

Translated from French

UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Frechon
(Appellant)

v.

United Nations Joint Staff Pension Board
(Respondent)

JUDGMENT
[No. 2010-UNAT-003]

Before: Judge Jean Courtial, Presiding
Judge Mark P. Painter

Judge Jean Courtial, Presiding Judge

Synopsis

1. The United Nations Appeals Tribunal received an appeal submitted by Ms. Frechon ("the appellant") on 16 October 2009 against the decision by the Standing Committee of the United Nations Joint Staff Pension Board at its meeting of 15 July 2009, of which the appellant was notified by a letter dated 21 July 2009, to reject her request for a disability benefit (the contested decision). The Tribunal considers that the Standing Committee could not reject the request unless it disregarded the provisions of article 33 (a) of the Pension Fund Regulations. The Tribunal rescinds the contested decision, but, considering that it is not in a position to rule on the basis of uncertain and disputed facts, it remands the appellant's appeal to the Standing Committee of the United Nations Joint Staff Pension Board so that the Committee may take a decision on the matter on the basis of the reasons set out in this judgment.

Facts and procedure

2. The appellant was hired as an interpreter in the Department of Peacekeeping Operations on 8 June 1998. She was subsequently recruited as a translator on a fixed-term contract by the International Criminal Tribunal for Rwanda in June 2001. She separated from service at the Tribunal on 31 July 2007, the date of expiration of her appointment (which was not renewed).

3. In 2003, the appellant began to suffer from pain in her left arm. On 20 July 2003, she was diagnosed with "cubital tunnel syndrome and complex regional pain". Following an operation, she resumed work on 27 January 2004 until the end of November 2004. She was then placed on sick leave. During 2005 and 2006 she underwent two medical examinations, one in Geneva and the other in New York, to determine whether she could resume work. These examinations concluded that she

Considerations

10. Article 2, paragraph 9, of the statute of the United Nations Appeals Tribunal provides that the Tribunal shall be competent to hear and pass judgement on an appeal of a decision of the United Nations Joint Staff Pension Board (or its Standing Committee) alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund. In this case, Ms. Frechon argues that the decision to reject her request disregards article 33 (a) of the Pension Fund Regulations.

11. Ms. Frechon's appeal first of all raises the issue of how article 33 (a) should be understood. It provides that entitlement to a disability benefit is recognized only when the Board finds a staff member "to be incapacitated for further service in a member organization reasonably compatible with his or her abilities, due to injury or illness constituting an impairment to health which is likely to be permanent or of long duration".

12. In the view of the Appeals Tribunal, it follows from article 33 (a) that the service of which it is necessary to assess the reasonable compatibility with the abilities of a staff member who is suffering from an impairment that is permanent or of long duration and who is requesting disability benefit must be understood as the duties which the staff member could perform, taking into account his or her state of health, in a member organization and which correspond to the duties performed by the staff member on the date of his or her separation, or at least duties commensurate with his or her education and professional qualifications.

13. It emerges from the investigation of this case, and moreover it is not contested, that the appellant's impairment is an incapacity which is permanent or of long duration and which prevents her from using a computer keyboard in her work. The duties whose reasonable compatibility with her abilities need to be assessed are those of a translator or at least duties commensurate with her education and professional qualifications.

14. Secondly, it is appropriate to ask what checks the Fund administration

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may review its decision on her request on the basis of the reasons set out in this judgment.

Judgment

23. Therefore the Appeals Tribunal:

- Rescinds the decision taken by the Standing Committee of the United Nations Joint Staff Pension Board at its meeting on 15 July 2009 with regard to Ms. Frechon's request;
- Remands Ms. Frechon's request to the Standing Committee of the United Nations Joint Staff Pension Board so that it may review its decision on the basis of the reasons set out in this judgment.

(Signed) Judge Courtial
Presiding

(Signed) Judge Painter

(Signed