

VIII. For these reasons, the Tribunal decides:

- (i) That the Respondent must pay the Applicant \$200 in compensation for the expenses incurred in connexion with home leave;
- (ii) That the other requests are rejected.

(Signatures)

Suzanne BASTID
President

H. GROS ESPIELL
Member

L. IGNACIO-PINTO
Member

Jean HARDY
Executive Secretary

New York, 1 November 1968

Judgement No. 126

(Original: English)

Case No. 121:
Salvinelli

Against: The United Nations
Joint Staff Pension Board

Request for the rescission of a decision of the Joint Staff Pension Board whereby the children's benefits to the children of a former FAO staff member were to be paid to their guardian.

Request for the production of the full text of the contested decision.—Request rejected, this measure not being material to the case.

Principal request.—Contention that the amount of the children's benefits should be remitted to the Applicant on the ground that the Applicant is the natural guardian of the children.—Plea rejected by reason of an order of Court placing the children under the care of the legal guardian.—Plea based on the definition of dependants.—Plea rejected by reason of the same order of Court.—Contention that the said order was invalid.—The legality of the order of Court cannot be raised before the Tribunal.—Contention that the said order of Court was contested by the Applicant.—Absence of any evidence that the said order was amended or that any application was made or is pending.

The request is rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; the Lord Crook, Vice-President; Mr. Zenon Rossides;

Whereas, on 20 September 1967, Piera Salvinelli, a former staff member 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 31 December 1967;

Whereas the time-limit for making the necessary corrections was successively extended to 31 March and 30 April 1968 with the Respondent's agreement;

Whereas, on 24 November 1967, the Applicant requested the President of the Tribunal to designate a counsel to assist her in drawing up and submitting her application to the Tribunal;

Whereas, on 15 January 1968, the President, in pursuance of Administrative Instruction ST/AI/163/Rev.1, designated as counsel Mr. Ignacio García-Zavala, a staff member of the United Nations;

Whereas the Applicant, after making the necessary corrections, again filed the application on 30 April 1968;

Whereas the pleas of the application request the Tribunal "to adopt the following measures and decisions:

"1. As a preliminary measure before proceeding to consider the merits of the case, to order Respondent to produce a full text of the decision adopted by the Standing Committee of the Joint Staff Pension Board in June 1967, whereby children's benefits to the two sons of the Applicant were to be paid to their guardian with effect from 2 May 1961, and any documents relevant thereto;

"2. To rescind such decision and order Respondent that, in compliance with the provisions of article VIII of United Nations Joint Staff Pension Fund Regulations and Administrative Rule D.11, children's benefits in regard to the Applicant's two sons, be paid forthwith to her with effect from 2 May 1961;

"3. That all payments relating to children's benefits in regard to Applicant's son Stefano Salvinelli born on 22 December 1949, be made in the future directly to Applicant.";

Whereas the Respondent filed his answer on 21 November 1968;

Whereas the Applicant filed written observations on 30 April 1969;

Whereas the facts in the case are as follows:

The Applicant, a former staff member of FAO, had been the recipient of a disability benefit under article V of the Pension Fund Regulations since 3 May 1961. Her husband died in July 1963 and, by a decree of 15 November 1963 revoking an earlier decree of 14 September 1963 (which was not put into effect), the Judge of the Guardianship Court (*Giudice Tutelare*) of Rome ordered that the Applicant's two minor sons be placed in the care of their paternal uncle. In 1965 the Applicant lodged with the FAO Staff Pension Committee a claim to children's benefit for her two sons under article VIII of the Pension Fund Regulations. On 5 May 1966, the Committee referred the claim to the Standing Committee of the Joint Staff Pension Board on the ground that a matter of principle was involved. On 6 July 1966, the Juvenile Court (*Tribunale per i Minorenni*) of Rome issued an order reaffirming the decree of 15 November 1963 to the effect that the Applicant's sons should remain in the care of their uncle. On 20 October 1966, the Standing Committee of the Joint Staff Pension Board considered the Applicant's claim but referred it back to the FAO Staff Pension Committee with its observations. On 1 December 1966, the FAO Staff Pension

Committee decided that, effective from the date on which the Applicant's disability benefit was granted, her two sons were entitled to the children's benefit but that, in view of the condition of the Applicant's health, the benefit was to be paid on their behalf to the legal guardian. The Applicant having requested the Committee to review its decision on the ground that the court order of 6 July 1966 was provisional and invalid, the Committee considered her request on 21 February 1967 under Administrative Rule G.7 of the Pension Fund and, on 3 March 1967, the Applicant was advised as follows:

“... ”

“The Committee noted that you have not produced any evidence to substantiate your contention that the court decree of 6 July 1966 was not definite and valid, nor have you brought forward any new facts which might warrant a reversal of its earlier decision of 1 December. In reviewing your case the Committee felt that there was already sufficient documentation available to enable it to reach a decision without the additional information which as you know had been requested through the Ministry of Foreign Affairs.

“This is to inform you that the Committee unanimously decided to uphold its previous decision that payment of the children's benefit (which is still subject to certification by the Secretary of the Joint Staff Pension Board as required by Article XXIII of the Pension Fund Regulations) should be made to the guardian who has had the judicial custody of your children and who *de facto* has been providing for their maintenance.”

