



Administrative Tribunal

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30 September 2009

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1467

Case No. 1526

Against: United Nations Joint Staff
Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Ms. Jacqueline R. Scott, First Vice-President, presiding; Mr. Dayendra Sena Wijewardane, Second Vice-President; Mr. Goh Joon Seng;

Whereas, on 2 March 2007, a widow of a former participant in the United Nations Joint Staff Pension Fund (hereinafter referred to as UNJSPF or the Fund), filed an Application requesting the Tribunal, inter alia:

“II. PLEAS

...

7. The Applicant petitions the Tribunal to suspend the provisions regarding time limits because (a) the Applicant never ceased to pursue her case and (b) the Respondent's letter of 8 January 2007 ... brought to light the rational[e] behind the Respondent's decision that had not been communicated to the Applicant. In response to this disclosure, the Applicant proffers new evidence that invalidates the rational[e] behind ... the Respondent's decision and supports her application to the Tribunal.

8. ... In accordance with Article 35 of the Regulations of the UNJSPF the Applicant is entitled to a widower's benefit.

9. ... [T]he Applicant respectfully requests the Tribunal to find that the Respondent misapplied Argentinean law and that the Applicant is eligible for widower's benefits.

10. [Whereafter] the Applicant most requests the Tribunal to order the payment of widower's benefits effective 1 May 1982.”

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 10 October 2007;

Whereas the Respondent filed his Answer on 17 October 2007;

Whereas the Applicant filed Written Observations on 19 January 2008;

Whereas the Respondent submitted additional documentation on 2 April 2008;

Whereas the Applicant submitted additional documentation on 5 May 2008;

Whereas the facts of the case read as follows:

The deceased UNJSPF participant, a national of Chile, was married in Chile to another Chilean national in 1948. They had one child. While they were residing in Argentina, they divorced by a decree issued by a Mexican Court in 1974. Mr. Lopez then married the Applicant, an Argentine national, who had been married previously in Argentina and also divorced in Mexico. The couple married in Bolivia, while being residents of Argentina. The Applicant's husband retired in 1978 and passed away in 1982. The couple had two children, born in 1975 and 1979.

It would appear that the Applicant's husband, while in active service, never reported his second wife to the Pan American Health Organization/World Health Organization (PAHO/WHO), as his spouse: at the time of his separation from service, his divorced wife and "a child whose mother is the Applicant" were the only dependants on record with PAHO/WHO. Thus, at the time of his death, both PAHO/WHO and UNJSPF recognized the first wife as the legal widow. Consequently, the first wife has been receiving from UNJSPF a surviving spouse's benefit under article 34 of the UNJSPF Regulations. However, the Applicant received for her two children the higher orphan's benefits under article 36 (e) of the UNJSPF Regulations.

According to the Respondent, the Applicant was informed, as early as 1984, that she was not eligible for a UNJSPF surviving spouse's benefit. The validity of the second marriage and the Applicant's status were determined on the basis of the applicable and relevant national laws in force at the time. Apparently, neither Chile nor Argentina recognized "divorce" at the time the divorces and the remarriage took place.

As the substantive decision regarding the identity of the legally recognized wife of the former UNJSPF participant when he retired, and, subsequently, of his legally recognized widow at the time of his death in 1982 was taken in 1982, well over 20 years ago, the Standing Committee of the United Joint Staff Pension Board (UNJSPB) decided, at its 1 87th meeting on 21 July 2004, that the request for review of the decision taken by the UNJSPF secretariat regarding the survivor's benefit was time-barred. The Standing Committee also stated that, had the case been considered on the merits, it would have upheld UNJSPF's decision to recognize the first wife, upon the staff member's death, as his widow.

On 2 March 2007, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Application is receivable.
2. She is the rightful surviving spouse.
3. The UNJSPB erred in fact and law, particularly when it applied Argentine law in its determination of her marital status.

Whereas the Respondent's principal contentions are:

1. The present Application is not receivable, as it is time-barred.
2. The UNJSPB properly reviewed the Applicant's claim and correctly applied the applicable laws.
3. The Applicant is not eligible for surviving spouse benefits. The former staff member's first wife retained those rights.

