



Administrative Tribunal

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6 February 2008

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1356

Case No. 1433

Against: United Nations Joint Staff
Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, President; Ms. Jacqueline R. Scott, Vice-President; Sir Bob Hepple;

Whereas, on 17 August 2005, a former participant in the United Nations Joint Staff Pension Fund (hereinafter referred to as UNJSPF or the Fund), filed an Application containing pleas which read, in part, as follows:

“Section II: *PLEAS*

...

12. The Applicant respectfully requests that the Tribunal summon ... witnesses ...

13. The Applicant ... [requests] that the Tribunal quash the decision taken by the Standing Committee of the [United Nations Joint Staff Pension Board (UNJSPB)] ...

14. The Applicant requests that the [Tribunal] order ... redress detailed below:

- payment of the US\$ 2,700 indicated by UNJSPF (...);
- payment of interest on this amount for the [nine-year period] caused by the [United Nations] legal mechanisms;
- the award ... of US\$ 15,000 in respect of costs and expenses incurred in the prosecution of this appeal;
- the award ... of

- interest on any monetary damages awarded hereunder, calculated at the market rate through the date any such decision of the [Tribunal] ... is satisfied in full; and,
- such other relief as the [Tribunal] deems necessary, just and equitable.”

Whereas the Respondent filed his Answer on 25 November 2005;

Whereas the Applicant filed Written Observations on 24 December 2005, and on 26 September 2007, the Respondent commented thereon;

Whereas, on 23 October 2007, the Tribunal decided not to hold oral proceedings in the case;

Whereas, on 24 October 2007, the Tribunal put a question to the Applicant and to the Respondent;

Whereas, on 30 October 2007, the Respondent provided an answer to the question put by the Tribunal;

Whereas the facts of the case are as follows:

The Applicant entered the service of the United Nations Office in Geneva (UNOG) on 8 August 1980, on a two-week contract as a Conference Secretary at the G-3 level. Thereafter, the Applicant served on a series of intermittent daily and monthly short-term appointments. On 5 April 1994, the Applicant was granted a three-month fixed-term appointment with the Economic Commission for Europe (ECE) as Secretary at the G-5 level, which was extended until 15 July 1994, when the Applicant separated from service. In accordance with the provisions of article 21 (a) of the UNJSPF Regulations, she was entitled to Pension Fund participation for the period from 26 September 1993 through 28 February 1994.

Under article 46 (a) of the UNJSPF Regulations “[t]he right to a withdrawal settlement or residual settlement shall be forfeited if for two years after payment has been due the beneficiary has failed to submit payment instructions...”. Accordingly, not having heard from the Applicant within two years following her separation from service on 15 July 1994, the Pension Fund contacted her on 10 March 1998 and again on 16 August 2000, to request that she submit payment instructions for the withdrawal settlement due to her in respect of her UNJSPF contributory service.

The Applicant failed to provide instructions for the payment of her UNJSPF withdrawal settlement until 2004, stating that she had pending appeals before the Tribunal, which prevented her from acting any earlier. Only after the last Judgement was rendered in July 2003 (No. 1107, *Facchin*), some nine years after her separation from service, did the Applicant make inquiries about the final amount of her UNJSPF withdrawal settlement. On 22 January 2004, she was advised, in writing, by the Fund’s Geneva office that her withdrawal settlement would total some US\$ 2,700. Thereafter, on 23 March, the Applicant provided the relevant payment instructions. Subsequently, on 5 April, the Pension Fund effected the payment of the Applicant’s withdrawal settlement in the amount of US\$ 2,072.76, calculated in accordance with article 31 of the UNJSPF Regulations, explaining that the earlier amount quoted was based on a miscalculation. The Pension Fund wrote to her again on 26 May and 12 August, explaining the calculation of the withdrawal settlement.

The Applicant challenged the amount paid by the Pension Fund, on the basis of 22 January letter and, on 25 January, 17 May and 25 July 2005, requested the Standing Committee “for redress”. The Standing Committee reviewed the case at its 188th meeting held on 5-8 July. It decided unanimously to uphold the Pension Fund’s

decision regarding the calculation of the total amount of the withdrawal settlement of the Applicant, in conformity with the Fund's Regulations and Rules. The Applicant was informed of the decision of the Standing Committee on 29 July.

On 17 August 2005, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contention is:

The amount of the withdrawal settlement paid to her is wrong, because it differs from the amount quoted by the Fund's Geneva office in a letter dated 22 January 2004.

Whereas the Respondent's principal contention is:

The inadvertent error in the Fund's January 2004 letter was almost certainly typographical; however, by no means can such a mistake create an increased benefit entitlement.

The Tribunal, having deliberated from 23 October to 21 November 2007, now pronounces the following Judgement:

I. The Applicant challenges the calculation of a withdrawal settlement that was paid to her with respect to a period of her service with the United Nations. The Applicant contends that she was entitled to be paid a withdrawal settlement of US\$ 2,700, in accordance with a letter sent to her by the Chief, Participation, Entitlements and Contribution Section, Geneva, on 22 January 2004. While the Respondent agrees that the Applicant was entitled to a withdrawal settlement for the above-circumscribed period, the Respondent disputes the amount claimed. Specifically, the Respondent alleges that the US\$ 2,700 figure quoted was erroneous; that, in fact, the Applicant was only entitled to a withdrawal settlement in the amount of US\$ 2,072.76, which was the amount the Applicant was paid by the Respondent on 5 April 2004.

