



Administrative Tribunal

Distr. Limited
23 December 2009

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1479

Case No. 1520

Against: United Nations Joint Staff
Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Dayendra Sena Wijewardane, President; Mr. Goh Joon Seng, Second Vice-President;
Ms. Jacqueline R. Scott;

Whereas, on 8 February 2007, a 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:

“8. ... [To] judge:

(a) that the Applicant’s son is his ‘child’ as defined in [Article 1 (e) of the UNJSPF Regulations]; and,

(b) as such is entitled to and is granted [a] Child’s Benefit as set out in [Article 36 of the UNJSPF Regulations], effective 16 December 2004.”

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 31 July 2007, and once thereafter until 31 August;

Whereas the Respondent filed his Answer on 30 August 2007;

Whereas the Applicant filed Written Observations on 21 September 2007;

Whereas, on 31 July 2009, the Tribunal requested information from the Applicant and decided to postpone consideration of this case until its next session;

Whereas on 29 August 2009, the Applicant provided the additional information requested by the Tribunal;

Whereas on 7 October 2009, the Respondent filed additional observations;

Whereas on 13 October 2009, the Applicant filed comments on the Respondent's observations;

Whereas the facts of the case are as follows:

The Applicant joined the United Nations as a Security Officer in the Safety and Security Service, Office of General Services, Department of Administration and Management, on 12 February 1981. On 17 May 2001, while he was assigned to the United Nations Mission for the Referendum in Western Sahara (MINURSO), he fathered a child in Morocco. According to the Applicant, upon his return from mission, he sought to enrol his child in the United Nations health insurance plan. Apparently, at that time, he was directed to first report his son as a dependant with the Office of Human Resources Management (OHRM), which required the submission of a birth certificate. This, according to the Applicant proved extremely difficult, as the Moroccan Authorities refused to issue a birth certificate bearing his name as the father.

The Applicant separated from service on 30 September 2003.

On 16 December 2004, the Applicant wrote to OHRM, requesting the issuance of a required personnel action form to retroactively recognize his son. The Applicant did not seek retroactive dependency benefits from the United Nations in respect of his son, but sought to obtain dependency status for his son for the Fund and After-Service Health Insurance (ASHI) purposes. OHRM rejected the Applicant's request as time-barred, as it had been submitted more than a year after the date of his retirement.

Separate requests, also dated 16 December 2004, to ASHI to enroll the child, and to the Fund for the payment of child benefits under article 36 were also denied: by ASHI, in view of the fact that his son was not enrolled under the Applicant's insurance when he retired - and therefore could not be added at that date to ASHI as his dependent; and the Fund was not in a position to record the Applicant's son as his prospective UNJSPF beneficiary almost two years after his separation from service.

On 14 November 2005, the Applicant submitted a formal request to the Standing Committee of the United Nations Joint Staff Pension Board (UNJSPB) for review of the decision not to grant the payment of child benefits pursuant to article 36. The Standing Committee considered the Applicant's request at its 189th meeting held on 19 July 2006 and decided to uphold the Fund's decision not to accept a change in the pension records, that is, to add the Applicant's dependant son as a prospective beneficiary after the Applicant's date of separation, particularly in light of Administrative Rule B.3 of the Fund's Regulations.

The Applicant was notified of the Committee's decision on 24 August 2006.

On 8 February 2007, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. He was unable to submit the required certification (proof of paternity) to the Organization because the Moroccan government of the country where the child was born refused to issue his son a birth registration bearing his name. The cause of delay to submit the required certification was thus beyond his control.

2. Upon submission of the proof of paternity, he satisfied the certification requirements set out in staff rule 103.24 (b) and his son should be entitled to all benefits of a dependent child.

3. In spite of the evidence, the Respondent refused to acknowledge the special circumstances of his case that prevented him from meeting the time limitation set out in Administrative Rule B.3 and turned a “blind eye” to its Regulations, including Article 46 (d).

Whereas the Respondent’s principal contentions are:

1. The Respondent maintains that the independent administrative action taken by the Fund to determine the Applicant’s eligibility for the child’s benefit was done in full conformity with the UNJSPF Regulations, namely article 1 (e) and article 36 of the UNJSPF Regulations, as well as Administrative Rule B.3.

