



THE

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

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

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