The Tribunal, having deliberated from 16 July to 31 July 2009, now pronounces the following Judgement:

I. The Applicant brings her claim to the Tribunal, seeking to be paid a widow/survivor's benefit from the UNJSPF, following the death in 1982 of her Chilean husband, a former staff member, to whom she alleges she was married at the time of his death. According to the Applicant, the former staff member was previously married, but on 28 May 1974, the staff member and his then wife entered into an agreement to separate and distribute their property, and on 3 July 1974 the staff member obtained a divorce from that "first" wife in Mexico. Almost immediately thereafter, the Applicant and the staff member were married in Bolivia, on 23 July 1974. They subsequently had two daughters, one born in 1975 and the other born in 1979. When the staff member died in 1982, the Applicant asserts, she was married to and living with the staff member, and they had been married continuously since 1974. She further alleges that the Bolivian marriage was registered in Mexico, Chile, and Argentina, and that this registration evidences the validity of the marriage and the acceptance of same by all three countries. Thus, as the surviving spouse, the Applicant contends that she was entitled to receive a widow's pension from the UNJSPF. She challenges the decision of the UNJSPB and PAHO/WHO to pay the widow's benefit to another woman, the woman the former staff member allegedly had divorced.

II. The Respondent challenges the Applicant's right to bring her case before the Tribunal as time-barred, alleging that the matter is not receivable by the Tribunal, as the Applicant failed to seek administrative review of the decision denying her the pension benefit within the appropriate time period set forth by the Regulations and Rules of the UNJSPF. Specifically, the Respondent argues that the Applicant was notified as early as 1984 of the Respondent's decision not to award her the widow's benefit, but that she waited until 2002, approximately 18 years later, to bring her claim before the Standing Committee of

the UNJSPB. In addition, the Respondent challenges the substance of the Applicant's contentions, alleging that, in fact, the Applicant's alleged "marriage" to the staff member had never been recognized as a valid marriage in Chile, his home state, as Chile did not recognize divorce at the time the staff member allegedly obtained a divorce in Mexico in 1974. The Respondent further buttresses its case on the merits by presenting evidence -- from the staff member's "first" wife to whom the widow's benefit was and continues to be paid -- to the effect that although she and the staff member were separated, they never divorced, that their marriage remained a valid marriage in all respects, and that she is the surviving spouse to whom the widow's benefit has rightfully been paid.

III. The staff member became a UNJSPF participant on 1 August 1968 and retired from PAHO/WHO in 1978. At no time during his service with PAHO/WHO did he notify his employing organization that he had divorced his "first" wife or that he had remarried the Applicant. In fact, at all times relevant hereto, the staff member reported his "first" wife as his dependent and his beneficiary. He did this both for purposes of his pension and for purposes of repatriation grant. Even after he remarried, he continued to list his "first" wife as his beneficiary and dependent. When his first child with the Applicant was born, the staff member apparently modified his designation of both pension and repatriation beneficiaries in 1976 to include that daughter. With respect to the pension, he designated his "first" wife to receive 80% and awarded his daughter 20% of the pension. Apparently, the modification in 1976 was the last time the staff member amended his Designation of Beneficiary form. At no time did the staff member include the Applicant as a beneficiary or dependent with respect to either the pension or the repatriation grant. Therefore, when he separated from service in 1978, the Applicant did not receive repatriation monies; instead, those repatriation benefits were paid to his first wife and his daughter with the Applicant, pursuant to his designation. Moreover, the repatriation form indicates that he was repatriating from Argentina to Caracas, Venezuela and was "to be accompanied by ["first"] wife and daughter [age 3]". In fact, his "first" wife alleges in a written communication to the Respondent that her husband requested, and was granted, travel authorization for her to accompany the staff member from Argentina to Venezuela upon repatriation.

IV. Also, according to the Respondent, the Applicant, also a staff member in her own right, never notified her employing organization that she had remarried, generally, or that she had married the deceased staff member, specifically, and she failed to report the staff member as her beneficiary or dependent.

V. In 1982, upon the death of her husband, the Applicant notified the Respondent immediately and requested that the Respondent pay her the widow's benefit to which she believed she was entitled. Because of the fact that the staff member had never identified the Applicant as his spouse, for purposes of his pension and other benefits, there apparently ensued confusion over whether the Applicant was indeed the staff member's legal spouse. Upon further investigation, over the course of approximately two years, however, the Respondent determined that the Applicant was not the staff member's legal spouse. On 15

May 1984, the Respondent notified the staff member's "first" wife and informed her that she was entitled to the widow's benefit of the staff member's pension. Subsequently, on 23 May of that same year, the Respondent also notified the Applicant that she was not entitled to the benefit, as she was not listed as a dependent by the staff member.

VI. During the period from 1984 to 1986, the Applicant and the Respondent engaged in a course of correspondence, during which time the Applicant tried to make her case that she was indeed the legal spouse of the staff member, regardless of the lack of designation as such by her husband. To this end, she provided the Respondent with various legal and other documents evidencing her husband's divorce and marriage to her, as well as documents reflecting the registration of the second marriage in various other countries. At all times, however the Respondent made clear its position that the staff member had not identified the Applicant as his dependent, that the Applicant was not the legal spouse and therefore that the Applicant was not entitled to any widow's benefit.

