 31 January 1970, during which time, as an associate participant, he was not required to make specific contributions for that purpose, in accordance with the provisions introduced into the Regulations of the Fund by the General Assembly on 1 January 1958 (cf. JSPB/G.4/Rev.7, p. 40) and in force at that time, which were repealed on 1 January 1967 without retroactive effect and replaced by the above-mentioned provisions of articles 23 (a) and 25 (c) of the Regulations of the United Nations Joint Staff Pension Fund (JSPB/G.4/Rev.6 and Rev.7).

“(3) As a subsidiary plea, should the Tribunal decline to accede to the request to rescind the contested decision of the Standing Committee of the United Nations Joint Staff Pension Board, while acknowledging the good faith of the Applicant with regard to the merits of the dispute and finding that his application is well founded, to order:

“(a) That the Applicant should be repaid, in accordance with the provisions of article 32 (a) and (b) of the Regulations of the United Nations Joint Staff Pension Fund (JSPB/G.4/Rev.7), the total amount, plus compound interest calculated on the basis of the provisions in force, of the contributions paid by him for the purpose of establishing his pension entitlement from 1 February 1970, onwards; these contributions no longer serve any purpose in view of the reduction to less than five years of his period of service as a FAO expert entitling him to a retirement benefit, and no longer enable him to claim such benefit in the event of

the early termination or the expiration of his contract implicitly envisaged for the month of July 1974.

“(b) That the Applicant should also be paid, by decision of the Secretary-General of the United Nations in accordance with the provisions of article 9, paragraph 1, of the Statute of the United Nations Administrative Tribunal (AT/11/Rev.4), compensation corresponding to the injury sustained by the Applicant, in consequence of the non-validation, for the purpose of his pension entitlement, of his service as an associate participant in the United Nations Joint Staff Pension Fund from 10 April 1965 to 31 January 1970, the amount of said compensation to be fixed according to the increase which the Applicant could normally have claimed in the event of a withdrawal settlement, in accordance with the request made in the preceding paragraph and in pursuance of the provisions of article 32 (b) (ii) of the Regulations of the United Nations Joint Staff Pension Fund (JSPB/G.4/Rev.7), of which increase the Applicant is unjustly deprived in view of the indirect reduction by the contested decision of his contributory service to a period of less than five years, and the expiration of his contract implicitly envisaged for July 1974; to fix, in consequence, the amount of compensation in question at 40 per cent of the contributions paid by the Applicant during his direct contributory service, from 1 February 1970 to 30 June 1975, calculated on the basis of the formula $\{Y \times 10/100\} \times 4$, in which (Y) represents the total contributions paid during the period in question, equal to 7 per cent of his pensionable remuneration, and the figure (4) represents the number of years of contributory service in excess of five years (associate membership plus direct membership) for a total period of service of nine years (4 April 1965 to July 1974), in accordance with the aforementioned provisions of article 32 (b) (ii) of the Regulations of the United Nations Joint Staff Pension Fund, to which should be added the compound interest applicable under the provisions in force.”;

Whereas the Respondent submitted his answer on 10 May 1974;

Whereas, on 26 March 1975, the Applicant filed written observations in which he stated, *inter alia*, that, as the copy of the Respondent's answer transmitted to him was incomplete since a page containing paragraphs 16 and 17 was missing, he reserved his position on that point with regard to the remainder of the proceedings;

Whereas the facts in the case are as follows:

The Applicant entered the service of FAO on 4 April 1965. On 1 February 1970, having received an appointment which extended his total service to at least five years, he became a participant in the United Nations Joint Staff Pension Fund and had the position, by virtue of article 23 of the Regulations of the Fund, of electing within one year to validate his prior service for pension purposes. On 27 February 1970, he signed a Participant's Declaration for the purpose of providing the Pension Fund with information concerning the Participant, his dependants and persons designated by him as his beneficiaries. The following notice appeared at the bottom of the declaration:

“If you wish to validate previous service in accordance with Article III, XII or XVI of the Regulations and consider that the eligibility requirements expressed in that article are met, you may obtain the necessary application forms from the Secretary of the FAO Staff Pension Committee. Such application must be made within the time-limits provided by the Regulations.”

