

ADMINISTRATIVE TRIBUNAL

Judgement No. 419

Case No. 421: GREENHAM

Against: The Commissioner-General  
of the United Nations  
Relief and Works Agency  
for Palestine Refugees  
in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Mr. Roger Pinto, Vice-President, presiding;  
Mr. Jerome Ackerman; Mr. Francisco A. Forteza;

Whereas, on 3 November 1986, Mary Elizabeth Greenham, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, hereinafter referred to as UNRWA, and currently a staff member of the United Nations, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after making the necessary corrections, again filed the application on 17 February 1987;

Whereas the pleas of the application read as follows:

"II. Pleas

(in conformity with article 7, paragraph 3 of the Rules of the Administrative Tribunal)

- (a) The Applicant requests that the Tribunal hear witnesses in connection with her allegation that the Administration of UNIDO at no time offered her the possibility to validate her post-1962 UNRWA service for UNJSPF [United Nations Joint Staff Pension Fund] purposes: Mr. R. Hillhouse [Personnel Officer, UNIDO], and/or any other Officer or former Officer of UNIDO.

- (b) As explained in the Applicant's letter to the Secretary-General dated 25 October 1984 (...), she requests reconsideration of the decision contained in a letter of 11 March 1980 by Mr. Olof Rydbeck, Commissioner-General of UNRWA, of not giving her the possibility to have her post-1962 UNRWA services recognized for UNJSPF purposes (...).
  - (c) The Applicant invokes the right to revise her decision of 18 January 1967 of not participating in the Fund because it was not her voluntary decision but a direct consequence of the UNRWA Administration's decision to abolish her post, thus excluding her from participation in the Fund; UNRWA's staff circular No. 1/1/67 of 9 January 1967 (...) described the conditions for conversion of associate member to that of full member of the UNJSPF, further explained in a Schedule of Changes to the Staff Regulations, particularly in rule 106.8.
- The Applicant invokes the right of every staff member to validate prior service for pension fund purposes under article 23 of the UNJSPF Regulations. In this connection she refers to the statement of the Chief of the Geneva Office of the UNJSPF at the Geneva JAB [Joint Appeals Board] oral hearing of 25 February 1985 that 'the Pension Fund might be ready to consider Appellant's request for revalidation'. Applicant further invokes the UN General Assembly's policy of encouraging staff participation in UNJSPF (resolution 37/131, Report of the United Nations Joint Staff Pension Fund, 17 December 1982; resolution 38/233, Report of the United Nations Joint Staff Pension Board, 20 December 1983)."

Whereas the Respondent filed his answer on 26 October 1987;

Whereas the Applicant filed written observations on 22 December 1987;

Whereas, on 18 February and on 30 March 1988, the Executive Secretary of the Tribunal transmitted to the Secretary of the United Nations Joint Staff Pension Board (UNJSPB) the pleadings concerning this case, under article 21 of the Rules of the Tribunal;

Whereas, on 7 April 1988, the Secretary of the UNJSPB submitted comments on the case;

Whereas, on 29 April 1988, the Tribunal put questions to the Respondent;

Whereas, on 6 May 1988 and 13 May 1988, the Respondent provided answers to the questions put to him by the Tribunal and on

16 May 1988, the Applicant provided comments thereon;

Whereas the facts in the case are as follows:

Mary Elizabeth Greenham entered the service of UNRWA on 14 November 1955. She was initially offered an appointment of indefinite duration as an area staff member, under the UNRWA Area Staff Regulations and Rules then in force. The Applicant's letter of appointment provided as a special condition that she was "required to join the Agency's Provident Fund with effect from the date of [her] appointment". The Area Staff Provident Fund provides social security coverage to area staff who are not covered by the United Nations Joint Staff Pension Fund (UNJSPF), hereinafter referred to as "the Pension Fund".

On 1 August 1962, the Applicant accepted a one-year fixed-term appointment as an International staff member and she thereby became an associate participant in the Pension Fund.

On 9 January 1967, the Commissioner-General issued Staff Circular No. 1/1/67 in which he announced to the staff certain changes that had been introduced into the statutory conditions of service of the International Staff of UNRWA. In paragraph 4 of the circular, he explained the changes concerning the requirements for participation in the Pension Fund.