2. The Respondent submits that evidence presented by the Applicant with regard to his efforts to establish his parenthood has no relevance to the decision of the Fund not to accept changes in pension records after the participant’s separation from service.

3. Neither the Fund secretariat nor any other person or entity has discretionary authority to deviate from any statutory provisions which determine beneficiaries and their eligibility for pension benefits.

4. The Applicant’s reference to article 46 (Forfeiture of Benefit) is not relevant in this case either, as the Fund denied the right to a UNJSPF child’s benefit in respect of the Applicant’s son, because he had not been reported to the Fund within the statutory time limit.

The Tribunal, having deliberated from 3 to 25 November 2009, now pronounces the following Judgement:

I. The Applicant requests that the Tribunal rescind the decision of the UNJSPF prohibiting him from including his son as a child beneficiary pursuant to UNJSPF Rules. Specifically, the Applicant requests the Tribunal to find that “the Applicant’s son is his child as defined in UNJSPF Regulations, Article 1(e)” and that he is therefore “entitled to and is granted [the] Child’s Benefit set out in UNJSPF Regulations, Article 36.” The Applicant asserts that extenuating circumstances beyond his control prevented him from successfully enrolling his son as a dependent in the United Nations system, most notably the refusal of the Moroccan Government to issue a birth certificate identifying the Applicant as the child’s biological father, as required by the Organization’s policy, despite his continuous and on-going efforts to obtain that certificate. As redress, the Applicant asks the Tribunal to order the Respondent to allow his son to be treated as his dependent for purposes of the Fund and to receive the Child’s Benefit due to him under the Applicant’s pension.

II. The Applicant, a Panamanian citizen, was employed by the Organization as a Security Officer from 12 February 1981 to the date of his mandatory retirement, 30 September 2003. He held a permanent appointment as of 1 March 1983. The Applicant was a participant in the Fund beginning 12 February 1981. The Applicant’s final mission assignment was served with MINURSO from September 1999 to July 2001. During this mission, the

Applicant fathered a son, born 17 May 2001. The Applicant seeks to add his son as a dependent child after the date of his separation from service and to have UNJSPF include the child as a Fund beneficiary.

III. At the time of the child's birth, both the attending physician and the civil servants in Morocco refused to recognize the Applicant as the boy's father on the birth certificate, because the Applicant is not a Muslim. The Applicant alleges that under Moroccan law a non-Muslim father cannot be recognized as the birth father on official documentation. On 23 May 2001, the Applicant was informed via email by a MINURSO colleague that, according to "civil matters and the applicable laws in Morocco," the child "cannot be registered with the Moroccan Civil Administration and automatically gets [the Applicant's] nationality" such that registration would have to be done at the Panamanian embassy or consulate. The Applicant immediately set about to find a way to obtain a birth certificate for his son.

IV. Upon returning from his mission on 20 August 2001, the Applicant sought to have his son registered as a dependent with the Organization. In August 2001, the Applicant approached OHRM, who informed him that in order to register his son as a dependent with the Organization he had to have a birth certificate on which the Applicant's name appears as the father. This advice was consistent with staff rule 103.24 and the 2001 Questionnaire on Dependency Benefits, particularly, the chart identifying required documentation for benefits. See Staff Rule 103.24. According to that document, "[a]n original birth certificate must be presented when the child is claimed as a dependant for the first time".

V. From the date of the child's birth in mid-2001 until late 2004, the Applicant worked tirelessly to obtain a birth certificate. Because of the Moroccan laws, the Applicant was eventually forced to investigate and pursue other channels to obtain the documentation, including seeking the help of the Panamanian Government. The Applicant approached the Honorary Consul for Panama in Casablanca on 2 December 2002 via email. According to the Applicant, he was informed by Panamanian officials that in order to register children born abroad to Panamanian nationals, a birth certificate from the child's native country along with the name of the Panamanian parent, duly authenticated in the nearest Consulate of Panama, was required. According to the Applicant, he and the child's mother both attempted to procure the documentation from Moroccan officials but were denied on the basis of Islamic law. Adoption of the child by the Applicant apparently was also considered but court officials refused to allow it.

