

Judgement No. 258

*(Original: English)***Case No. 246:
El-Tawil****Against: The Secretary-General
of the United Nations**

Request for validation for pension purposes of a period of service during which the staff member concerned was not a participant in the Joint Staff Pension Fund.

Respondent's objection that the application was not submitted within the prescribed limits.—Objection rejected on the ground that none of the provisions cited by the Respondent relates to the filing of an application to the Tribunal.

Conditions applying to requests for validation.—Applicant's failure to comply with the instructions contained in a Note appended to the "Participant's Declaration".—Applicant's letter to the Chief, Field Operations Service.—Impossibility of regarding that letter as the required notice in writing to the Secretary of the Staff Pension Committee.—Applicant's negligence was the determining factor in depriving him of the validation.—The Applicant took no action for the next fifteen years.—Oral assurances allegedly given to the Applicant.—Those assurances cannot be regarded as entitling the Applicant to compensation.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Endre Ustor, Vice-President, presiding; Mr. Samar Sen; Mr. Arnold Kean;

Whereas, on 27 February 1980, Bahgat A. El-Tawil, a former staff member of the United Nations, filed an application the pleas of which read as follows:

“1. The Appellant wishes to appeal the decision of the Secretary-General to not entertain the Appellant's request for corrective action to the administrative error committed by the Administration, and requests the Tribunal to order the Secretary-General to inform the Secretary of the United Nations Joint Staff Pension Committee that the United Nations committed an administrative error, and that, because of it, the United Nations will bear the financial consequence and pay the United Nations Joint Pension Fund the amount it requires, in accordance with the Rules and Regulations of the Fund, towards the cost of validation of the Appellant's initial period of service with the United Nations.

“2. In this connexion, the Appellant wishes to bring to the attention of the Tribunal the fact that the United Nations would have had to bear these costs, with some adjustments, if the Appellant was not prevented, at the time, from participating in the Fund. Accordingly, what the United Nations is being asked to pay corresponds roughly to what it would have otherwise paid if not for the administrative error committed by it.”

Whereas the Respondent filed his answer on 13 June 1980;

Whereas the Applicant filed written observations on 1 August 1980;

Whereas the facts in the case are as follows:

The Applicant was recruited in 1961 as a Technical Assistance Expert to establish a regional training centre in Addis Ababa and served as the first Director of the Statistical Training Centre from 2 June 1961 to 1 October 1962. On 10 October 1962 he joined the Secretariat of the Economic Commission for Africa (ECA) as Deputy Chief of the Statistics Division and his service with the United Nations, in various capacities, was continuous since that date until his retirement on 31 December 1979.

Shortly after joining the Secretariat of ECA, the Applicant received from the United Nations Joint Staff Pension Fund a "Participant's Declaration" form which he completed and signed on 23 November 1962; the form contained the following note:

"Note—In case a participant wishes to validate previous service in accordance with Articles III, XII, XVI or Supplementary Article B of the Regulations and considers that the eligibility requirements expressed in that article are met, he may obtain the necessary application forms from the Secretary of his Staff Pension Committee. Such application must be made within the time limits provided by the Regulations."

On 30 November 1962 the Applicant sent to the Chief of the Field Operations Service a letter in which, after dealing with various administrative matters, he stated:

"I am inclined however to request revalidation of my service from 2 June 1961 to 1 October 1962 for pensionable service. If this is approved, I would be grateful if arrangements could be made to apply my end of service benefits to the required contribution to the Pension Fund and advise on any credit or debit balance due.

"Your considerate assistance in clearing this business will be much appreciated. . . ."

In a reply dated 28 December 1962, the Chief of the Field Operations Service advised the Applicant that:

"With regard to your request to revalidate your pension from 1 June 1961, the Staff Pension office will be contacting you directly in this respect in view of the fact that you are now a full participant."

The Applicant having apparently declined to receive a cheque representing the end-of-service payments for his first assignment on the ground that such payments should be used to meet the Pension Fund contribution required for the validation of his earlier service, on 25 April 1963 the Personnel Officer of ECA sent the following cable to Headquarters:

" . . . ELTAWIL PREFERS TO HAVE FINAL PAYMENT WITHHELD TO COVER PENSION FUND PARTICIPATION PERIOD JUNE 1961 THROUGH SEPTEMBER 1962. PLEASE ASCERTAIN STAFF MEMBERS REQUEST AND CABLE BALANCE PAYABLE."

The Applicant eventually accepted the cheque in question. On 25 October 1979 he wrote to the Secretary-General drawing his attention to the matter and requesting him to direct the Administration to take the necessary corrective action. On 7 December 1979 the Assistant Secretary-General for Personnel Services sent him the following reply:

"Please refer to your letter of 25 October 1979 to the Secretary-General in which you drew to his attention certain instances of 'administrative error and negligence' which, if not redressed, would cause serious damage to your expected

retirement benefit. You requested that corrective action be taken for pension purposes in respect of your service during the period from 2 June 1961 to 1 October 1962, when you served as Director of the Statistical Training Centre in Addis Ababa while a Technical Assistance Expert.

