



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-129



Before: Judge Sophia Adinyira, Presiding
Judge Mark P. Painter
Judge Inés Weinberg de Roca

Judgment No.: 2011-UNAT-136

Date: 8 July 2011

Registrar: Weicheng Lin

Counsel for Appellant: Edward Patrick Flaherty

Counsel for Respondent: Bernard Cochemé

JUDGE SOPHIA ADINYIRA, Presiding.

Synopsis

1. Francesco Ardisson's (Ardisson) request to consider his five and a half years of service with the International Organization for Migration (IOM) from 1 July 1987 to 31 December 1992 as contributory service to the United Nations Joint Staff Pension Fund (UNJSPF or Pension Fund) was rejected by the United Nations Joint Staff Pension Board (UNJSPB or Pension Board) on the grounds that this service was not in the employment of, at the time, a member organization.
2. Article 24(a) of the Regulations, Rules and Pension Adjustment System of the UNJSPF (UNJSPF Regulations) under which Ardisson is seeking restoration of his IOM service, does not fall under Article 4 of the Agreement concluded on 6 March 2006 between the UNJSPF and IOM that recognizes as contributory service the pre-2006 service of the IOM staff members that joined the Pension Fund on 1 January 2007.
3. Since Ardisson was not a staff member of IOM at the time of the Agreement, the Pension Board correctly held that the terms of the Agreement were not applicable to him.
4. Accordingly, his claim of inconsistency, unequal treatment, and arbitrariness by the Pension Board is unfounded and dismissed. His claim for compensation is also dismissed.

Facts and Procedure

5. Ardisson's first participation in the UNJSPF was from 23 March 1983 to 22 March 1986 as a staff member of the United Nations Development Programme (UNDP). At the end of this three-year participation period, he opted to be paid a withdrawal settlement for his pension contributions.
6. From 1 July 1987 through 31 December 1992, Ardisson worked for IOM and was a participant of the Provident Fund, IOM's own pension fund. At the end of his IOM service, Ardisson was paid a withdrawal settlement by the Provident Fund. The Provident Fund was not part of the UNJSPF system.

7. On 1 January 1993, Ardisson began to work for the United Nations High Commissioner for Refugees (UNHCR), and again became a participant in the UNJSPF. Ardisson availed himself of the option to restore his prior three-year period of contributory service with UNDP. With the exception of one year (15 February 1999 to 14 February 2000), during which he was placed on special leave without pay while he was serving with the European Commission, he remains a staff member of UNHCR and an active participant of the UNJSPF.

8. In December 2006, the United Nations General Assembly amended Article 24(a) of the UNJSPF Regulations regarding the restoration of prior contributory service so as to eliminate the limitation on the right to restoration for existing and future participants based on the length of prior service. The amended Article 24(a), which came into effect on 1 April 2007, provides:

A participant re-entering the Fund on or after 1 April 2007, who previously had not, or could not have, opted for a periodic retirement benefit following his or her separation from service, may, within one year of the recommencement of participation, elect to restore his or her most recent period of prior contributory service. Any participant in active service who re-entered the Fund before 1 April 2007 and was previously ineligible to elect to restore prior contributory service owing to the length of such prior service, may now do so by an election to that effect made before 1 April 2008.

9. Effective 1 January 2007, IOM became a member organization of the UNJSPF. Pursuant to Article 22(c) of the UNJSPF Regulations and the Agreement between the UNJSPF and IOM, IOM staff members, who became participants of the UNJSPF on 1 January 2007, were offered a one-time possibility to have their pre-2007 IOM service recognized as UNJSPF contributory service.

10. In April 2007, Ardisson wrote to the UNJSPF Geneva Office to inquire *inter alia* about “buy[ing] back” his prior employment with IOM (1 July 1987 to 31 December 1992). He was informed that it was not possible for him to do so because that period of five and a half years “was prior to IOM becoming a UNJSPF member organization”, and consequently “that period cannot be considered as a UNJSPF contributory period”.