In a circular letter dated 9 January 1967, the Director of Administration and Relief, UNRWA, invited the Applicant, who had not completed five years of service on 1 January 1967 and who would continue to be an associate participant in the Pension Fund until the fifth anniversary of her date of entry on duty, "to agree to a revision of [her] contract of employment", pursuant to staff circular 1/1/67, paragraph 4(d), to enable her to become a full participant in the Pension Fund on 1 August 1967, the fifth anniversary of her date of entry on duty as an International staff member. If she agreed, the Applicant undertook to pay to UNRWA on that date, if she was then a staff member, the arrears of her contributions to the Pension Fund (7 per cent of pensionable

remuneration) plus compound interest for the recognized period of contributory service. The letter further stated that:

"Should you feel you cannot accept this offer and, accordingly, cannot agree to the revision of your contract of employment, you may request exclusion from entry into full participation in the UNJSPF on grounds of special circumstances as described in paragraph 5 of staff circular 1/1/67 dated 9 January 1967, and the Agency may, at its sole discretion, agree to exclude you. ... If such request is accepted by the Commissioner-General, you will be invited to accept a revision of your existing contract of employment, irrevocably excluding all your continuous service with the Agency, both past and future, from any form of participation in the UNJSPF ..."

The Applicant asserts that she learned at the time from a confidential source, that the post she encumbered would be abolished before completion of five years of service as an International staff member. Thus, she believed she would in no event qualify for full participation in the Pension Fund. The Applicant states that, for that reason, on 18 January 1967, she wrote a memorandum to the Chief, Personnel Division that reads as follows:

"...

I do not agree to a revision of my contract of employment as proposed in your letter, as I do not wish to become a full participant in the United Nations Joint Staff Pension Fund. I cannot offer any special circumstances as a justification for my exclusion from such participation.

From the alternatives offered in your letter, as well as from the revised text of the Staff Regulations and Rules, I understand and accept that the Commissioner-General terminated, or will proceed to terminate my appointment by 31 December 1967, or at an earlier separation date, as may be mutually agreed to."

On 24 April 1967, the Applicant signed a revised letter of appointment with a special condition that provided: "... it is explicitly agreed and understood that your associate participation in the United Nations Joint Staff Pension Fund shall cease with

effect from 1 January, 1967 ... and that all your service as an International staff member of the UNRWA, both past and future, shall remain excluded from participation in the United Nations Joint Staff Pension Fund."

On 12 May 1967, the Chief, Personnel Division, wrote to the Applicant "to confirm our earlier advice to you that the Agency has now decided to eliminate your post on 19 June 1967" and gave the Applicant formal notice of the Agency's intention to terminate her appointment on 19 June 1967.

On 5 June 1967, the Agency initiated the required procedures to separate the Applicant from service. However, the Applicant's post was not abolished on 19 June 1967 as had been envisaged. War broke out in the Middle East and on 27 June 1967, the Director of Administration and Relief requested the extension of the Applicant's appointment "for some more time, possibly until [his] departure at the end of July" and asked that the process of the Applicant's separation from service be suspended. On 26 July 1967, the Chief, Personnel and Administration Division, informed the Applicant that it had been decided to defer the date of the abolition of her post until 31 July 1967. The Applicant agreed to continue working for the Agency.

The Applicant separated from the service of UNRWA on 31 July 1967, having completed five years of service as an international staff member. On 1 August 1967, she would have been entitled to become a full participant in the Pension Fund. The Applicant was subsequently repatriated to the United Kingdom.

On 1 November 1967, the Applicant re-entered the service of the United Nations and was assigned to the Office of the Executive Director of the United Nations Industrial Development Organization (UNIDO) in Vienna. She was initially offered a probationary appointment and thereby became a participant in the Pension Fund. The Applicant served at UNIDO until 1 September 1972, when she transferred to the UNICEF (United Nations International Children's Fund) Office at Geneva. She served with UNICEF until 14 September

1975, on which date she transferred to the Secretariat of the United Nations Office in Geneva.

On 6 June 1977, the Applicant asked the Chief, Geneva Office of the Pension Fund to review her case with a view to validating her prior service with UNRWA for pension purposes on the ground that she had been informed of an "arrangement" whereby participation in the Pension Fund could be made retroactive to the date on which UNRWA staff would have qualified for full participation in the Pension Fund. The Chief, Geneva Office, UNJSPF, transmitted the Applicant's request to the Director of Personnel at UNRWA on the same day.