VI. As the Applicant neared retirement, he sought an alternative method of registering his son with OHRM because of his ongoing difficulties in obtaining a birth certificate. Again, however, in a conversation with OHRM, he was informed that, pursuant to staff rule 103.24, he was required to produce a birth certificate with his name appearing as the father in order to register his child as a dependent with the Organization. On 26 August 2003, the Applicant met with a representative of UNJSPF, who similarly informed him that he could not add his son as a child beneficiary under the Fund without previously having registered his son as a dependent with the Organization.

VII. Between the time of the Applicant's retirement, 30 September 2003, and his first written contact with OHRM of 16 December 2004, the Applicant continued to seek the assistance of local Moroccan authorities in obtaining the birth certificate. It was not until December 2004, however, that the Applicant was able to secure a *Certificat de la Vie Individuelle* from the Moroccan interior ministry, an official document issued to children born to foreign parents in Morocco. Immediately upon receipt of the *Certificat*, on 16 December 2004, the Applicant forwarded the document, along with proof of his support of the child, and his renewed request for dependency status to OHRM.

VIII. On 14 January 2005, OHRM denied the request as time-barred on the basis that it was filed more than one year after the Applicant's retirement. Thereafter, the Applicant sought administrative review of the Organization's denial through ALU (Administrative Law Unit)/OHRM, but his claim was rejected. On 14 June 2005, the ALU/OHRM responded that "OHRM was not able to recognize the child . . . born 17 May 2001, as the Appellant's dependent in view of the fact that the Appellant retired from the Organization on 30 September 2003 and his request was not made within one year required by the rule on retroactivity of payments." On 22 August 2005, UNJSPF similarly refused to recognize the child as a prospective UNJSPF beneficiary on the grounds that UNJSPF Administrative Rule B.3 forbids a "change in the records relating to the date of birth of a participant or his or her prospective beneficiaries after the date of the participant's separation".

IX. The Applicant appealed the decision to the Joint Appeals Board (JAB), which on 25 April 2006, rendered a decision unfavorable to the Applicant. The JAB found that the UNJSPF decision was "grounded on UNJSPF Administrative Rule B.3, which does not allow a change in the records relating to the date of birth of a participant or his or her prospective beneficiaries after the date of the participant's separation". The Panel agreed with the UNJSPF decision and found that the duty to timely report was that of the Applicant. The Panel did not find sufficient evidence of the Applicant's attempts to contact the Fund and OHRM upon his return to New York in 2001. The Panel concluded that it was not competent to hear the Applicant's appeal against the UNJSPF decision "insofar as the issue at hand was the child's eligibility to be added effective [16] December 2004 rather than the Respondent's failure to report this child to the UNJSPF as the Appellant's dependent prior to the Appellant's retirement from the Organization on 30 September 2003". In transmitting a copy of the JAB Report to the Applicant, the Officer-In-Charge of the Department of Management advised him of the Panel's decision and noted that "the JAB did not accept your contentions concerning your attempts to register your son with the appropriate offices with the Organization upon your return to New York in August 2001". The Applicant appealed this decision to the Administrative Tribunal.

X. The Applicant requests the Tribunal to find that his son is his "dependent child" who is entitled to be included as a child beneficiary under article 36 of the Fund. The Tribunal recognizes that in order to be eligible for

Pension Fund benefits, a staff member must file the necessary paper work and conform to UNJSPF rules. The applicable law is as follows:

UNJSPF Article 1(e) defines a child as “a child existing on the date of separation or death in service of a participant . . .”

UNJSPF Article 36(a) defines the child’s benefit as a benefit that is “payable to each child of a participant who is entitled to a retirement, early retirement or disability benefit or who has died in service, while the child remains unmarried and under the age of 21.”

UNJSPF Administrative Rule B.1 requires that “[e]ach member organization shall, upon fulfillment by a member of its staff or by one of its officials of the conditions of article 21 of the Regulations, register that person’s admission to the Fund as a participant by furnishing to the secretary of the staff pension committee of the organization such information with respect to that person as the secretary may require, including the terms of appointment; the organization shall thereafter notify the secretary of any changes which occur therein.”

UNJSPF Administrative Rule B.2 states that “[t]he information shall normally include the name of the participant and the date of commencement of participation, date of birth, sex and marital status, and, as the case may be, the names and dates of birth of the participant’s spouse, children under the age of 21, and secondary dependants; the organization shall verify, to the extent possible, the accuracy of the information furnished.”