11. Following exchanges of correspondence between Ardisson and the UNJSPF Geneva Office, the matter was brought before the United Nations Staff Pension

Committee (UNSPC). By letter dated 11 May 2009, the Chief of the UNJSPF Office in Geneva informed Ardisson of the UNSPC's 22 April 2009 meeting in which the UNSPC reviewed the case and confirmed that

[Ardisson's] period of employment with IOM from 16 July 1987 [sic] to 31 December 1992 could not be restored for it does not constitute a prior period of contributory service within the meaning of the UNJSPF Regulations. It further concluded that since [Ardisson was] not an IOM staff member becoming a participant of the Fund on 1 January 2007, when the IOM joined the Fund, the conditions governing IOM's admission did not apply to [Ardisson].

12. In a registered letter dated 18 June 2009 to the UNJSPF in New York, Ardisson appealed the UNSPC's decision to deny his request for restoration. According to the Respondent, the UNJSPF received the letter on 14 July 2009.

13. Ardisson's appeal was not considered until July 2010. The Standing Committee of the Pension Board reviewed the appeal during its annual session and decided to uphold the decision taken by the UNSPC. In a letter dated 30 July 2010, the Chief Executive Officer of the UNJSPF informed Ardisson of the decision of the Standing Committee of the Pension Board.

14. On 13 September 2010, Ardisson filed an appeal against the decision of the Standing Committee of the Pension Board. On 25 October 2010, the UNJSPF filed an answer.

Submissions

Ardisson's Appeal

15. Ardisson maintains that the UNJSPF's decision not to allow him to restore his prior contributory service with IOM violates the principle of equal treatment and that it is arbitrary and capricious. Ardisson also contends that the impugned decision is tainted by mistakes of fact and law seeing that under the amended Article 24(a) of the UNJSPF Regulations, which do not contain any substantive restrictions, Ardisson's period of five and a half years of employment with IOM was "restorable" prior contributory service. By refusing to allow him to restore his prior contributory service, the UNJSPF denied Ardisson equal treatment with IOM staff, in that IOM staff members were afforded the

right to retroactively restore a period of prior service, despite the fact that IOM was not part of the UNJSPF during such time. Conversely, Ardisson was not allowed to do so on the purported grounds that IOM was not part of the UNJSPF when Ardisson was an IOM staff member, though he was a full participant of the UNJSPF since 1993.

16. The response to Ardisson's request adversely affected his legitimate expectations as a United Nations staff member and a UNJSPF contributor, as it contained gross inaccuracies, and failed to give adequate reasons or take into account Ardisson's specific circumstances. The delay in treating Ardisson's appeal entitles him to an award of moral damages.

17. Periods of contributory service of IOM staff members fall under the amended Article 24 of the UNJSPF Regulations as demonstrated by the willingness of the UNJSPF to restore current IOM staff members' contributory service prior to 1 January 2007.

18. Ardisson fulfilled the requisite conditions for restoration in that his period of contributory service of five and a half years was within a time period contemplated by the amended Article 24 of the UNJSPF Regulations.

UNJSPF's Answer

19. The contributory service that Ardisson is seeking to restore was undertaken when he was neither a participant in the UNJSPF nor in the service of a UNJSPF member organization. The fact that IOM became a member organization of the UNJSPF effective 1 January 2007 could not make his IOM period of employment "contributory service" within the meaning of the UNJSPF Regulations. Contrary to the assertion made by Ardisson, there was no restoration of IOM staff members' contributory service prior to 1 January 2007, but rather recognition of earlier service as contributory under the Agreement between the UNJSPF and IOM, which set the conditions governing the membership admission of IOM to the UNJSPF.

20. Neither the UNJSPF nor the Appeals Tribunal is in a position to extend to Ardisson a provision adopted by the General Assembly that does not apply to him. There was no unequal treatment, as all current IOM staff members were given the same option, but Ardisson did not qualify for recognition of his prior IOM service, since the terms of

the IOM's membership in the UNJSPF only covered staff members who were in service with IOM on 1 January 2007, which was not Ardisson's case.

21. Ardisson's allegation of a reasonable expectation that his service with IOM could constitute UNJSPF contributory service is unfounded as he could not have developed such expectations during his service with IOM because IOM was not a UNJSPF member organization at the time.

