



Administrative Tribunal

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30 September 2009

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1468

Case No. 1529

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, member;

Whereas, on 20 April 2007, a former staff member of the United Nations, filed an Application
requesting the Tribunal, inter alia:

“II. PLEAS

8. ...T[[o](#)] [[find](#)]:

....

(b) that the present application alleges non-observance of the rules and regulations of the United Nations Joint Staff Pension Fund [UNJSPF] following the illegal separation of the [Applicant] from the International Criminal Tribunal for Rwanda (ICTR);]

(c) that the present application is receivable under article 7 of its Statute.

9. ...T[[o](#)] [[find](#)]:

(a) that the decision of the Standing Committee of the UNJSPF is ill-founded on facts and in law[;]

(b) that for the reasons detailed ... the UNJSPF denied the [Applicant] the application of due process by failing to inform the [Applicant] of her right to deter payment of her pension when she was illegally separated from the ICTR....

...

10. ...T[o] [order]:

- a. that the decision taken by the Standing Committee of the UNJSPF be rescinded[;]
- b. [to declare] null, void, and of no effect the decision of the Standing Committee of the UNJSPF not to allow the [Applicant] to restore prior contributory service and thus enable her to benefit from a pension.”

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 5 September 2007; and once thereafter until 5 November;

Whereas the Respondent filed his Answer on 5 November 2007;

Whereas the Applicant filed Written Observations on 15 January 2008;

Whereas the Respondent filed additional documentation on 12 September 2008;

Whereas the facts of the case are as follows:

The case concerns the Applicant’s pension participation in the UNJSPF and the possibility of restoring prior contributory service.

The Applicant had been a Fund participant, as a staff member of United Nations Environment Programme (UNEP) from 13 April 1992 through 30 June 1995 and of ICTR from 29 May 1996 through 1 October 1997. As the Applicant’s contributory service resumed within 12 months after her first separation and no benefit had been paid, pursuant to article 21 of the UNJSPF Regulations, her ICTR participation with the Fund was linked to the UNEP participation and continued under the same pension number.

On 1 October 1997, the Applicant separated from ICTR and was paid a withdrawal settlement.

On 27 August 1999, the Applicant joined the United Nations Interim Administration in Kosovo (UNMIK), and served until 30 June 2001. On 9 April 2002, the Applicant requested to “pay back past payments with interest” and to defer the payment in respect of the most recent UNJSPF participation when serving with UNMIK. The Fund responded on 27 April and advised her that, in accordance with article 32 of the UNJSPF Regulations, the maximum period of deferment of payment was 36 months, and that her case would expire on 30 June 2004. As of the date of the present Application, the Applicant has not provided the Fund with her payment instructions. Rather, she has maintained that the Fund should allow her to pay back her UNEP and ICTR contributions now, more than eight years after her first separation from service.

According to the Applicant, she advised the UNJSPF several times that she never wanted her pension benefits to be paid and requested the option to pay back the amounts she had received from the Fund. However, the UNJSPF apparently did not receive any such communications until April/May 2002, following which the Fund replied, on 10 July, that her second participation in the Fund began on 27 August 1999; that under article 24 (a) of the UNJSPF Regulations she had one year from the date of her re-entry

(thus, until 26 August 2000) to request restoration of her prior contributory service in 1992-95 and 1996-97; and, that her 2002 requests for restoration were time-barred.

The Applicant referred to UNAT Judgement No. 1159 (2003), in which the Tribunal ordered payment of compensation to her for all the irregularities committed in the treatment of her situation with ICTR. The UNJSPF advised the Applicant that the Tribunal judgement did not change her pension records in any way, however, she kept asking for a right to pay back “contributions for two years of salary granted by UNAT”. The UNJSPF never received contributions from her for the period of 2 October 1997 to 26 August 1999.

In 2005, the Applicant submitted a written request for review of the Fund’s decisions not to allow her to defer her benefit payment after her first separation from UNEP and ICTR service in 1997, as well as the decision not to allow her to restore the contributory service when she resumed service with UNMIK in 1999. On 19 July 2006, the Standing Committee decided in its 189th meeting that the request for review lodged by the Applicant was time-barred. It added that, had the Committee decided to consider the case on its merits, it would have upheld the Secretary of the UNJSPB’s decision regarding the participation records of the Applicant, as well as the decision to reject her request for restoration.