On 19 June 1970, the Secretary of the FAO Staff Pension Committee acknowledged receipt of the Participant's Declaration submitted by the Applicant and returned a copy of it to him for his files. Meanwhile, in a letter dated 8 April 1970 addressed to the Applicant but which he states that he did not receive, since he was absent from his duty station in Africa at the time, the Secretary had informed the Applicant that it was his

responsibility, if he wished to validate prior service for pension purposes, to submit his application within the statutory time-limit of one year from the date of commencement of his participation in the Fund. On 30 August 1971, in reply to a letter in which the Applicant requested to be informed "of the amounts still to be paid [by him] in order to be up to date in the payment of [his] contribution" to the Fund, the Secretary sent him a validation application form and invited him to return it, duly completed, as soon as possible. The Applicant having requested, on 21 September 1971, information on how to complete the form, the Secretary sent the following reply on 16 November 1971:

"From 4 April 1965 until 31 January 1970, you were an associate participant in the Fund. On 1 February 1970, you became a full participant. The personnel officer dealing with your file, Mrs. Enna, informed you of this fact in her letter of 1 April 1970. I wrote to you on 8 April 1970, enclosing with my letter copies of the Rules of the Pension Fund, and drawing your attention to the fact that, should you wish to validate your prior service, you would have to do so during the year following the date on which you became a full participant (i.e. before 31 January 1971). The existence of this time-limit was also brought to your notice in the Participant's Declaration, which you completed on 27 February 1970.

"Consequently, I regret to inform you that you are no longer entitled to validate your previous service, since the prescribed time-limit has expired."

On 19 December 1971, the Applicant requested his supervisor to intervene, claiming in particular that he had not received the letters of 1 and 8 April 1970 mentioned in the Secretary's communication of 16 November 1971. On 18 January 1972, the Secretary confirmed her decision of 16 November 1971 to the Applicant. On 16 February 1972, the Applicant requested the FAO Staff Pension Committee to review that decision. After the Committee had confirmed the decision on 7 April 1972, the Applicant submitted an appeal to the Standing Committee of the United Nations Joint Staff Pension Board on 10 June 1972. On 25 September 1973, the Secretary of the Pension Board informed the Applicant that the Standing Committee had decided to uphold the decision of the FAO Staff Pension Committee on the ground that he had "not submitted [his] application for validation of the service in question within the time-limit of one year prescribed in the Regulations and Rules of the Fund". On 5 November 1973, the Applicant filed the aforementioned application.

Whereas the Applicant's principal contentions are:

1. The contested decision was based on faults attributable to the Respondent:

(a) The procedure followed was irregular and was invalidated by the insufficiency of the information addressed to the Applicant, the erroneous nature of some of the information transmitted to the Applicant concerning the exercise of his right to validation, and the restrictive interpretation which was given to the statutory provisions concerning time-limits; all these irregularities warrant the assertion that the Respondent, in this case, partially failed in his statutory and contractual obligations.

(b) The grounds of the contested decision are invalidated by a twofold error: on a question of fact, in the description of the facts allegedly forming a ground of the contentious decision, the Respondent having invoked non-observance of the time-limit of one year even though he was responsible for that non-observance; and on a question of law, since the absence or the inoperative nature of the ground invoked deprives the contested decision of any legal basis.

2. The contested decision cannot be justified in the absence of any fault attributable to the Applicant. The good faith of the Applicant, his unquestionable and reiterated intention of exercising his right to validate and the purely formal nature of the statutory provisions whose non-observance is claimed by the Respondent make it incumbent upon the Tribunal to settle the dispute on the merits, on the basis mainly of considera-

tions of humanity and equity. The minor negligence which may be attributed to the Applicant, which constitutes the only ground for the contested decision, cannot have the legal and factual implications claimed by the Respondent, which are the cause of the very serious injury suffered by the Applicant.

Whereas the Respondent's principal contentions are:

1. The Applicant is entirely responsible for the fact that he did not read the relevant documentation received by him and that he thus forfeited the right to elect to validate the service in question. He cannot blame others for the consequences of his own negligence.

2. The fact that he might not have received the communications of 1 and 8 April 1970 would not change the situation in any way.

3. The Applicant's lack of diligence cannot give rise, either in law or in equity, to additional obligation on the part of anyone else.

4. Election to validate prior service is a right which only the participant can exercise or decide not to exercise, since he alone can determine whether or not validation would be in his interest in his particular case.

5. Time-limits are not an arbitrary or peripheral restriction of a participant's right to validate, but an essential prerequisite for the existence of that right.

6. The right to validate which a participant has neglected to exercise within the prescribed time-limits no longer exists and the sending of an application form cannot revive it.

The Tribunal, having deliberated from 1 to 25 April 1975, now pronounces the following judgement:

I. The Applicant requested, in a communication dated 28 March 1975, that he be granted additional time to file possible observations on paragraphs 16 and 17 contained in page 7 of the Respondent's answer. In his unsigned written observations, received on 3 March 1975, he had indicated that page 7 was missing in the Respondent's answer which had been sent to him on 13 August 1974. The page in question had been sent to him on 14 March 1975 and the Applicant had been requested to send his observations as a matter of urgency, since his case had been placed on the list for the session of the Tribunal commencing on 31 March 1975.

