

Judgment No. 2022-UNAT-1271



JUDGE GRAEME COLGAN , PRESIDING .

1. Carolina Larriera, at relevant times herself a former staff member of the United Nations, appeals before the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) against Judgment No. UNDT/2021/110 of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissing as not receivable her application for compensation as the surviving spouse of a former staff member who died in the course of official duties.¹ The case raise/-0.70.98 454-0.7

to the Pension Fund's documentation, those in the current proceedings turn on the interpretation and application of Appendix D of the United Nations Staff Rules (Staff Rules or Rules).

3. The following summary of the UNAT's 2020 Judgment is no substitute for a reading of the Judgment but rather highlights the features of it pertinent to this appeal. The UNAT's Judgment turned on whether it had been established that Ms. Larriera was Mr. M's spouse. Mr. M, a Brazilian national, was a member of the Pension Fund at the date of his death. The UNAT recorded that Mr. M had married Ms. M, a French national, in 1973 and that they had two children born in 1978 and 1980. At no material time was the Pension Fund notified that anyone else was Mr. M's spouse.

4. The UNAT found also that Ms. Larriera, an Italian national, was a member of the UNJSPF from 1998 until 2008. She was originally recorded by the Fund as having been married to someone other than Mr. M but was later recorded by the Pension Fund as having been divorced. The Pension Fund had no report of Ms. Larriera having been married to, or otherwise in a relationship in the nature of a marriage with, Mr. M.

5. In May 2003, Mr. M initiated divorce proceedings against his then spouse (Ms. M) in a French court. An order was made for their separation and authorizing them to apply for divorce, but their marriage was not then dissolved. The French court's order was that if no application for divorce was filed within the period of six months, the provisional measure for separation would lapse. Less than halfway into that six-month period, Mr. M died. This had the effect in law of ending his marriage to Ms. M. His intention to divorce Ms. M was thwarted only by his tragic and untimely death. In 2005, the French court confirmed that its provisional orders had lapsed, and in 2012 confirmed that there had been no ending of that marriage by a judicial decree of divorce. Mr. M's widow, Ms. M, was paid a widow's benefit by the Pension Fund.

6. Ms. Larriera's claim to a widow's benefit from the Pension Fund was based on her production to it, in 2018, of a Judgment (dated 7 December 2016, and executable on 22 March 2017), of the Ninth Family Court of the Capital District, Rio de Janeiro, Brazil, to the effect that she and Mr. M had been in a "stable union" under Brazilian law from March 2001, that is for more than two years before his death, e7.1 (t2.7(o)-2.1 (dgc))-2.3le

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The Administration cannot dismiss information that it requested and that was officially provided to it by a member state.

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entitlements will be determined by reference to the law of the competent authority under which the personal status has been established. Thus, Ms. Larriera's argument that the UNDT should have relied on ST/SGB/2004/4 to find that only Brazilian law should have determined the personal status of Mr. M, is erroneous. At any rate, UNAT had also ruled that even if ST/SGB/2004/4 was still in force, the determination of Mr. M's personal status would be based on French law because that is where Mr. M chose to marry Ms. M. Consequently, the UNDT was correct to determine Mr. M's status based on French law, as did the UNAT in its Judgment.

20. The UNDT correctly relied on the UNAT Judgment to determine that Ms. Larriera is not Mr. M's widow. UNAT explicitly stated that Ms. Larriera had no basis on which she could argue that the deceased Mr. M's marital status should be changed after his death. While Ms. Larriera is correct that the UNAT Judgment determined whether she was eligible for benefits under the Pension Fund regulations, the facts and the legal principles that underlie the UNAT Judgment apply to her current case, rendering the UNDT's reliance on the UNAT Judgment legally sound under principles of collateral estoppel. Consequently, Ms. Larriera cannot invoke the law of Brazil, being that of Mr. M's nationality, as the determinative law in the instant case to assess the validity of Mr. M's marriage to Ms. M. While the UNAT Judgment refers to "UNJSPF purposes," its holding applies with the same force to the Organization's determination of Mr. M's marital status under Appendix D. Namely, Mr. M chose to marry Ms. M under French law. That marriage was not dissolved under French law by a French court nor by the Brazilian court, nor could it be in the latter case. Consequently, the UNDT was entitled to rely on the UNAT Judgment to hold that Ms. Larriera was not Mr. M's widow and the appeal should be dismissed.

21. The Secretary-General is not required to determine the marital status of Mr. M according to Brazilian law. Ms. Larriera's contention is erroneous

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in error. Ms. Larriera's filing seeking revision of the UNAT Judgment does not render the Judgment any less valid or show an error by the UNDT. The UNAT Judgment is final and binding. Furthermore, the UNDT relied on the reasoning set out in the UNAT Judgment and its conclusion that the determination of Mr. M's personal status is determined by the fact that Mr. M was still married to Ms. M under French law. Not awaiting the determination of the Appellant's request for revision of the UNAT Judgment does not constitute an error in the UNDT's reasoning.

25. The Secretary-General asks that the appeal be dismissed.

Considerations

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apparently narrow wording of the third category of lawful claimant, its intention is clearly to at least allow claims made by, for example, the executor or other administrator of the estate, of a deceased staff member.⁵

28. It is necessary to examine the issues in this appeal on two bases. The first is Ms. Larriera's entitlement to claim under Appendix D. The second, assuming she is so entitled, is to examine her entitlement under the UNDT's Statute to appeal against the Secretary-General's refusal to grant her claim under Appendix D.

29. The entitlement to a death benefit under Appendix D of the Staff Rules crystallises (or becomes subject to the then relevant

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Ms. Larriera had to establish that she qualified under one of the three statutory gatekeeping categories of applicant. It is indisputable that she did not qualify under either of the first two categories, as a current staff member or as a former staff member. Although in a real sense she was a former staff member, her claim did not relate to that status – it depended on the status of the late Mr. M at the date of his death. So, Ms. Larriera had to establish that she was a person entitled to bring a claim “in the name of” Mr. M. The UNDT held she could not so qualify.

34. What does the phrase “in the name of a deceased or incapacitated staff member” mean and

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that there is a congruent interpretation and application of both. The position otherwise would be at least very undesirable, if not intolerable.

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UNDT is a dependent of an incapacitated or deceased staff member

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44. The appeal is granted, and Judgment No. UNDT/2021/110 is reversed.

Original and Authoritative Version: English

Decision dated this 28th day of October 2022 in New York, United States.

(Signed)

Judge Colgan, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Murphy

Judgment published and entered into the Register on this 17th day of November 2022 in New York, United States.

(Signed)

Juliet Johnson, Registrar