The matter was then referred to the Standing Committee of the Joint Staff Pension Board and, on 26 June 1967, the Secretary of the Board informed the Applicant that the Standing Committee had decided that children's benefits would be payable to her sons with effect from 3 May 1961 and that the benefits would be paid to the legal guardian of the children on their behalf. On 20 September 1967, the Applicant filed with the Tribunal the Application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The contested decision was based on a misinterpretation of the invalid Court order of 6 July 1966.
2. As a result of that decision, the Applicant has been unable to prove her ability to provide her two sons with adequate abode and support to recover their custody.
3. The Applicant was not deprived by the Court of the *patria potestas* over her two sons. Moreover, in granting her request for children's benefits on behalf of her two sons, the Respondent recognized that they are her dependants.
4. The Applicant's capacity to handle her financial affairs has never been questioned, and her personal conduct has been at all times above reproach.
5. The contested decision violates not only the letter but also the spirit of the provisions of the Pension Fund Regulations and Administrative Rules relating to children's benefits.

Whereas the Respondent's principal contentions are:

1. Under article VIII of the Pension Fund Regulations, children's benefits vest in the children separately in their own right. Therefore, the Respondent

could not have discharged his obligation otherwise than by remitting the allowances to the duly appointed legal guardian of the children, their paternal uncle, in whose custody and at whose financial charge they were living. Neither the children nor their guardian ever questioned the correctness of the procedure followed for the fulfilment of the Respondent's obligation.

2. The Court order of 6 July 1966 has remained in force ever since, and like the previous Court order of 15 November 1963 was never amended or rescinded; nor is there any evidence that any appeal or petition has been lodged with the Court or is pending or anticipated.

The Tribunal, having deliberated from 6 to 13 May 1969, now pronounces the following judgement:

I. The Applicant requests the Tribunal to order the Respondent, as a preliminary measure, to produce the full text of the decision of the Standing Committee of the Joint Staff Pension Board notified to the Applicant on 26 June 1967, and to rescind the said decision.

II. The Tribunal rules that the production of the full text of the decision adopted by the Standing Committee of the Joint Staff Pension Board is not material to the determination of the case and accordingly rejects the plea.

III. The Applicant's contention that the amount of the children's benefit should be remitted to the Applicant on the ground that the Applicant is the natural guardian of the children is unacceptable by reason of an order dated 6 July 1966, made by the *Tribunale per i Minorenni* of Rome. This order, made on the application of the son, Giuseppe Salvinelli, reaffirmed the decree of 15 November 1963 of the *Giudice Tutelare* of Rome to the effect that the Applicant's minor sons should remain in the care of their paternal uncle, Mr. Giovanni Salvinelli.

IV. Nor can the Applicant's plea that according to the definition of dependants relevant to internal administrative procedures "children of a female staff member are to be dependent upon her if the father or step-father either has no legal obligation or is unable to ensure their main and continuous support" avail against an order of court depriving the Applicant of the custody of the children and placing them under the care of the legal guardian. So far as the Respondent is concerned, payment of the benefit to the legal guardian constitutes a valid discharge of the obligation.

V. On the plea that the decree entrusting the guardianship over the Applicant's two sons to their paternal uncle, Mr. Giovanni Salvinelli, was invalid and had been contested by the Applicant, the Tribunal takes note of a note verbale of the Ministry of Foreign Affairs of Italy dated 30 March 1967, addressed to FAO and produced by the Respondent, which reads as follows:

"The order of 6 July 1966, whereby the Rome Juvenile Court gave ruling, in the best interests, at that stage, of the children of Mrs. Pierina Salvinelli, née Corenty, widow, is issued as provided for in articles 336 of the Civil Code and 737 of the Code of Civil Procedure by the Court sitting in Chamber. . . .",

and rules that the legality or validity of the said order of Court cannot be raised before this Tribunal.

VI. As regards the contention that the said order of Court has been contested by the Applicant, the Tribunal finds no evidence before it that the said

order has been amended or rescinded in any manner or that any application has been made or is pending.

VII. For the foregoing reasons, the Tribunal rejects the application.

(Signatures)

R. VENKATARAMAN
President

CROOK
Vice-President

Z. ROSSIDES
Member

Jean HARDY
Executive Secretary

Geneva, 13 May 1969.

Judgement No. 127

(Original: English)

Case No. 127:
Burdon

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.

Request for the rescission of the decision taken by the Joint Staff Pension Board refusing to validate the Applicant's prior service.—Grounds of the original decision of the FAO Staff Pension Committee and of the contested decision.—Article II and article III, paragraph 1, of the Pension Fund Regulations.—The Applicant was in neither of the situations covered by the latter 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 at an earlier date to participate in the Pension Fund, it would be necessary to examine the Applicant's contract and the relevant legal provisions of FAO.—The judicial precedents of Judgements Nos. 118 and 119 relating to the competence of the ILO Administrative Tribunal.—Question whether the request for validation was submitted within the prescribed time-limit.—It is not necessary for the Tribunal to rule on this question.

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 Fund.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; the Lord Crook, Vice-President; Mr. Zenon Rossides;

Whereas, on 13 August 1968, David Joseph Burdon, a staff member 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;