On 20 April 2007, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. The present Application is receivable.
2. The decision of the Standing Committee of the UNJSPB was based on errors of fact and law and should be made null and void.
3. Her due process rights were violated.

Whereas the Respondent’s principal contentions are:

1. The present Application is not receivable, as it is time-barred.
2. The Standing Committee of the UNJSPB correctly based its decision not to allow the Applicant to defer her benefit payment after her first separation from UNEP and ICTR.

The Tribunal, having deliberated from 9 July to 31 July 2009, now pronounces the following Judgement:

- I. This case concerns the Applicant’s participation in the UNJSPF and the possibility of restoring her prior contributory service. It is an appeal from a decision of the Standing Committee of the UNJSPB taken at its 189th meeting held on 19 July 2006 that the Applicant’s request for the restoration of her prior contributory service was time-barred.

II. As will be seen from the facts referred to below the Applicant has to her credit a total of six years and some four months of service with several organs of the United Nations. It was not one continuous period of service, but it was during several periods of her employment that the Applicant participated in and contributed to the Fund. Whilst over five years of continuous contributory service would normally entitle a participant to the benefit of a periodic pension payment on retirement, the Applicant, despite six years of service, does not have a right to a monthly pension and feels aggrieved. However, a staff member's right to a pension is strictly controlled by the UNJSPF Regulations and Rules, and on the material available to the Tribunal, it is satisfied that these Regulations have been correctly applied.

III. The history of the Applicant's service with the United Nations which gives rise to this appeal is as follows: The Applicant was a participant in the Fund as a staff member of UNEP from 13 April 1992 to 30 June 1995. Thereafter, and within a period of one year from her separation from UNEP, she succeeded in finding employment again within the United Nations. She became a staff member of ICTR from 29 May 1996 to 1 October 1997. The Pension Fund Regulations and Rules under article 32 enabled the deferment of a withdrawal settlement at the time for a period of twelve months from separation from UNEP. Accordingly, her contributions to the Fund for a period of some three years as a staff member were retained in the Fund and as she had obtained further employment within the required twelve month period, her continued participation in the Fund as a staff member of the ICTR was linked to her prior contributory service in UNEP and continued under the same pension number.

IV. Unfortunately for the Applicant, her service with ICTR came to an end on 1 October 1997 and she was separated after one year and four months of service. Prior to December 1998 the option to defer a withdrawal settlement payment was limited to a period of one year, unlike the current regime which enables a deferment for 36 months (article 32 of the UNJSPF Regulations and Rules). The Applicant found employment once more, but only on 27 August 1999 and this time, with UNMIK, where she served up to 30 June 2001.

V. In June 1998, and in conformity with payment instructions which she had given two years previously after she had joined ICTR, she was paid a withdrawal settlement of US\$ 39,183.05 on account of contributions whilst in service with UNEP and ICTR. Before doing so the UNJSPF obtained confirmation that her bank particulars were still valid. The Tribunal finds that the Applicant should have known the reason why the inquiry was made and notes that she did not object. In February 1999, again prior to her joining UNMIK, the Fund informed her that there was in fact a small additional amount due to her, and this elicited an inquiry on her part in June 1999 regarding the payment of that additional amount. She was informed that the amount had in fact been deposited to her account in February 1999.

VI. In August 1999, almost two years after her separation from ICTR, the Applicant joined UNMIK and served until June 2001. The Tribunal notes that it was after she separated from UNMIK, in April 2002, that she began to request a right “to pay back past payments with interest” and to have the payment of benefits deferred in respect of her most recent participation in the UNJSPF whilst serving with UNMIK. The Fund explained under article 32 this could be done for a period of 36 months, i.e., until 30 June 2004. In other words, if she did not locate an employment with the UN and did not become a participant in the UNJSPF once again, the withdrawal settlement payment in respect of her service with UNMIK could be put off until 30 June 2004. To date, the Applicant has not provided payment instructions in respect of this contribution. The Tribunal notes that it might be related to her plea to consolidate her service for purposes of a pension.

