

Judgement No. 329*(Original: French)***Case No. 310:
Longerich****Against: The United Nations
Joint Staff Pension
Board**

Request by a former staff member of ILO to declare null and void the decision of the United Nations Joint Staff Pension Board to propose certain changes in pension benefits and the approval of these proposals by the General Assembly, and to cancel these decisions.—Request for preliminary measures: suspension of the entry into force of the contested decisions.

Nature of the contested decisions.—The application calls for partial rescinding of proposals of the Board in so far as they recommend to the General Assembly measures affecting the benefits of persons already participating in the Fund.—Concern of the Tribunal that if the actuarial imbalance of the Fund continues the interests of the participants may suffer.—Contention of the Respondent that the Tribunal lacks competence to rescind the Board's decisions.—The Tribunal regrets that the Respondent failed to develop any supporting arguments, thus depriving the Applicant of the opportunity to discuss them.—Question of the meaning of "decisions" under article 48 (a) of the Fund's Regulations.—The Tribunal considers itself competent to rule on general decisions or decisions in the nature of regulations only when they apply to a particular case.—Finding that the application does not relate to an individual case.—Judgements No. 237 (Powell) and No. 268 (Mendez).—Similar jurisprudence of the ILO Administrative Tribunal.—The Tribunal infers from article 48 of the Fund's Regulations and from article 2 of its statute that its competence with regard to the decisions of the Board extends only to applications relating to individual rights.—The Tribunal finds that it lacks competence.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Arnold Kean, Vice-President, presiding; Mr. Herbert Reis; Mr. Roger Pinto; Mr. T. Mutuale, alternate member;

Whereas, on 9 February 1983, Willi Peter Longerich, a former staff member of the International Labour Organisation, hereinafter referred to as ILO, filed an application dated 4 February 1983 in which he requested the Tribunal:

"In regard to form:

"To declare in order, valid and receivable this application, filed within 90 days of the issuance on 10 November 1982 of the report of the United Nations Joint Staff Pension Board to the United Nations General Assembly at its thirty-seventh session, which contains the contested decisions.

"Whereupon, by way of substantive action

"To order, as a preventive measure, the suspension of the entry into force on 1 January 1983 of the changes in the system of pension adjustments in so far as they apply to pensions in payment as at 31 December 1982, and to order the application of those measures suspended until the Tribunal pronounces its judgement.

"As principal measures:

"To adjudge and declare that the decision by the United Nations Joint Staff Pension Board to propose to the General Assembly changes in the system of adjusting pensions already in payment is null and void because it

affects the benefits of beneficiaries and is contrary to the Regulations of the Fund.

“Consequently to declare that the approval of those changes by the General Assembly on 16 December 1982 was null and void, in view of the illegality of the proposals.

“Consequently to cancel the changes in the system of pension adjustments in so far as they apply to pensions in payment as at 31 December 1982.

“To dismiss all other claims or counter-claims by the Pension Board or any intervener in these proceedings and to order them to pay all costs, including a reasonable share of the Applicant’s costs.”;

Whereas, on 20 April 1983, the Respondent filed the following answer:

“. . . None of these applications [that of the Applicant and other similar applications] relates to any decision taken by the United Nations Joint Staff Pension Board or by any of its subsidiary organs to which the procedures in section K of the Administrative Rules apply. Instead, the applications are directed either against discretionary actions taken by the Board which under the Regulations are not subject to review, or against decisions of the United Nations General Assembly taken under article 49 (formerly article 50) of the Regulations and/or under the Charter of the United Nations and the Rules of Procedure of the General Assembly. The applicants also purport to interpret article 26 (formerly article 27) of the Regulations although no authority to do so is given to them by the Regulations.

“As the applications do not fall under article 48 (formerly article 49) of the Regulations, no response thereto is required from the United Nations Joint Staff Pension Board. . . .”;

Whereas the Applicant filed written observations on 17 August 1983;

Whereas the facts in the case are as follows:

The Applicant was in the service of ILO from 31 October 1956, when he became a participant in the Joint Staff Pension Fund, to 30 November 1982, when he went into early retirement. In November 1982, the Joint Staff Pension Board, in its report to the United Nations General Assembly at its thirty-seventh session, recommended, among other measures to improve the actuarial balance of the Fund, an increase of 4 to 4.5 per cent in the interest rate in the commutation of periodic benefits, and certain changes in the system of pension adjustments (A/37/9, paras. 36-40). In a report dated 16 December 1982, the Fifth Committee of the General Assembly recommended that the Assembly should approve those measures with effect from 1 January 1983 (A/37/761, para. 12), which the Assembly did in its resolution 37/131 of 17 December 1982. In a circular letter from the Secretary of the Pension Board dated December 1982, the Applicant was notified of the changes. On 9 February 1983, he filed the aforementioned application.