In a letter dated 24 August 1977, the Director of Personnel, UNRWA, asked the Chief, Geneva Office, UNJSPF, to convey to the Applicant his comments on her request. He explained that in 1975, the Commissioner-General and the Secretary-General of the United Nations, under the authority of the UNJSPB, had concluded an agreement concerning participation by UNRWA staff in the Pension Fund. The General Assembly had agreed to give financial aid towards the actuarial cost of offering coverage by the Pension Fund to certain UNRWA staff members employed during the period 1950-1960. The Applicant did not fall within this category of staff. In addition, he noted that the Applicant, like all other International staff members at the time, had been invited, on 9 January 1967, to revise her contract of employment in order to become a full participant in the Pension Fund on 1 August 1967, when she would have completed five years of service as an International staff member of UNRWA. In this connexion, he observed:

"Miss Greenham refused the offer made and signed a fresh letter of appointment on 24 April 1967 changing, at her request, her conditions of service, effective 1 January 1967, to permanently exclude her UNRWA service from participation in the UNJSPF. The decision of Miss Greenham to exclude herself from UNJSPF cover cannot, at this stage, be revoked."

In a letter dated 16 November 1977, the Applicant reiterated her request to validate her period of non-contributory service with

UNRWA as an International staff member. In a reply dated 23 December 1977, the Acting Director of Personnel, UNRWA, confirmed that the decision taken by the Applicant at that time "must stand and cannot now be revoked" and noted that the Applicant was "permanently excluded from obtaining recognition for UNJSPF purposes of [her] post-1960 UNRWA service."

On 27 April 1979, the Applicant requested the Commissioner-General to reconsider his decision of 23 December 1977, on the ground that, in 1967, she had been "forced" to decide not to become a full participant in the Pension Fund, on account of the advice given to her by the UNRWA Administration, that they would abolish her post. In addition, she stated: "should my decision have been positive, still, my full participation to the UNJSPF could not have taken place, as the first day of full participation could have been only on 1 August 1967, after five years of associate participation. At that date I had ceased being an UNRWA staff member".

On 21 June 1979, the Acting Commissioner-General informed the Applicant that under the current rules, the decision which she had taken voluntarily in 1967 could not be reversed. On 6 November 1979, the Applicant again asked the Commissioner-General to reconsider her case. In a letter dated 11 March 1980, the Commissioner-General maintained the decision conveyed in previous communications to the Applicant and stated in this regard:

"As you state, your separation actually took place on that date which gave you five years of continuous employment with UNRWA. Furthermore, you rejoined UN service and became a participant of the Pension Fund as from 1 November 1967. It is not clear why you did not then raise the question of having your post-1960 service with UNRWA recognized. While I can appreciate your feeling that, in retrospect, the decision you took in 1967 has worked out unfavourably from your point of view, I regret that UNRWA is not in a position to do anything about the matter."

On 10 April 1980, the Applicant notified the Secretary of the Geneva Joint Appeals Board of her intention to file an appeal against the decision taken by the Commissioner-General of UNRWA on

11 March 1980. On 22 March 1984, the Applicant filed her statement of appeal. The Board adopted its report on 9 July 1985. Its recommendations read as follows:

"C. Recommendations

46. The Board, accordingly, recommends the Secretary-General to respect and uphold the decision of the Commissioner-General of UNRWA of 11 March 1980, according to which Appellant's decision could not be reversed and that UNRWA was not in a position to do anything in this matter.
47. The Board also recommends that, an opportunity should be given to Appellant of finding any other Organization or source which would be ready to finance the full amount of the actuarial value of the contributions corresponding to the period of Appellant's service in question, provided that the UN Joint Staff Pension Fund is still ready to accept revalidation."

On 8 October 1985, the Assistant Secretary-General for Personnel Services advised the Applicant that the final decision on the appeal was within the competence of the Commissioner-General of UNRWA, and the competent advisory body for that purpose was the UNRWA Joint Appeals Board.