UNJSPF Administrative Rule B.3 states that “[t]he participant shall be responsible for providing the information in rule B.2 above and for notifying the organization of any changes which occur therein; the participant may be required to submit documentary or other proof of such information to the organization or the secretary of the committee. No change in the records relating to the date of birth of a participant or his or her prospective beneficiaries shall be accepted after the date of the participant’s separation.”

XI. The Applicant asserts that his inability to obtain a birth certificate for his son prior to his retirement should not bar him from including his son as a child beneficiary to the Fund, as the birth certificate was required by the Organization and his inability to obtain one was due solely to external factors beyond his control. The Respondent argues that a pure reading of Rule B.3 prevents any changes to the records following retirement.

XII. The Tribunal finds that, in this case, the Fund knew or had reason to know that the Applicant was in the process of trying to obtain the requisite birth certificate, in order to comply with the rules of the Organization, which clearly required this certificate in order to register the child as a dependent.

XIII. The Applicant first approached the Fund to enroll his son as his dependent on 26 August 2003. At that time, he designated his son as a recipient on the Designation of Receipt of a Residual Settlement form. His son, a child as defined by UNJSPF article 1(e), was eligible for the child’s benefit under article 36(a), as he was both under 21 years of age and unmarried. During this initial meeting, although the Applicant was allowed to submit the form designating his son as a residual beneficiary, he was also specifically told that in order for his son to be accepted as a dependent under the Fund, the child first had to be registered as a dependent with the Organization.

XIV. Under Rule B.3 “the participant may be required to submit documentary or other proof of . . . information to the organization or the secretary of the committee”. In this case, the required documentation was the birth certificate designating the Applicant as the father. While it has been subsequently suggested that the Applicant could have provided “other proof” of his son’s parentage, nobody ever provided a suggestion as to what other documentation would be accepted by the Organization. To the contrary, during his initial meetings with Organization and Fund personnel, it was made clear that only a birth certificate including the staff member’s name as a parent would be accepted. Again, this was in accordance with staff rule 103.24 and the very specific instructions on the 2001 Questionnaire on Dependency Benefits that an original birth certificate was required.

XV. It took the Applicant 15 ½ months following his retirement to get a document which constituted sufficient proof of his fatherhood in the eyes of the Organization. When he produced the document for the UNJSPF on 16 December 2004 and attempted to make an amendment to his Payment Instructions, the UNJSPF rejected his efforts, citing Rule B.3, which states that “no change in the records relating to the date of birth of a participant or his or her prospective beneficiaries shall be accepted after the date of the participant’s separation”. The JAB and UNJSPF strictly construed the final sentence of Rule B.3 to constitute a total bar to a change in records after the date of the participant’s separation. The Tribunal disagrees, given the particular facts in this case.

XVI. The Respondent argues that “the Applicant could have, but did not, notify his employer and/or the UNJSPF of the birth of his son in 2001 when he was still employed by the Organization. The Fund had no evidence that the Applicant had indeed pursued the matter by trying to prove his parenthood; neither did the Fund have any indication of the Applicant’s intentions to claim pension benefits in respect of his son.” Contrary to this assertion, the Applicant has demonstrated to the satisfaction of the Tribunal that indeed the Applicant on more than one occasion approached both OHRM and UNJSPF to attempt to register his son, beginning in August 2001 upon his return to New York. According to evidence presented by the Applicant to the Tribunal, subsequent to the JAB proceedings and in response to the Tribunal’s direct and specific questions about the Applicant’s alleged contacts with the Organization prior to his retirement, the Applicant met with OHRM during the week of 20 August 2001, seeking to enroll his son as his dependent. OHRM specifically told him that in order to register with the Organization, he had to produce a birth certificate with his name identified as the father of his child. The Applicant was never offered the opportunity to file any substitute documentation to prove to OHRM the parentage of his son. Additionally, the Applicant met with a representative of UNJSPF on 26 August 2003, prior to his retirement. At that time, the Applicant completed the “Designation of Recipient of a Residual Settlement” form and included his son as a beneficiary.

XVII. The Respondent argues that the beneficiary form could not constitute notice because the Applicant failed to state the relationship between himself and the beneficiary. However, the form the Applicant signed then requires no such designation; all that is required on the form is the residual beneficiary’s name, address and a designation of proportionate share. It is not surprising, therefore, that the Applicant did not indicate the father-son relationship.