Whereas the Applicant’s principal contentions are:

1. In regard to receivability:

The application is receivable because it was brought against a decision of the Pension Board on grounds of non-observance of the Regulations of the Fund and was filed within the time-limits prescribed.

2. In regard to merits:

(a) The Applicant is qualified to act and has a direct legal and material interest in contesting the decision at issue;

(b) The changes in cost-of-living pension adjustments are inadmissible with regard to pensions already in payment because they are contrary to the provisions of paragraph (b) of article 50 (now article 49) of the Regulations of the Fund regarding respect for acquired rights.

Whereas the Respondent's principal contentions are:

1. In regard to receivability:

The application does not fall under article 48 (formerly article 49) of the Regulations of the Fund.

2. In regard to merits:

(a) The action is valid because it was taken by the Pension Board in the exercise of its discretionary power,

(b) And/or was taken or approved by the United Nations General Assembly.

The Tribunal, having deliberated from 9 to 23 May 1984, now pronounces the following judgement:

I. The application calls for the partial rescinding of proposals of the United Nations Joint Staff Pension Board in so far as they recommend to the General Assembly measures affecting the benefits of persons already participating in the Fund. The Tribunal notes that those measures were approved in General Assembly resolution 37/131 dated 17 December 1982. Essentially they relate to cost-of-living pension adjustments; specifically, they reduce the frequency of pension adjustments. They have been applied since 1 January 1983. Without questioning the need to improve the actuarial balance of the Fund, the Applicant contends that such measures should not have been taken before article 26 of the Regulations of the Fund was applied. This article requires the member organizations to pay into the Fund the sums necessary to make good the deficiency in the event that an actuarial valuation of the Fund shows "that its assets may not be sufficient to meet its liabilities under [the] Regulations". The Tribunal notes that actuarial valuations in fact showed that the assets of the Fund might not be sufficient; nevertheless, the Pension Board did not apply the provisions of article 26 of the Regulations. The Tribunal recognizes that if the situation continues, it might damage the interests of participants in the staff pension scheme of member organizations.

II. The Respondent contends that the Tribunal lacks competence to rescind the Pension Board's decisions referred to in the application; however, the Respondent fails to develop any supporting arguments. The Tribunal regrets the complete lack of argumentation on the part of the Respondent, which, as the Applicant correctly pointed out, is contrary to article 8 of the Rules of the Tribunal. It was not possible for the Applicant to make a detailed response in his written observations to the Respondent's unexplained plea that the Tribunal lacks competence. That made the Tribunal's task more difficult.

III. As to the Pension Board's recommendations to the General Assembly, the Tribunal has no need to determine whether, as the Applicant contends, they constitute "decisions" within the meaning of article 48 (a) of the Regulations of the Fund, because in any event, for the reasons given below, the Tribunal considers itself competent to rule on general decisions or decisions in the nature of regulations only when they apply to a particular case.

IV. The Tribunal notes that the Applicant has not claimed reparation for present or even imminent damages to him personally, which would thus be distinct from damages which the measures in question might cause participants in the Fund as a whole. The Pension Board's decisions contested by the

Applicant are of a general nature. The application does not relate to an individual case; it does not refer to a specific decision that applies directly to the Applicant.

V. The Tribunal observed in the *Powell* case (Judgement No. 237, para. XVII) "that under its Statute it is competent to hear and pass judgement upon applications submitted in individual cases". It added: "However, the Tribunal has not been given competence to rescind *erga omnes* a decision which is in the nature of a regulation." This holding was confirmed in the *Mendez* case (Judgement No. 268, para. II).

VI. The ILO Administrative Tribunal has also ruled that it is competent to determine the validity of provisions of regulations, general decisions and even international conventions relating to the staff of an international organization, but only in connection with an application concerning a "particular case" [Judgements Nos. 365 (*Lamadie* (No. 2) and *Kraanen*), 366 (*Biggio* (No. 3), *Van Moer* (No. 2) and *Fournier*), 368 (*Elsen* and *Elsen-Drouot*) and 371 (*Mertens* (No. 2))].