On 25 October 1984 the Applicant requested the Commissioner-General of UNRWA to review the administrative decision taken by his predecessor on 11 March 1980. On 8 November 1985, the Applicant lodged an appeal with the UNRWA International Staff Joint Appeals Board. The Board adopted its report on 21 July 1986. Its conclusions and recommendations read as follows:

- "8. The Board concludes that the decision which the Appellant took not to become a full participant in the UNJSPF was voluntary, though the Board notes the possibility that she may have been misled by the UNRWA Administration with regard to the abolition of her post. However, even after being made aware on 26 July 1967 that her services would continue for a full five-year period, she made no attempt to change her decision.
9. The Board recommends to the Commissioner-General that the appeal be rejected."



On 5 April 1986, the Commissioner-General informed the Applicant that he had accepted the recommendation of the Board.

On 17 February 1987, the Applicant filed with the Tribunal the application referred to above.

Whereas the Applicant's principal contentions are:

1. When the Applicant's appointment was extended for five additional days until 31 July 1967, she was not invited to change her decision concerning her participation in the Pension Fund.

2. It is not clear that the Applicant could have changed her decision - had she wanted to - since on 1 August 1967, the fifth anniversary of her date of entry on duty, she had ceased to be employed by UNRWA.

3. UNIDO never advised the Applicant to validate her prior service because she had never been a full member but only an associate member of the Pension Fund during the years she was employed by UNRWA.

4. The Applicant would have requested full participation in the Pension Fund from 1962, if the Rules and Regulations of the Pension Fund had been made available to her by the UNIDO Administration.

Whereas the Respondent's principal contentions are:

1. The Applicant had explicitly made an irrevocable choice against joining the Pension Fund under UNRWA.

2. Validation of previous service must be requested within one year under the Pension Fund Regulations.

3. There is an absolute bar to the validation of the Applicant's service for UNRWA because of the formal exclusion in the 24 April 1967 letter of appointment signed by the Applicant.

4. Repeated laches have occurred in this case, and the Applicant's claim that the anticipated termination of her post prior to 31 July 1967 prompted her to elect to be excluded from coverage

is illogical for the Applicant would not have been disadvantaged in any way by electing coverage in that situation. Only if the Applicant had remained in the employ of UNRWA or returned to it later would the election against coverage have been meaningful.

5. The Applicant's negligence cannot be excused by any fault of UNIDO.

The Tribunal, having deliberated from 28 April to 26 May 1988, now pronounces the following judgement:

I. The Applicant requests the Tribunal to hear witnesses in connexion with her allegations that the Administration of UNIDO at no time offered her the possibility to validate her post-1962 UNRWA service for UNJSPF purposes. However, in view of the Tribunal's decision as set forth below, there is no need for the Tribunal to hear witnesses relating to the alleged conduct of the UNIDO Administration in this case and therefore the request is rejected.

II. The Tribunal notes that there is no difference between the parties as regards the facts. Their differences relate to the respective effect of their actions or inactions on the right of the Applicant to validate the period of service performed with UNRWA with the status of an associate participant in the UNJSPF, i.e. 1 August 1962 to 31 July 1967, as contributory service for Pension Fund purposes.

III. During the above-mentioned period, on 9 January 1967, a circular letter informed the Applicant that, like other staff members in her situation, upon completion of five years of service, she would become a full participant in the Pension Fund "with compulsory retroactivity" unless excluded, at her request, "on grounds of special circumstances".

Staff members so excluded were required to accept a revision in their letters of appointment excluding all their service with

UNRWA, both past and future, from any form of participation in the UNJSPF.

On 18 January 1967, the Applicant indicated in a memorandum to the Chief, Personnel Division, that she did not agree to a revision of her contract of employment to enable her to become a full participant (at the end of five years of her entry on duty as an International staff member) in the UNJSPF and that she could not offer any special circumstances or justification for such exclusion, but indicated that she understood that she would be terminated by 31 December 1967 or earlier. In accordance with the preceding paragraph, she then received a revised letter of appointment which she signed on 24 April 1967.

IV. The Tribunal notes that the Applicant was separated from the service of UNRWA on 31 July 1967, on completion of five years of service as an International staff member. However, the Applicant did not become a full participant under the Regulations of the UNJSPF "as the first day of full participation could have been only on 1 August 1967, after five years of associate participation. At that date, [the Applicant] had ceased being an UNRWA staff member". (Applicant's letter to the Commissioner-General of UNRWA, dated 27 April 1979).

V. The Tribunal further notes that the Applicant re-entered the Pension Fund as a full participant on 1 November 1967, having received a probationary appointment at UNIDO. However, almost ten years elapsed before she raised for the first time the question of the validation of her prior service with UNRWA for pension purposes.