Standing alone, this form might not constitute notice, but along with the Applicant's discussions with the staff members of UNJSPF and OHRM and the Applicant's ongoing quest to procure the required certification, did constitute notice to the Organization, before his retirement, of the Applicant's intentions to have his son designated as his dependent and included in the benefits afforded to the Applicant as a staff member.

XVIII. The Tribunal has consistently supported a strict compliance with deadlines. See Judgement No. 596 *Douville* (1993); Judgement No. 1241 (2005). However, where the Organization requires documentary proof from an applicant who, for reasons beyond his or her control, is unable to supply such documentary proof in a timely fashion despite continued and consistent efforts to do so, the applicant should not be penalized for his or her attempt to comply with the Rules. In addition, UNJSPF did have notice of the Applicant's efforts to procure such documentation prior to his retirement from the time of his 26 August 2003 meeting with a staff member at UNJSPF.

XIX. While the Tribunal is mindful of the JAB's determination that the original record might not have substantiated the Applicant's allegations that he contacted the Organization in a timely fashion, the Tribunal is satisfied, based on additional evidence provided to it by the Applicant in response to its specific inquiries, that the Applicant did in fact contact the Organization on more than one occasion to notify it about his son and his intention to enroll the son as his dependent. He did this as early as 2001, when he returned from mission. The Applicant's ability to recount the names of employees and the dates upon which they spoke constitutes sufficient proof of his rebuffed attempts to register his son with the Organization. Also, the Tribunal notes that the Respondent did not inform the Applicant that if he did not provide a birth certificate for his son before his retirement, his son would be ineligible to receive a Child's Benefit under the Fund.

XX. Moreover, the Tribunal notes that while it would have been to the Applicant's advantage to document in contemporaneous writings his contacts with the Organization, the fact that he did not is not fatal to his claim. The Tribunal recognizes that staff members do not approach all encounters with an eye to subsequent litigation.

XXI. Finally, the Tribunal is further persuaded by the Applicant's documented attempts to procure birth documents from both the Moroccan and Panamanian officials, demonstrating that from the birth of his son to his procurement of the *Certificat de Vie Individuelle* on 16 December 2004, the Applicant was working vigorously and continuously to secure the birth certificate demanded by the Organization, and that the delay in obtaining it was in no way due to his action or inaction.

XXII. The Tribunal notes, however, that the Applicant faced a unique situation and "the Tribunal is mindful of the very unusual and particular facts of this case and the unlikelihood of additional, similar cases arising in the future". (see, Judgement No. 1333 (2007)). Thus, the Tribunal's decision in this matter is limited solely to the circumstances in this case. Where, as here, the Organization made a demand for documentary proof from the Applicant, who

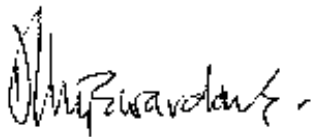
consistently attempted to comply with the demand but was unable to comply within the time limits set out by Organization, the Applicant, in these circumstances, should not be penalized.

XXIII. In addition, the Fund had notice of his attempts to procure the required documentation prior to his retirement and failed to inform him of the adverse consequences of his failure to provide the birth certificate before his retirement. In light of the circumstances of this case, the Tribunal finds that the Applicant's son is entitled to be enrolled as the Applicant's dependent and therefore is entitled to the Child's Benefit.

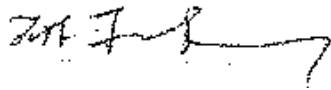
XXIV. In light of the foregoing, the Tribunal:

1. Rescinds the decision of the UNJSPB's Standing Committee; in light of Judgment No. 1478 (2009), which ordered the Organization to recognize the Applicant's son as his child and dependent effective as of 16 December 2004, pursuant to staff rule 103.24(b);
2. Orders the Respondent to grant the Applicant the Child's Benefit pursuant to Article 36 of the UNJSPF Regulations; and
3. Rejects all other pleas.

(Signatures)



Dayendra Sena Wijewardane
President



Goh Joon Seng
Second Vice-President

Handwritten signature of Jacqueline R. Scott in black ink.

Jacqueline R. **Scott**
Member

New York, 25 November 2009

Handwritten signature of Tamara Shockley in black ink.

Tamara **Shockley**
Executive Secretary