



UNITED NATIONS APPEALS TRIBUNAL



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deducted under Article 45 should not exceed 50 per cent of a staff member's monthly pension benefit.

15. Each of the parties is appealing separately the decision taken by the Standing Committee of the UNJSPB.

Submissions

Ms. Onogi's Appeal – UNAT-2010-153

16. Ms. Onogi submits that the UNJSPF decision to only deduct USD 1,000, rather than the full amount ordered by the Canadian courts, is unreasonable and the result of the incorrect application of Article 45 of the Regulations.

17. Ms. Onogi submits that the Standing Committee failed to take into account all the facts, including that Mr. Elguindi withdrew one third of the value of his pension account, thereby reducing the monies available for future pension payments as well as the fact that it had determined that the monthly payment of USD 5,000 is a separate cause of action that does not constitute double dipping.

18. Furthermore, Ms. Onogi states that while the UNJSPF does have discretionary powers to determine the monies to be awarded under Article 45 of its Regulations, it erred by failing to provide her with "cogent reasons" for the motivating factors of its decision, thereby rendering it unreasonable.

19. Ms. Onogi further states that the UNJSPF breached her due process rights by neither providing her with information regarding the additional claims that had been filed against Mr. Elguindi, nor the statements that Mr. Elguindi submitted to the UNJSPF in response to her claims, thereby depriving her of the opportunity to properly defend her claims.

Ms. Sheryda's Appeal – UNAT-2010-164

20. Ms. Sheryda appeals the quantum awarded by the UNJSPF as being insufficient. Ms. Sheryda submits as supporting evidence to her claim a recent Egyptian court order which determined that she has no other resources and that therefore, in addition to the cost of her children's education and various annual costs totaling EGP 16,260 and USD 6,785, she

should be receiving EGP 15,000 (USD 2,500) per month with an additional EGP 15,000 (USD 2,500) per month for her children.

Mr. Elguindi's Appeal – UNAT-2010-178

21. Mr. Elguindi submits that following the 2005 Canadian court order, Ms. Onogi received 50 per cent of the total value of his pension account which, at the time, amounted to USD 693,092 as the courts considered that there was no guarantee that Ms. Onogi would receive her share of Mr. Elguindi's pension at a later date.

22. Mr. Elguindi states that due to the fact that Ms. Onogi received a lump sump payment, in addition to the transfer of the title to two properties, and in adherence with the court order that future payments may be varied upon Mr. Elguindi's retirement, any additional payment to Ms. Onogi would be akin to allowing her to double dip into his retirement benefit. Furthermore, Mr. Elguindi adds that the amounts awarded by the Canadian courts were based on the total value of his pension benefit prior to Ms. Onogi receiving a large lump sum payment.

23. Mr. Elguindi adds that while the UNJSPF, under Article 45 of its Regulations, may direct that up to 50 per cent of the pension payments be set aside for another party, such a payment of 50 per cent of the value of his retirement account has already taken place and no future payments should therefore be awarded to Ms. Onogi.

UNJSPF's Answers

24. The UNJSPF filed separate answers in response to each of the three appeals under review. Considering the fact that each of the appeals deals with the same subject matter, the UNJSPF's answers have been consolidated.

25. The UNJSPF submits that that it “does not routinely or automatically endorse or implement the court orders of national courts. The application of article 45 is, therefore, based solely at the discretionary authority of the CEO [of the UNJSPF].” Indeed, under Article 45, the UNJSPF “cannot be responsible for ensuring that retirees meet their private obligations to support their families”. Rather, it “is limited to assisting participants in meeting their obligations to pay maintenance or amounts under divorce settlements”.

26. The UNJSPF submits that the former Administrative Tribunal¹ upheld the discretionary powers afforded by Article 45 of its Regulations and the resulting decision that as a matter of policy it would limit the maximum that can be remitted from a staff member's monthly pension benefit to 50 per cent. Consequently, "the [UNJSPF]'s action did not violate [the staff member's] acquired right to a monthly pension payment nor was the CEO's decision vitiated by arbitrariness, caprice or abuse of discretion".