II. The Applicant entered the service of the UNOG on 8 August 1980 and separated from service on 15 July 1994. Due to the nature of her contractual arrangements with the Organization, the Applicant, upon her separation from service, was entitled to a withdrawal settlement in accordance with article 31 of the Pension Fund Regulations. This withdrawal settlement was only for the period of 26 September 1993 to 28 February 1994, a period of five months. The Tribunal notes that according to the terms of article 31, the Applicant was entitled only to those contributions that she made; she was not entitled to any contributions made on her behalf by the Organization as her contributory service was only five months:

“Article 31

WITHDRAWAL SETTLEMENT

- (a) A withdrawal settlement shall be payable to a participant whose age on separation is less than the normal retirement age, or if the participant is the normal retirement age or more on separation but is not entitled to a retirement benefit.
- (b) The settlement shall consist of:
 - (i) The participant's own contributions, if the contributory service of the participant was less than five years ...”

In addition, in accordance with article 11 (c) of the Pension Fund Regulations, as at 28 February 1994, she was entitled to statutory interest at the rate of 3.25 per cent, calculated as US\$ 6.67:

“Article 11

ADOPTION OF ACTUARIAL BASES

(a) The Board shall, on the advice of the Committee of Actuaries, adopt, and revise when appropriate, service, mortality and other tables and shall decide upon the rates of interest to be used in the periodic actuarial valuation of the Fund.

...

(c) The rates of interest which, without prejudice to the power of the Board to establish rates under (a) above for the purpose of actuarial valuation, shall be used in all calculations required in connection with these Regulations shall be 2.5 per cent per annum until 31 December 1957, 3 per cent per annum from 1 January 1958 to 31 March 1961 and 3.25 per cent per annum thereafter, until changed by the Board.”

This interest was computed in accordance with UNJSPF Administrative Rule D.3:

- “D.3 (a) Interest shall accrue each year or part of a year on a participant's contributions to the Fund; interest shall not, however, accrue in any year on contributions made during that year.
- (b) For the purpose of accrual of interest under article 25 (b), (c), (d) or (e), article 31 and article 38 (c) of the Regulations, the interest shall be calculated to the end of each financial year and compounded annually at that date.”

III. Upon her separation from service, and for approximately nine years thereafter, the Applicant failed to submit payment instructions so that she could be paid the withdrawal settlement to which she was entitled. In explanation for her failure to submit in a timely fashion the payment instructions, the Applicant claimed that she was unable to do so because she was in the midst of bringing various cases before the Tribunal and had to wait until those matters were resolved before she could submit payment instructions.

Following completion of Judgement No. 1107 (*ibid.*), the Applicant inquired several times as to the specific amount of her withdrawal settlement. On 22 January 2004, a letter from the Chief, Participation, Entitlements and Contribution Section, Geneva, informed her that the amount to which she was entitled was US\$ 2,700. Thereafter, on 23 March (the actual letter was mistakenly dated 23 March 2003), the Applicant provided payment instructions to the Respondent for the payment of her withdrawal settlement. On 5 April, a withdrawal settlement was paid to the

Applicant in the amount of US\$ 2072.76. She challenged the payment as incorrect, based on the letter of 22 January, and requested the Standing Committee of the UNJSPB “for redress” against the Fund’s decision. On 29 July 2005, a letter was sent from the Fund informing the Applicant that the matter had been reviewed by the Standing Committee, and the payment had been upheld. Thereafter, the Applicant brought her claim to the Tribunal.

IV. Notwithstanding the provisions of article 46 (a) of the UNJSPF Regulations - that withdrawal settlements are forfeited if the beneficiary fails, for two years after payment has been due, to submit payment instructions - the Respondent agreed to pay to the Applicant her withdrawal settlement, even though she waited nine years to direct the Organization where to make payment. Having done that, the only issue before the Tribunal is whether the amount paid to the Applicant was the correct amount to which she was entitled.

V. Regardless of the letter sent to the Applicant on 22 January 2004, the Tribunal, upon investigation, is satisfied that the amount paid by the Respondent to the Applicant was correct. While it is unfortunate that the erroneous letter of 22 January may have given the Applicant false hope of receiving a bit more than that to which she was entitled, it does not change the fact that the Applicant was never entitled to more than she had contributed. Based on the record, the Tribunal is satisfied that the Applicant contributed an amount equal to US\$ 2066.09. That amount, together with US\$ 6.67 in interest, is the amount she received. The Tribunal also notes that there is nothing in the record to indicate that the Applicant relied to her detriment on the mistaken belief that she was entitled to an additional US\$ 627.24. Since she appears not to have relied to her detriment on the mistake, the Tribunal finds no basis for considering an award of such money. In this regard, the Tribunal recalls that it has consistently held that in any case where an Applicant alleges arbitrariness or other improper motivation, the *onus probandi*, or burden of proof, rests upon the Applicant. The Applicant in the instant case has not discharged the burden of proof: the amount in the 22 January letter was no more than a mistake which the Pension Fund was fully entitled to correct.

VI. For the foregoing reasons, the Tribunal rejects the Application in its entirety.

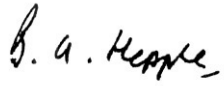
(Signatures)



Spyridon **Flogaitis**
President

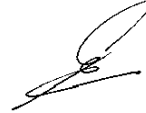


Jacqueline R. **Scott**
Vice-President

Handwritten signature of Bob Hepple in black ink.

Bob Hepple
Member

New York, 21 November 2007

Handwritten signature of Maritza Struyvenberg in black ink.

Maritza Struyvenberg
Executive Secretary