In his aforementioned communication of 28 March 1975, the Applicant invoked a family bereavement and the need to seek the advice of his counsel abroad in order to request additional time. The Tribunal points out that under article 9, paragraph 1, of its Rules the Applicant has 30 days after the date on which the answer is transmitted to him in which to file his written observations. The Tribunal notes that the additional time could have been granted to the Applicant, in connexion with his observations concerning page 7 of the answer, if the observations received by the Tribunal on 3 March 1975, informing it of the omission in the text of the answer, had been sent within the prescribed time-limit starting from the date of the transmission of the answer.

In view of the prolongation of the proceedings which is mainly attributable to the Applicant, the Tribunal decides to disregard page 7 of the answer, i.e. paragraphs 16 and 17, in its consideration of the case and to pronounce its judgement.

II. The Applicant contests the decision by which at its 136th meeting, held in July 1973, the Standing Committee of the United Nations Joint Staff Pension Board decided to uphold the decision of the FAO Staff Pension Committee rejecting the Applicant's request for validation of his service as an FAO expert from 4 April 1965 to 31 January 1970 on the ground that the Applicant had not submitted his application within the one-year time-limit prescribed in the Regulations and Rules of the Fund. He requests that this decision be rescinded and validation of the service in question be ordered.

III. The Tribunal therefore has to consider the application on the basis of the provisions of the Regulations and Rules of the Fund applicable to the Applicant as a participant in the Fund.

IV. The contested decision is based on article 23 (a) of the Regulations, which prescribes that in certain circumstances, "a participant may elect, within one year of the commencement of his participation, to validate prior service during which he was not eligible . . . for participation."

V. The Tribunal notes that the Applicant became a participant in the Fund on 1 February 1970. Consequently, at the beginning of February 1970, the department concerned sent the Applicant a Joint Staff Pension Fund "Participant's Declaration" form, in English, requesting him to complete it and to return it signed to the FAO Staff Pension Committee, which he did on 27 February 1970. The Tribunal notes that under the signature appended by the Applicant to the aforementioned declaration, there appeared, in italics, the following notice:

"If you wish to validate previous service in accordance with Article III, XII or XVI of the Regulations and consider that the eligibility requirements expressed in that article are met, you may obtain the necessary application forms from the Secretary of the FAO Staff Pension Committee. Such application must be made within the time limits provided by the Regulations."

The Tribunal also notes that the Applicant took no action in that regard; he did not write to the Secretary of the FAO Staff Pension Committee to obtain the validation application forms and did not request information on the question, either at his duty station in the offices of the United Nations Development Programme at Yaoundé, or in Rome which he visited twice, in March and in May 1970, from the Administrative Officer of his division. Finally, he did not express within the prescribed time the desire to have his prior service validated. It was only in a letter of August 1971, that is to say about a year and a half after becoming a participant in the Fund, that the Applicant first approached the FAO Staff Pension Committee in order to obtain information about his contribution.

With regard to the above notice which appeared at the bottom of the "Participant's Declaration", the Applicant stated that:

"Being under pressure of many professional obligations before my departure, I admit that I did not take cognizance of the small paragraph, written in italic type, *below* the place for the signature. Furthermore, since English is not my mother tongue, it would have required a special effort on my part to take cognizance of that paragraph which is particularly badly situated in the text."

The Applicant therefore acknowledges his own negligence, even though he considers it to be "minor". The Tribunal holds that the negligence in question is serious, since the notice appeared on the very page where the Applicant had signed a document which was extremely important not only for his own interests but also for those of his dependants. The fact that the notice was worded in English is not relevant, judging from all the correspondence which the Applicant exchanged in that language in connexion with the present case. The Tribunal concludes that the notice which appeared in the "Participant's Declaration" was sufficient to inform the Applicant of the existence of time-limits for the submission of requests for validation of prior service.

VI. On 8 April 1970, the Secretary of the FAO Staff Pension Committee sent the Applicant a letter with which she enclosed a copy of the Regulations and Administrative Rules of the Fund, drawing his attention to article 23 of the Regulations. The Tribunal notes that at the time the Applicant was absent from Yaoundé on home leave. According to the Applicant, that letter and the enclosures never reached him. It is on the non-receipt of this letter, "an essential factor in the dispute" in his view, that the

Applicant bases himself primarily in order to establish the insufficient nature of the information furnished to him regarding the existence of time-limits for the submission of requests for validation.

Whatever shortcomings there may be in correspondence by ordinary mail with staff in the field, the Tribunal concluded in the preceding paragraph that the question of the validation of prior service had been specifically brought to the attention of the Applicant in the "Participant's Declaration" signed by him on 27 February 1970. Consequently, the Applicant is not justified in blaming the Respondent for the insufficiency of information which he invokes to justify his failure to take action.