27. It was only after the UNJSPF was satisfied that all the legal processes involving Ms. Onogi, Ms. Sheryda and Mr. Elguindi were final, and the various obligations for spousal support clearly established, that the UNJSPF agreed to consider the request made by each Of the parties.

28. The UNJSPF disagrees with Mr. Elguindi's assertions that Ms. Onogi's action equates to double dipping as the 30 June 2005 Canadian court order clearly sets out that there are three components to its order, a) an equalization payment, b) monthly spousal support, and c) a lump sum for additional spousal support for the period that preceded the 2005 order.

29. Similarly, on 28 April 2009, in response to Mr. Elguindi's attempt to vary the order pursuant to paragraph 115 of the 2005 order, the Canadian Court dismissed his application. Furthermore, the fact that Ms. Onogi may have other financial means or made financial gains from her investments is irrelevant to this process as that information would have been in front of the courts issuing the respective spousal support orders.

30. The UNJSPF also submits that under Article 48 of its Regulations, its decisions are only appealable to the Appeals Tribunal if the UNJSPF did not observe its own Regulations, which is not the case in these three matters.

31. The UNJSPF therefore "requests that the [Appeals] Tribunal dismiss the appeal[s] and uphold the decision of the CEO [of the UNJSPF]".

Considerations

32. Article 45 of the Regulations provides, inter alia, as follows:

¹ Former Administrative Tribunal Judgment No. 1253, Applicant (2005).

(a) [T]he Fund may, to satisfy a legal obligation on the part of a participant or former participant arising from a marital or parental relationship and evidenced by an order of a court or by a settlement agreement incorporated into a divorce or other court order, remit a portion of a benefit payable by the Fund to such participant for life to one or more former spouses and/or a current spouse from whom the participant or former participant is living apart. Such payment shall not convey to any person a benefit entitlement from the Fund or (except as provided herein) provide any rights

Article 2 of the Statute of the Appeals Tribunal

9. The Appeals Tribunal shall be competent to hear and pass judgement on an appeal of a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund, submitted by:

- (a) Any staff member of a member organization of the Pension Fund which has accepted the jurisdiction of the Appeals Tribunal in Pension Fund cases who is eligible under article 21 of the regulations of the Fund as a participant in the Fund, even if his or her employment has ceased, and any person who has acceded to such staff member's rights upon his or her death;
- (b) Any other person who can show that he or she is entitled to rights under the regulations of the Pension Fund by virtue

exercise of the UNJSPF's discretion thus rendering the entire decision unreasonable and unlawful.

38. Mr. Elguindi argues, on the other hand, that by virtue of the fact that a payment of approximately USD 400,000, which represented essentially 50 per cent of the then value of his pension fund, was awarded to Ms. Onogi on foot of an Order of the Canadian Courts on 30 June 2005 in the course of the parties' divorce, the decision of the Pension Fund to award USD 1,000 to Ms. Onogi constituted "double dipping" into his pension fund. However, in the course of the divorce proceedings in front of the Canadian Court Mr. Elguindi was also ordered to make monthly spousal support payments of USD 5,000 to Ms. Onogi for life, subject to such variation as "may" occur upon Mr. Elguindi's retirement or should Ms. Onogi be required to pay taxes in Canada on her monthly spousal payment.

39. Ms. Onogi's request that the Pension Fund make a monthly deduction from Mr. Elguindi's monthly pension benefit was made in October 2007 following his retirement in September 2007.

40. Mr. Elguindi's response to the Pension Fund, following on Ms. Onogi's request for

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The exercise of the Pension Fund's discretion

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61. As already set out herein, the Appeals Tribunal is satisfied, having regard to all of the circumstances in the three present appeals, that the respective apportionments constitute a reasonable and equitable exercise of the Pension Fund's discretion.

62. Accordingly, the Appeals Tribunal finds no basis to vary or set aside the decision of the Pension Fund as upheld by the Standing Committee.

Judgment

63. The respective appeals are dismissed.

Original and Authoritative Version: English

Done this 16th day of March 2012 in New York, United States.

(Signed)