Case No. 2010-158

Ansa-Emmim

(Appellant)

v.

United Nations Joint Staff Pension Board

(Respondent)

JUDGMENT

Before:	Judge Kamaljit Singh Garewal, Presiding Judge Jean Courtial Judge Mary Faherty
Judgment No.:	2011-UNAT-155
Date:	8 July 2011
Registrar:	Weicheng Lin

Counsel for Appellant:	Victor Essien
Counsel for Respondent:	Bernard Cochemé

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22. The Pension Fund initially paid Jacqueline a widow's benefit based on the status report issued by FAO in 1989 which had recorded Michael's divorce from Eva and the remarriage to Jacqueline. While considering Eva's claim for a divorced surviving spouse benefit under Article 35bis of the UNJSPF Regulations, the Pension Fund received a copy of a divorce decree which indicated that Michael's divorce from his second spouse had taken place almost seven years after the marriage to Jacqueline. Therefore, Michael could not have entered into a valid marriage with Jacqueline without first dissolving his second marriage.

23. The Pension Fund submits that, seeing that Michael reported his marriage to Eva at the time of his entry into service with FAO in September 1977, there is no basis for denying it. The Pension Fund was further provided with proof of the divorce in July 1993 that has not been refuted by Jacqueline. Therefore, the marriage between Jacqueline and Michael could not have been legal.

24. The Pension Fund concludes that Jacqueline does not meet the requirement of Article 34(a) of the UNJSPF Regulations since she was not legally married to Michael at the time of his separation as well as at the time of his death. The Pension Fund requests that Jacqueline's appeal be rejected.

Considerations

25. A widow of a participant in the Pension Fund receives a widow's benefit as the surviving female spouse on the basis of Article 34 of the UNJSPF Regulations:

> A widow's benefit shall…be payable to the surviving female spouse of a participant who was entitled to a retirement, early retirement, deferred retirement or disability benefit at the date of his death, or who died in service, if she was married to him at the date of his death in service or, if he was separated prior to his death, she was married to him at the date of separation and remained married to him until his death.

26. What we have to consider is whether, in the particular circumstances of Jacqueline's case, she is entitled to receive a widow's benefit. Jacqueline married Michael in 1986 and remained married to him until his death in 2008, ten years after his separation from service, and there is nothing on record to indicate the contrary. The mention of the date of Eva's marriage in the divorce decree produced by her, in the absence of a valid marriage certificate, does not make Jacqueline's marriage to Michael

invalid for the purposes of determining her rights under Article 34 of the UNJSPF Regulations.

27. We have gone through all the documentary evidence placed on the record, including Jacqueline's marriage certificate, and find that Jacqueline had married Michael in good faith on 20 September 1986 in Dakar, Senegal; whereas Eva has not been able to produce the marriage certificate showing her marriage to Michael on 16 April 1977. The divorce decree is no proof of marriage even though the date of the marriage is mentioned therein. Furthermore, it appears that, on the basis of a statement made by Michael, the FAO status report dated 14 July 1989 indicated that Michael had divorced Eva prior to his marriage to Jacqueline. Following an inquiry by the Pension Fund, Eva produced the divorce decree of 1993. We have no way of knowing Michael's version and the divorce decree cannot be the sole basis of declaring Jacqueline's marriage to Michael invalid.

28. The Pension Fund heavily relies on this Tribunal's judgment in El-Zaim.[2] However, that case is clearly distinguishable from the present one. El-Zaim was a Syrian national who married his first wife Narwal, also a Syrian national, in France in 1962 under French law. He later married Ariolla, a Mexican national, under Sharia law at the Syrian Embassy, Yemen in 1993, prior to divorcing Narwal under Sharia law, also at the Syrian Embassy in Yemen, in 1994. It was only in 2000, after his separation from service in 1998 that El-Zaim registered the divorce from his first wife as well as his marriage to his second wife. In the present appeal, to the contrary of El-Zaim's case where there was no evidence that the first marriage had come to an end prior to El-Zaim's death or that El-Zaim had entered into a valid second marriage, the marital status of Jacqueline was clear on the date of the separation.

29. At the time of Michael's separation from service in 1998 Jacqueline was his legal wife. Consequently, Jacqueline is entitled to the widow's benefit under Article 34 of the UNJSPF Regulations.

30. While communicating the Standing Committee's decision to Jacqueline on 26 January 2010, the Pension Fund did not include a copy of the order detailing its decision, thereby seriously affecting Jacqueline's due process rights in filing her appeal.

[2] El-Zaim v. United Nations Joint Staff Pension Board, Judgment No. 2010-UNAT-007.

This Tribunal has not been shown the order as issued by the Standing Committee detailing the impugned decision; therefore we are unable to determine the reasoning adopted by the Standing Committee. We find that the Standing Committee erred in declaring the marriage between Michael and Jacqueline invalid and in withdrawing the benefits to which Jacqueline was entitled.

31. We would like to iterate that all proceedings which culminate in appealable decisions must be conducted in a reviewable manner, by observing the principles of natural justice. The affected party must get a proper hearing, and the order detailing a decision must contain sound reasons which can be judicially scrutinized upon appeal. Failure to record the order or provide a copy of the order to the party concerned is a grave violation of due process rights as it deprives the concerned party of the proper opportunity to file an appeal.

Judgment

32. This appeal is allowed, and the decision of the Standing Committee of the UNJSPB is set aside. Jacqueline shall receive a widow's benefit under Article 34 of the UNJSPF Regulations.

33. Jacqueline widow's benefits shall be reinstated from the date on which the UNJSPB originally suspended the distribution of her widow's benefits. In accordance with the Appeals Tribunal's ruling in Warren