VII. Based on the record before the Tribunal, the correspondence between the Applicant and the Respondent ceased between 1986 and 1993. Thereafter, from 1993-2002, the Applicant reinstated her letter-writing campaign to the Respondent, again raising her entitlement to a widow's benefit. This time, however, the Applicant proposed that she receive the widow's benefit upon the death of the staff member's "first" wife. Again, as he had done in the past, the Respondent reaffirmed his position that the Applicant was not entitled to a benefit, as she was not considered to be the legal spouse.

VIII. Finally, in 2002, 16 years after the Respondent first notified her of its decision to deny her the widow's benefit, the Applicant brought her claim to the Standing Committee of the UNJSPB. At its meeting held on 21 July 2004, the Standing Committee decided that the case was time-barred, as the Applicant was informed as early as 23 May 1984 of the Respondent's adverse decision. By letter dated 12 August 2004, the Respondent notified the Applicant of the Standing Committee's decision. According to the Applicant, however, she did not receive this letter until June 2005. The Applicant filed her appeal to the Tribunal on 2 March 2007.

IX. While the Tribunal recognizes the rather complicated nature of the facts presented in this case and the equally complex legal issues raised thereby, the Tribunal will not enter into consideration of the merits of the case, as it finds that the matter is not receivable by the Tribunal, *ratione temporis*, the Applicant having failed to file her appeal with the Tribunal within the time limits of article 7(4) of the Statute of the Tribunal. (See Judgements No. 1335, (2007) and No. 1257 (2005)).

X. According to article 7(4), "an application shall not be receivable unless it is filed within ninety days... reckoned from the date of the communications of the joint body's opinion containing

recommendations unfavourable to the Applicant.” In some circumstances, however, the Tribunal may decide to suspend or waive the provisions regarding time limits, pursuant to article 7(5). Generally, though, the Tribunal will not do so “unless there are extraordinary circumstances, including ‘serious reasons which prevented the Applicant from acting’”. (Judgement No. 1257 (2005), citing Judgement No. 359, *Gpikpi* (1985)).

XI. In the instant matter, the Standing Committee’s adverse decision was communicated to the Applicant by letter of 12 August 2004. That decision was then re-conveyed to the Applicant in two additional letters dated 10 June 2005 and 26 June 2006, respectively. In the latter communication, in response to the Applicant’s request to the UNJSPF that it reconsider her claim, the Respondent specifically directed the Applicant to bring her appeal to the Tribunal. Giving the Applicant the benefit of every doubt, and using 26 June 2006 as the date on which she not only knew of the adverse decision but also that she had to bring her claim to the Tribunal if she wanted to continue to pursue her claim for benefits, the Applicant still did not file her appeal within the ninety day period established by article 7(4). In fact, she did not file her appeal for over eight months following the 26 June 2006 letter from the Respondent. Thus, without more, the Applicant failed to satisfy the time limits of article 7(4). Additionally, as the Applicant did not set forth any circumstances based upon which the Tribunal might waive or suspend the time limits, the Application is not receivable, *ratione temporis*.

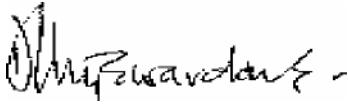
XII. The Tribunal further concurs with the decision of the Standing Committee that the application to that body was similarly time-barred. The Applicant was apprised of the adverse decision denying her a widow’s benefit as early as 23 May 1984. Again, giving the Applicant the benefit of doubt, and assuming that the decision to deny her the widow’s benefit she claimed was not final until the conclusion of the first round of correspondence between the Applicant and the Respondent, which occurred in 1986, the Applicant waited at least sixteen years to seek administrative review. This is obviously well beyond the time limit of ninety days of receipt of notification of the disputed decision required by Section K of the Regulations and Rules of the UNJSPF. Moreover, as the Applicant did not set forth any circumstances which might justify a delay of almost 20 years, her application before the Standing Committee was similarly irreceivable, *ratione temporis*.

XIII. In light of the foregoing, the Application is rejected in its entirety.

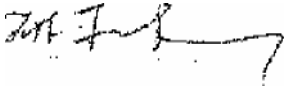
(Signatures)



Jacqueline R. **Scott**
First Vice-President



Dayendra Sena **Wijewardane**
Second Vice-President



Goh Joon Seng
Member

Geneva, 31 July 2009



Tamara **Shockley**
Executive Secretary