VI. In the light of these facts, it is clear that:

(i) Whether or not the exclusion clause of the Applicant's revised letter of appointment of 24 April 1967 was valid, at no time during her employment with UNRWA could she have become a full participant in the Pension Fund and hence she could not have been

credited with her prior service as contributory;

(ii) Under article 23 of the Pension Fund Regulations, she could have asked, within one year after the commencement, on 1 November 1967, of her full participation in the Pension Fund, to validate the period of prior service with UNRWA during which she had been an associate participant.

Had the Applicant done so, it might have become necessary to determine whether she had been validly excluded during that period from participation and hence was barred from validating it thereafter.

VII. The Tribunal concludes that as the Applicant did not apply within the time-limit required by article 23 of the Regulations of the UNJSPF for the validation of her non contributory service, the question is moot, her request to validate being time-barred. This is so even if the Tribunal accepts the Applicant's contention that "she could just as well have declined to write any letter at all and did so only for reasons of administrative courtesy and upon the advice of Mr. Gendron [Director of Administration and Relief]". Therefore her plea that her letter of 18 January 1967 should not be considered against her, even if granted, does not change the Applicant's entitlements and in the circumstances of this case, the Tribunal finds no justification for this plea by the Applicant based on her imminent termination. As the Respondent has pointed out, that could not logically have accounted for her request for exclusion.

VIII. The Applicant also claims that the exclusion clause in her contract of 24 April 1967 should be retroactively cancelled or declared null and void ab initio because she agreed to it only because she was under the impression, induced by UNRWA, that her employment would be terminated within a month or two. This argument presumably involves the corollary that had she known that she would have remained in employment until 31 July 1967 - as in fact she was

- she would have opted for the alternative, i.e. full participation on the completion of five years and compulsory validation of her prior period of service as an associate participant in UNRWA.

This argument is unconvincing. As the Applicant herself recognizes, had she opted for the latter arrangement, it could not have altered her entitlements or status in the Pension Fund while she was with UNRWA, as she was not a staff member on 1 August 1967.

The only difference it might have made is that after joining UNIDO, she could, without even being concerned about the future exclusion provision, have applied to validate the portion of her service with UNRWA during which she was an associate participant.

IX. The Tribunal notes, however, that the Applicant also claims that the reason why she did not apply for such validation within the one year time-limit, was not that she thought the period in question was excluded, but because she was unaware of the Regulations and Rules of the Pension Fund during the relevant period and presumably thereafter.

As the Tribunal has said previously, experienced staff members must look out for their own interests, including becoming acquainted with the applicable Regulations which affect them. They cannot expect this Tribunal to rescue them from the consequences of their own conduct.

X. The Tribunal concludes on the above grounds that the application must be rejected. There is, however, reason to take note of the personal statement of the Chief of the Geneva Office of the UNJSPF at the Geneva JAB, oral hearing of 25 February 1985 that "the Pension Fund might be ready to consider Appellant's request for revalidation", as well as the communication to the Tribunal of 7 April 1988 from the Secretary of the UNJSPB. In the latter communication it is explained that "should a determination be made that the Applicant had been deprived of accruing contributory service for a specific prior period of service due to an

administrative error by a participating organization, the Pension Fund would be likely to act favourably on a request by that organization to redress the consequences of its error, provided the additional actuarial costs involved are paid to the Fund by that organization". The Tribunal encourages consideration of such a solution by UNRWA and recalls that the Applicant has served the United Nations since 1955 and that she was awarded the UN Medal and certificate for thirty years of service in 1985.

XI. The Tribunal also takes note of the exclusion clause mentioned in paragraph III above, which was incorporated in the Applicant's amended letter of appointment. Without entering into a discussion on whether such clauses are valid or not, the Tribunal cannot but observe with concern that an Organization, member of the Pension Fund, could have advised a staff member in such a manner that the staff member was misled into believing that such an exclusion clause was to her benefit.

XII. For the reasons stated above, the application is rejected.

(Signatures)

Roger PINTO  
Vice-President, presiding

Jerome ACKERMAN  
Member

Francisco A. FORTEZA  
Member

Geneva, 26 May 1988

R. Maria VICIEN-MILBURN  
Executive Secretary