VII. As of the Applicant’s separation from UNMIK in June 2001, she maintains that she did not want any of her pension benefits to be paid to her and that she preferred the option to pay back the amounts received from the Pension Fund with any additional interest, so that she could benefit from a regular monthly pension payment, consolidating her service with the United Nations.

VIII. Under the UNJSPF Regulation article 24 (a), the Applicant had one year from the date of re-entry into the Pension Fund – on 27 August 1999- as a staff member of UNMIK, i.e., until COB 26 August 2000, to request a restoration of her prior contributory service from 13 April 1992 to 30 June 1995 (the UNEP period) and from 29 May 1996 to 1 October 1997 (the ICTR period). Therefore, her request made in 2002 was out of time, and that was communicated to her on 10 July 2002. However, the exchange of correspondence continued between the Applicant and the UNJSPF Secretariat, and the matter of the Applicant’s request for review for the restoration of her prior contributory service was not presented to the Standing Committee until 2006. Finally, the Standing Committee of the Pension Board was provided the documentation with regard to the Applicant’s claim, including her request for review dated 24 September 2005. On 17 July 2006 the Standing Committee at its 189th meeting decided that the Applicant’s claim for restoration of her contributory service was indeed time-barred for the reasons set forth above. This decision was communicated to her on 24 August 2006. The Tribunal finds that the Applicant appealed the decision of the Pension Board in a timely manner, within the ninety days allowed to her, filing her appeal on 20 October 2006. The Tribunal takes the view that for reasons already set out above the Applicant had a statutory right to repay the payments made to her together with any other statutory dues and to have her prior contributory service restored, but she failed to invoke her rights on time, i.e., by 26 August 2000. The Tribunal has not found convincing the grounds the Applicant has alleged as regards to the difficulties she encountered in doing this. Although the Tribunal is mindful of the circumstances prevailing in Kosovo at the time, the Tribunal nonetheless finds that the Applicant had the responsibility and the possibility to meet the deadline in a timely fashion. In strictly applying the statutory deadlines, the Tribunal wishes to underline the fact that, in the context of the Pension Fund, the issues are not simply a matter between the

Fund and the Applicant, as the interests of third parties could be affected as well. It appears that the Fund has for these reasons strictly observed the statutory time limits.

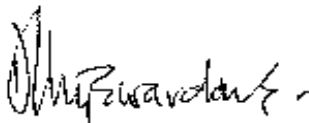
IX. Finally, the Tribunal turns to another contention the Applicant has made to advance her claim. Her contention is that her separation from ICTR was based on a “null and void” decision and that this makes the payment of her withdrawal settlement in June 1998, a defective decision that ought to be “rescinded”. She states: “(h)ad my appointment not been illegally discontinued by the Administration, ... I would have had five years of contributions and would have been eligible for a pension. I therefore suffered a double injustice, loss of employment, denial of due process and loss of pension benefits”. After her separation from ICTR in October 1997 the Applicant successfully challenged the decision to separate her from service and in UNAT Judgement No. 1159 issued in November 2003, she obtained a favorable judgement of the Tribunal. In those proceedings, although the Applicant had requested the restoration of pension rights, the Tribunal did not order reinstatement of the Applicant and instead awarded one and half years’ net salary with all allowances as “compensation” for the violation of her rights. That issue is therefore *res judicata* and cannot be raised again. Also, the Applicant cannot claim that the Judgement had any impact on her rights under the Pension Fund, a position which the Fund has already adequately explained to the Applicant. The Tribunal does not agree with the Applicant’s contention, and in this respect holds that Judgement No. 1159 does not in anyway affect the Applicant’s rights under the Pension Fund.

X. In view of the above the Tribunal rejects the Applicant’s claim in its entirety.

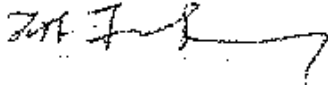
(Signatures)



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



Dayendra Sena **Wijewardane**
Second Vice-President



Goh Joon Seng
Member

Geneva, 31 July 2009



Tamara Shockley
Executive Secretary