“I wish to assure you that I have taken a very sympathetic view about your case but must draw to your attention the following facts:

“You were recruited in 1961 as a Technical Assistance Expert to establish a regional training centre in Addis Ababa and served as the first Director of the Statistical Training Centre from 2 June 1961 to 1 October 1962. Subsequently, on 10 October 1962, you joined the Secretariat of the ECA as Deputy Chief of the Statistical Division. Upon joining ECA, you expressed in a letter, dated 30 November 1962, addressed to Mr. Carey Seward, then Chief, Field Operations Service, that you were inclined to request revalidation of your service from 2 June 1961 to 1 October 1962 for pensionable service. You asked if arrangement could be made to apply your end of service payment to the required contribution to the Pension Fund and advise on any credit or debit balance due. In his reply, dated 28 December 1962, Mr. Seward said to you: ‘With regard to your request to revalidate your pension from 1 June 1961, the Staff Pension Office will be contacting you directly in this respect in view of the fact that you are now a full participant’.

“It should be noted in this regard that in the normal course of events, it is our understanding that the UNJSPF [United Nations Joint Staff Pension Fund] sends every participant, upon entry into the Fund, a Participant’s Declaration form in which it is clearly stated:

“ ‘In case a participant wishes to validate previous service in accordance with Articles III, XII, XVI or Supplementary Article B of the Regulations and considers that the eligibility requirements expressed in that Article are met, he may obtain the necessary application forms from the Secretary of his Staff Pension Committee. Such application must be made within the time limits prescribed by the Regulation’.

“Since it is assumed you had been notified by the UNJSPF that the application must be made within the time limits prescribed by the Regulation (one year), you should have written directly yourself to the Secretary of the Staff Pension Committee and obtained the necessary application forms. There was no reason for you to delay any action in that regard, as you had already been made aware of the time limits within which to validate your prior service.

“If the above assumption is correct, as we so believe, it would seem that the non-validation of your prior service was primarily attributable to your failure to act on the advice of the Pension Fund Secretariat by writing directly to the Secretary of the Staff Pension Committee seventeen years ago to apply for the validation of your service. In view of this, the Administration can hardly be held responsible for a situation arising out of your own failure to pursue the matter in time with the Pension Fund. I therefore regret to advise you that your request for a corrective action cannot be entertained.”

On 12 December 1979 the Applicant requested permission to submit his case directly to the Tribunal. On 27 December 1979 his request was granted and on 27 February 1980 he filed the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. The Administration has made an administrative error and/or been negligent in handling the request made by the Applicant in his letter of 30 November 1962.

2. The Applicant did make a request for validation of his former services and asked for specific action to be taken and for advice and assistance in clearing the matter. No reply was received by him. Accordingly, the Administration is now estopped from arguing that the Applicant should have taken some other action than what he took when the Administration failed at the time to advise him correctly.

3. The Administration having already admitted to the error made, it is now estopped from denying such error.

4. It is an established principle that an employee should not be victimized by the administrative error of the employer.

Whereas the Respondent's principal contentions are:

1. The application, which was filed more than fifteen years after the occurrence of the events in issue, is untimely, regardless of whether the delay in filing is measured against the specific limitations established under article 23 of the Pension Fund Regulations, Staff Rule 103.15, Staff Rule 111.3 (a) or the general limitation inherent in the doctrine of laches.

2. No administrative error was committed giving rise to any entitlement on the Applicant's part to pension in excess of that payable by the Pension Fund based on years of service calculated in accordance with the Regulations of the Fund. There is no justification for imposing an inordinate burden on the Organization in an effort to afford relief to the Applicant who has no legally recognizable explanation for the delay in seeking such relief.

The Tribunal, having deliberated from 27 October 1980 to 6 November 1980, now pronounces the following judgement:

I. The Respondent contends that the application is untimely when measured against the limitations under article 23 of the Pension Fund Regulations and Staff Rules 103.15 and 111.3 (a). However, none of these provisions relates to the filing of an application to the Tribunal. Article 23 of the Pension Fund Regulations is concerned with the period within which election may be made for validation of non-contributory service; Staff Rule 103.15 with retroactivity of payments; and Staff Rule 111.3 (a) with the procedure of the Joint Appeals Board. The Respondent has agreed to the submission of the case to the Tribunal, without making any reservation as to the application being time-barred. For all these reasons the Tribunal finds that the application to the Tribunal is not time-barred.

II. Election for validation of prior service was required to be made by the staff member within one year of the commencement of his participation, by notice in writing given to the Secretary of the relevant Staff Pension Committee. These requirements were in substance the same as those at present in force under article 23 (a) of the Pension Fund Regulations and Rule E.1 of the Administrative Rules, which are referred to by the Applicant and the Respondent. Reference to the Regulations then in force was made in a Note appended to Form JSPB/G.6/Rev.3 (Participant's Declaration). That form was in the hands of, and was signed by, the Applicant on 23 November 1962. Although the note was not part of what he signed, the Applicant must have had notice of what it contained, appearing as it does in large print and immediately below his signature.

III. According to the note, the Applicant should have obtained an application form from the Secretary of the Staff Pension Committee and applied within the time-limit