VII. On 30 August 1971, the Secretary of the FAO Staff Pension Committee replied to the letter from the Applicant mentioned in paragraph V above, enclosing a copy in French of the validation application form. She added: "if you [will be] kind enough to return it to me, duly completed, as soon as possible, I shall inform you of the amount to be paid to the Pension Fund . . .".

The form in question contained *inter alia* the following instructions:

"(a) Before completing this form, please check Article 23 of the Regulations to ascertain whether you are entitled to validate and read Administrative Rules E.1 through E.6 which describe the procedure to be followed.

"(b) Notice of election to validate must be submitted within one year of commencement of participation."

The Applicant nevertheless claims "that a logical interpretation of this correspondence had merely led him to believe that this period *could still be validated*, i.e. that the time-limits allowed for doing so were still open at that time".

The Tribunal does not subscribe to this interpretation. It considers that the sending of a standard form designed to enable a staff member to submit an application cannot, unless otherwise indicated by a text or relevant practice, be considered equivalent to a decision by the organ which communicated it, or prejudice such a decision or give rise to any expectation in the mind of the staff member. In this instance, the standard form is entitled "Notice of election to validate", which clearly indicates its purpose. The fact that this form was transmitted seven months after expiry of the time-limit by a person who should have been aware of that situation could not confer on the sending of the form the value of a decision or give rise to expectations in the mind of the Applicant, who should have known that the prescribed time-limit had already expired.

VIII. The Applicant maintains that, so long as the conditions of substance are satisfied, expiration of the time-limit set does not signify extinction of the right to validation. He asserts that "the sole purpose of the time-limit is to encourage the staff member to act as quickly as possible" and that, consequently, the time-limit is devised for the benefit not of the organization but of the staff member, against whom it cannot therefore be applied.

The Tribunal recalls the principle that time-limits must be observed, with the exception of cases in which the competent authority has the power to extend them. The time-limit set by article 23 (a) of the Regulations of the Pension Fund is imperative in character and these Regulations do not confer on the organs of the Fund the power to extend them. Since the Applicant did not elect to validate within the time-limit of one year from the commencement of his participation in the Fund, the Tribunal decides that the application is not well founded.

IX. For these reasons the application is rejected.

(Signatures)

Suzanne BASTID
Vice-President, presiding

Zenon ROSSIDES
Member

New York, 25 April 1975

Francisco A. FORTEZA
Member

Jean HARDY
Executive Secretary

Judgement No. 202

(Original: French)

Case No. 195:
Quéguiner (Education grant)

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

Request of a staff member of IMCO that he continue to benefit from the education grant system in force when he entered upon his duties, despite subsequent amendments thereto.

Applications for intervention.—Their admissibility.

Request for rescission of the decision of the Secretary-General amending IMCO Staff Rule 103.8 (d).—Effect erga omnes which the judgement would have if that request were granted.—Request rejected.

Request for compensation for the loss sustained by the Applicant as a result of the application of the new text of Staff Rule 103.8 (d).—Contention of the Applicant that he is entitled to receive an annual flat-rate education grant of \$1,500.—Argument based on IMCO Staff Regulation 12.1.—Obligation of the Secretary-General to respect the acquired rights of staff members in exercising his power to amend.—Question whether the Applicant has an acquired right to the education grant system as established when he entered upon his duties.—Contractual status of the Applicant.—Power of the competent authorities of the Organization to amend unilaterally the conditions of employment laid down in the Staff Regulations and Staff Rules.—The limitation of the right of amendment based on respect for acquired rights concerns the rights of the staff member expressly stipulated in the contract.—Apart from the salary, no benefit accruing to the Applicant was mentioned in his contract.—Respect for acquired rights as meaning that no amendment can have an adverse retroactive effect in relation to a staff member.—Contention of the Applicant that the education grant is of a personal nature and hence contractual.—Nature of the amendment made.—Legality of comparable measures concerning the non-resident's allowance and the allowances payable under the definition of dependency.—Steps taken to attenuate the unfavourable monetary consequences of the new rules.—Reasonable character of those rules.—The Respondent is not obliged to pay compensation for a reduction in the amount of the education grant received by the Applicant.—The new education grant system did not prevent the Applicant from agreeing to the renewal of his contract.—The Applicant agreed to the amendment which the Secretary-General intended to make to the Staff Rules but no legal inferences can be drawn therefrom.—Conclusion of the Tribunal that in changing the bases for the computation of the education grant, the Secretary-General exercised the powers accorded him by the Staff Regulations.

The applications for intervention are admissible.—The application and the applications for intervention are rejected.