22. Contrary to Ardisson's claim about the delay in considering his appeal, his appeal was considered within a reasonable time. The UNJSPF Secretariat received Ardisson's appeal on 14 July 2009, when the 2009 annual session of the Pension Board was already underway and there was therefore insufficient time to prepare a submission to the Standing Committee for its consideration in 2009. Consequently, it was scheduled to be considered at the next annual session of the Pension Board in July 2010. Furthermore, the circumstances of Ardisson's case did not justify the scheduling of a special session of the Standing Committee.

Considerations

23. Article 24 of the UNJSPF Regulations provides, in part, that "[a]ny participant in active service who re-entered the Fund before 1 April 2007 and was previously ineligible to elect to restore prior contributory service owing to the length of such prior service, may now do so by an election to that effect made before 1 April 2008". Under Article 1 of the same Regulations the words "restoration" and "service" are defined as follows:

"Restoration" shall mean the inclusion in contributory service of the prior contributory service of a former participant who again becomes a participant.

"Service" shall mean employment as a full-time member of the staff of a member organization.

24. Ardisson's request to consider his five and a half years of service with IOM from 1 July 1987 to 31 December 1992 as UNJSPF contributory service was rejected by the UNSPC on the grounds that Article 1(v) of the above Regulations defines "service" as employment as a full-time staff member of a member organization. The UNJSPB confirmed the decision of the UNSPC.

25. Ardisson submits that this decision was inconsistent, arbitrary, capricious, and violates the principle of equal treatment in that IOM staff members were afforded the right to restore retroactively a period of prior service despite the fact that IOM was not part of the UNJSPF during such time of service; but he was not allowed to do so on the purported grounds that IOM was not part of the UNJSPF at the time that he was an IOM staff member, though he was a full participant in the Pension Fund since 1993.

26. We note that, when Ardisson joined the Fund in 1993, he could not restore his five and a half years of contributory service with IOM, not because of the length of service but because, at the time, IOM was not a member organization of the UNJSPF. Furthermore, the 2006 amendment to Article 24 of the UNJSPF Regulations is inapplicable to him for the same reasons.

27. The Appeals Tribunal recalls that the pre-2006 service of IOM staff members that joined the Pension Fund on 1 January 2007 was recognized as contributory service under Article 4 of the Agreement between the UNJSPF and IOM which was concluded on 6 March 2006, and not under the provision of Article 24(a) of the UNJSPF Regulations. By its terms, this Agreement covered only current staff members of IOM at the time of the Agreement. Article 4 states: "IOM service performed before 2006 by an IOM staff member, who became a UNJSPF participant on 1 January 2007, may also be recognized as UNJSPF contributory service upon the payment by IOM of the actuarial costs involved..." Article 24 of the UNJSPF Regulations under which Ardisson is seeking restoration of his IOM service differs from Article 4 of the Agreement. Since Ardisson was not a staff member of IOM at the time of the Agreement, the Pension Board correctly held that the terms of the Agreement were not applicable to him.

28. Ardisson does not have any legitimate expectations nor can he claim any consideration under the new Agreement between the UNJSPF and IOM as he was not a staff member of IOM at the time of the Agreement.

29. The different treatment of IOM staff members was established by the General Assembly. Restoration is an exceptional benefit and cannot be extended by analogy.¹ It is only the General Assembly that can amend the UNJSPF Regulations. Our

¹ *Nock v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-023.

competence is limited to passing judgment on appeals from decisions of the Standing Committee of the Pension Board alleging non-observance of the UNJSPF Regulations.² Accordingly, the claim of inconsistency, unequal treatment, and arbitrariness against the Pension Board is unfounded.

30. Ardisson is further seeking compensation for the delay by the Pension Board in disposing of his appeal which was filed on 18 July 2009 and heard on 30 July 2010. We find no inordinate delay on the part of the Pension Board.

² *Muthuswami et al. v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-034.

Judgment

31. The appeal is dismissed. The decision of the Pension Board is affirmed.

Original and Authoritative Version: English

Dated this 8th day of July 2011 in Geneva, Switzerland.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Painter

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 29th day of August 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar