

ADMINISTRATIVE TRIBUNAL

Judgement No. 402

Case No. 392: KATZ

Against: The United Nations  
Joint Staff Pension  
Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Mr. Samar Sen, President; Mr. Roger Pinto,  
Vice-President; Mr. Endre Ustor; Mr. Jerome Ackerman, alternate  
member.

The presence and participation of an alternate member ensured that the panel would always have three members, and could avail itself of the alternate's special knowledge of the large number of details which characterize this case;

Whereas, on 24 June 1986, Mrs. Monique Marie Katz, the recipient of a deferred retirement benefit, filed an application dated 23 May 1986, the pleas of which read as follows:

"MAY IT PLEASE the presiding member to agree to the holding of oral proceedings in this case.

AND MAY IT PLEASE the Tribunal:

1. To declare itself competent in this case;
2. To declare and judge the application receivable;
3. To order the rescission of the decision adopted by the Standing Committee of the United Nations Joint Staff Pension Fund, acting on behalf of the Board, at its 164th meeting, held from 28 to 30 January 1986, to reject the Applicant's application for a review of the Secretary's decision to apply to her, according to the procedure established definitively in his letter dated 23 March 1984, the pension adjustment system as revised in December 1982, without respecting her acquired rights;

4. Accordingly, to order the adjustment with effect from 1 January 1983, in accordance with the rules in force on 31 December 1982, of the United States dollar amount of the Applicant's retirement pension (and all other benefits from the Fund whose rate is fixed by reference to the said amount to which she or her beneficiaries may be entitled), and the application of the two-track adjustment system with effect from the date on which the Applicant starts to receive her pension subject to her acquired rights to the amount of her pension in local currency, obtained on the date of commencement of payment of the said pension by applying the two-track adjustment system from the date of the Applicant's separation from service;

5. To award the Applicant, as costs, a sum payable by the Respondent, assessed at the time of the submission of this application at nine thousand (9,000) United States dollars, subject to adjustment upon completion of the proceedings."

Whereas the Respondent filed its answer on 11 March 1987;

Whereas the Applicant filed written observations on 30 April 1987;

Whereas on 5 June 1987, the Tribunal decided to postpone consideration of this case until the autumn session;

Whereas on 9 October 1987, the Respondent submitted comments on the written observations filed by the Applicant and the Applicant commented thereon on 23 October 1987;

Whereas the President of the Tribunal decided on 4 November 1987 that there would be no oral proceedings in this case;

Whereas the facts in the case are as follows:

Monique Katz, a former staff member of UNESCO, separated from service on 31 March 1979 having been a participant in the United Nations Joint Staff Pension Fund, hereinafter referred to as the Fund, for a period of five years and 10 months. At the time of her separation, when she was not quite 38 years of age, the Applicant opted for a deferred retirement benefit, payable when she was 55 or over, in accordance with then article 31 of the Fund's Regulations. In the Applicant's case, the date of her fifty-fifth birthday will

be 16 April 1996.

In November 1982, in its report to the thirty-seventh session of the United Nations General Assembly, the Board made the following recommendation, as one of several measures designed to improve the actuarial balance of the Fund:

"No adjustment will be applied to deferred retirement benefits prior to the beneficiaries reaching age 50. Commencing at age 50 or date of separation, if later, the base dollar pension under paragraph ... above will be adjusted by the United States CPI [Consumer Price Index] in accordance with paragraph ... above without retroactive effect. The two track system will become operational on the date of payment. At that time a local currency base amount will be established by applying to the adjusted dollar amount the average exchange rates over the 36 consecutive months up to and including the month of first payment." (A/37/9, para. 24).

In its report of 16 December 1982, the Fifth Committee of the General Assembly recommended to the Assembly the adoption of those measures with effect from 1 January 1983 (A/37/761, para. 12).

The Assembly endorsed that recommendation in its resolution 37/131 of 17 December 1982.

By a circular letter of December 1982, the Secretary of the Board notified the Applicant of the decision which the General Assembly had taken at its thirty-seventh session with regard to the adjustment of deferred retirement benefits.

The Applicant informed the Secretary of the Fund, by a letter dated 23 February 1983, that she was contesting the application of the modification of the adjustment system for deferred pensions to her particular case. After a further exchange of letters (dated 12 April and 19 May 1983), in which the Secretary informed the Applicant that he could not comply with her request because the Standing Committee was not qualified in the matter, the Secretary agreed, by a letter dated 6 September 1983, to submit the request to the Standing Committee for review .

In the meantime the Board had reconsidered the matter and had

authorized the Standing Committee to consider recommending to the United Nations General Assembly transitional measures for the implementation of the changes in the Fund's Regulations and deferred pension adjustment system effective 1 January 1983 (A/38/9, paras. 14-19). In accordance with this mandate, the Standing Committee, acting on behalf of the Board, reached the following conclusion:

"17. The Pension Board, in the light of observations by the Committee of Actuaries, concluded that, in a spirit of fair play, the participants who had elected a deferred retirement benefit before 1 January 1983 (i.e. at a time when they expected the cost-of-living adjustment system to operate irrespective of their age), and who were under age 50 on 1 January 1983, should be given a second chance to consider their options".

The Standing Committee, deeming that a participant's decision to opt for a deferred pension might have been influenced by the adjustment procedures in force at the time of his separation from service, recommended to the Board:

"... [that] the options to be offered to a participant who has elected a deferred retirement benefit will be as follows:

(a) Maintain his original election of a deferred benefit. If he does so, and he was younger than 50 on 1 January 1983, his benefit, together with cost-of-living adjustments prior to 1 January 1983, will be 'frozen' till his fiftieth birthday, when it will again become subject to adjustment;

(b) Choose a withdrawal settlement. If he does so, the amount which would have been paid to him at the time of separation will be established; interest at 6.5 per cent a year compounded will be calculated ... as if he had initially opted for a withdrawal settlement; hence any cost-of-living adjustments between date of separation and 1 January 1983 will not be taken into account."

The Standing Committee, acting on behalf of the Board, adopted those recommendations at its 158th meeting, held in New York in October 1983.

At the same meeting, the Standing Committee reviewed the Applicant's request for rescission and rejected it. This decision

was communicated to the Applicant by the Secretary in a letter dated 31 October 1983. By that letter, the Applicant was informed that, unless the General Assembly specifically disapproved the measure, participants in the Fund who had opted for deferred retirement benefits before 1 January 1983 and who were under age 50 (a category in which the Applicant clearly belonged) would be allowed, if they so desired, to reverse their earlier decision and to opt for withdrawal settlements from the Fund, with interest at 6 1/2 per cent a year compounded until the date of payment.

By a letter dated 23 March 1984, the Secretary of the Board invited the Applicant to exercise, before 1 November 1984, the option thus offered to her in his letter of 31 October 1983. The letter of 23 March 1984 contained all the facts and figures relating to the particular situation of the Applicant. Similar letters were sent to each of the persons concerned.

In a letter dated 5 April 1985 addressed to the Secretary of the Fund, the Applicant alleged that she had never received the letter of 23 March 1984. She added that she reserved her rights in the matter.

On 26 July 1985, the Secretary of the Fund sent her a copy of the letter of 23 March 1984. On 30 August 1985, the Applicant requested that the Standing Committee should review the decision by the Secretary of the Board to apply to her particular case the modification of the deferred pension scheme.

Following a further exchange of letters in which the Applicant specified, in answer to a question raised by the Secretary, that her request for a review involved a decision different from the one which had been the subject of the request for a review contained in her letter dated 19 May 1983, and which had been considered and rejected by the Standing Committee in October 1983, the Secretary informed the Applicant, by a letter dated 27 December 1985, that her appeal would be considered at the next meeting of the Standing Committee of the Board.

By a letter dated 26 February 1986, the Secretary informed

the Applicant that "the Standing Committee had unanimously rejected her request for a review, on the grounds that this question had already been settled at the 158th meeting of the Standing Committee and was therefore res judicata".

By a letter dated 21 March 1986, the Secretary of the Fund informed the Applicant that, in view of the particular circumstances, he was prepared to consider her request favourably if she wished to exercise, within a reasonable period, the option offered to her in the letter of 23 March 1984.

By a letter dated 21 April 1986 addressed to the Secretary of the Fund, the Applicant declined the above-mentioned offer on the ground that, because of the conditions that it posed, it could in no way satisfy the said request.

On 24 June 1986, the Applicant filed with the Tribunal the application dated 23 May 1986 referred to above.

Whereas the Applicant's principal contentions are:

1. The decision to apply to the Applicant's case, according to the modalities finally laid down by the Secretary of the Fund in his letter of 23 March 1984, the change in the adjustment system for deferred pensions decided on in December 1982, was taken in violation of her acquired rights.

2. The contested decision was taken in violation of article 26 of the Regulations of the Fund.

Whereas the Respondent's principal contentions are:

1. The application is time barred.

2. The subject matter of the Applicant's claim is res judicata.

3. The Applicant's claims were in any event made prematurely.

4. The Applicant's arguments based on "acquired rights" and article 26 of the Fund's Regulations are not relevant to this case.

5. The 1 January 1983 modifications in the adjustment of

deferred retirement benefits were reasonable and their implementation was prospective.

The Tribunal, having deliberated from 4 May 1987 to 5 June 1987 in Geneva and from 20 October 1987 to 12 November 1987 in New York, now pronounces the following judgement:

I. The Applicant has referred to the Tribunal a decision (taken at the 164th meeting) by the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board and communicated to the Applicant on 26 February 1986 by the Secretary of the United Nations Joint Staff Pension Fund (hereinafter referred to as the Fund). That decision rejected her request for the review of a previous decision by the Standing Committee, which had been communicated to the Applicant by the Secretary of the Fund on 31 October 1983. That previous decision was reached on the appeal which the Applicant had lodged against a circular letter of December 1982 informing her of the decision by the General Assembly concerning the suspension of cost-of-living adjustments for deferred retirement benefits.

II. Since 18 July 1979, the Applicant has been entitled to a deferred retirement benefit which will become payable when she reaches age 60, on 16 May 2001, or, if she so elects, beginning at any time between the age 55 and 60. As a result of measures proposed by the Board to the United Nations General Assembly, the cost-of-living adjustment system for retirement benefits was modified (resolution 37/131 of 17 December 1982).

III. Until 31 December 1982, the amount of the Applicant's deferred retirement benefit was increased by periodic cost-of-living adjustments. Under the new measures adopted, cost-of-living adjustments were suspended and her deferred benefit was frozen at the level reached on 31 December 1982. From the Applicant's fiftieth birthday until payment of the benefit commences the

adjustment system reflecting movements in the United States Consumer Price Index will again apply. From the time the benefit becomes payable, i.e. on 16 May 2001, or, if the Applicant so elects, at any time between age 55 and 60, the benefit will be adjusted in the same way as other benefits then in payment (circular letter of the Fund of December 1982, para. 6 (c)).

IV. Upon receipt of this letter of December 1982, the Applicant lodged her first appeal on 23 February 1983. She contested the changes made in the deferred pension adjustment system, alleging violation by the Fund of her acquired rights and of a contractual commitment.

V. When notifying the Applicant on 31 October 1983 that her appeal had been rejected, the Secretary of the Fund informed her that participants under age 50 on 1 January 1983 who before that date had opted for deferred retirement benefits would be allowed to reverse their earlier decision and opt for withdrawal settlements, with interest at 6 1/2 per cent per year compounded until the date of payment. This information was confirmed by a letter of 23 March 1984, which seems not to have reached the Applicant until April 1985. The Applicant then formulated a request to the Standing Committee of the Board to review the initial decision communicated to her on 31 October 1983. This request was again rejected by the Standing Committee (notification of 26 February 1986).

VI. On 21 March 1986, the Secretary of the Fund informed the Applicant that "in view of the particular circumstances of her case" she might still be able, "within a reasonable period", to elect to receive a withdrawal settlement in place of the deferred retirement benefit. On 21 April 1986, however, the Applicant's counsel, at her request, wrote a letter to the Secretary of the Fund in which he stated: "You cannot give satisfaction to Mrs. Katz by forcing her to go back on a choice which she has already made". On 23 May 1986,



the Applicant filed her application with the Tribunal.

VII. The Respondent raises an objection to the receivability of the application on the following grounds: the application is time-barred, the subject-matter is res judicata and the claim was made prematurely.

VIII. The Tribunal observes a contradiction between the first two grounds and the third. If, in fact, the application is premature, the objections that it is time-barred and that the subject-matter is res judicata must be set aside. As the Tribunal will decide that it does not have jurisdiction at this stage to pass judgement on the application, it necessarily follows that the arguments that the application is time-barred and that the subject-matter is res judicata must be rejected.

IX. In this instance, as the Respondent submits, the particular case of the Applicant has not and could not have been the subject of a decision of an individual character. Such a decision will not be made until she reaches age 60 or, if she so opts, between age 55 and 60.

At that time she will be entitled to contest the decision regarding the amount of her deferred retirement benefit payments.

X. The Tribunal notes that the Secretary of the Board had stated that the Applicant could exercise, within a reasonable period, the option offered in his letter dated 23 March 1994 and sent again on 26 July 1985. In the particular circumstances of this case the Tribunal considers that the Secretary of the Board should renew the offer made to the Applicant.

XI. The Applicant having failed in her application, the Tribunal considers that there is no justification for awarding her costs.

XII. For the foregoing reasons, the Tribunal upholds the objection relating to receivability raised by the Respondent on the ground that the application is premature and rejects the objections that the application is time-barred or that its subject-matter is res judicata.

XIII. All the pleas of the Applicant are rejected.

(Signatures)

Samar SEN  
President

Roger PINTO  
Vice-President

Endre USTOR  
Member

New York, 12 November 1987

R. Maria VICIEN-MILBURN  
Executive Secretary