VII. It is true that the *Powell* and *Mendez* cases dealt with general decisions taken by the Secretary-General of the United Nations within the framework of the Staff Rules and Regulations of the United Nations. In the present case, the Tribunal's competence derives from its Statute and from article 48 of the Regulations of the United Nations Joint Staff Pension Fund. Article 48 reads as follows:

"(a) Applications alleging non-observance of these Regulations arising out of a decision of the Board may be submitted directly to the United Nations Administrative Tribunal".

VIII. In the absence of any clarification in the text regarding the nature of the "decision" of the Pension Board, that term could be interpreted as applying to any decision of the Board, whether of a general nature or relating to individual cases.

IX. The Tribunal observes, however, that article 48 (a) (ii), *in initio*, of the Regulations of the Fund clarifies the scope of that attribution of competence by opening the appeals procedure to any person "who can show that he is entitled to rights under these Regulations" [emphasis added]. In this context, the word "rights" refers to the individual rights of participants. The same applies to article 48 (a) (i), *in fine*. Accordingly, article 48 does not permit the filing of applications with a view to the rescission *erga omnes* of a general decision of the Pension Board.

X. The Tribunal further observes that article 48 of the Regulations of the Fund attributes competence to the United Nations Administrative Tribunal within the framework of its Statute. The *Powell* and *Mendez* rulings were based on that Statute. They should be applied in the present case.

XI. Article 2, paragraph 1, of the Statute of the Tribunal, in defining the competence of the Tribunal, explicitly refers to applications alleging non-observance of "the staff pension regulations". Paragraph 2 (b) of that article opens the appeals procedure "to any other person who *can show that he is entitled to rights under any contract or terms of appointment . . .*" [emphasis added]. That subparagraph served as a model for article 48 (a) (ii) of the Regulations of the Fund, which likewise opens the appeals procedure to "any other person who *can show that he is entitled to rights under these Regulations*" [emphasis added]. In both cases, therefore, applications relating to individual rights are envisaged.

XII. For the foregoing reasons, the Tribunal decides that it does not have competence in this case. The application is rejected.

(Signatures)

Arnold KEAN
Vice-President, presiding
 Herbert REIS
Member
 Roger PINTO
Member
 Geneva, 23 May 1984

T. MUTUALE
Alternate member
 Jean HARDY
Executive Secretary

Judgement No. 330

(Original: English)

Case No. 236:
Klee

**Against: The Secretary-General
 of the United Nations**

Request by a former staff member of UNIDO for interpretation of Judgement No. 242. Conditions of receivability of requests for interpretation.—The Tribunal's practice to grant such requests provided that the requesting party appears to have a legitimate interest in the clarification of the judgement concerned.—Finding that the Applicant has a legitimate interest in the interpretation of Judgement No. 242.—Lack of due diligence on the part of the Applicant in not requesting clarification on a previous occasion instituting proceedings for the interpretation of Judgement No. 242 cannot relieve the Respondent from his duty to give effect to that judgement.—Respondent's contention that interpretation given in Judgement No. 253 constitutes res judicata which defeats the Applicant's claims.—Contention rejected.

Interpretation of paragraph XII of Judgement No. 242.—Application of staff rules 109.8 and 109.5.—The Tribunal interprets the words "all allowances, except home leave entitlement" as not including payment for accrued annual leave and including the increase in the amount of repatriation grant.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
 Composed of Mr. Endre Ustor, President; Mr. Arnold Kean, Vice-President; Mr. T. Mutuale; Mr. Roger Pinto, alternate member;

Whereas, in Judgement No. 242 rendered on 22 May 1979, the Tribunal decided that the Respondent should

“pay the Applicant the amount of 15 months' salary at the P-3, step VII level, including all allowances, except home leave entitlement, which the Applicant would have earned had he been maintained in UNIDO's service for 15 months from 1 April 1976”;

Whereas, on 26 October 1979, the Applicant filed an application for interpretation of Judgement No. 242 in which he requested the Tribunal to:

“Declare and rule that the compensation awarded to the Applicant by Judgement No. [242] of 22 May 1979 and equivalent to ‘the amount of 15 months' salary at the P-3, step VII level, including all allowances, except