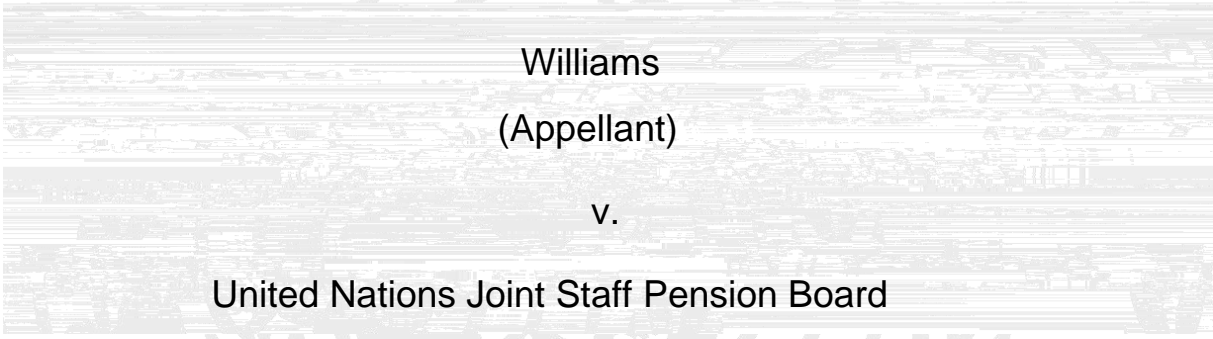




UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2017-UNAT-736



Williams
(Appellant)

v.

United Nations Joint Staff Pension Board

Counsel for Appellant: Michelle Rockcliffe

Counsel for Respondent: Sergio B. Arvizú

JUDGE DIMITRIOS RAIKOS , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mrs. Cynthia Brenda Williams against a decision of the Standing Committee of the United Nations Joint Staff Pension Board (Standing Committee and UNJSPB, respectively) made on 20 July 2016. Mrs. Williams filed her appeal on 27 October 2016, and the United Nations Joint Staff Pension Fund (UNJSPF or the Fund) filed its answer on 6 December 2016.

Fund (UNJSPF Regulations) since her marriage to Mr. Williams took place after Mr. Williams' separation from service. She also advised Mrs. Williams that there was no annuity payable to Mrs. Williams under Article 35 *ter*

that a retiree may choose instead to make

Submissions

Mrs. Williams' Appeal

10. The Fund denied Mr. Williams due process and erred by failing to advise him of the need to purchase an annuity in order that Mrs. Williams receive a survivor's benefit under Article 35 *ter* of the UNJSPF Regulations. Mr. Williams provided the information regarding his new wife on the revised PENS. A/2 form in accordance with Administrative Rule B.2, intending to include his wife for the purpose of her receiving a benefit. He reasonably and legitimately believed that the information he submitted would be reviewed in the same manner as his other documents had been, when the Fund requested him to provide the corrected payment instructions and a new PENS. A/2 form. In the absence of any contrary instructions from the Fund's Secretariat or the Staff Pension Committee (SPC), Mr. Williams again reasonably believed that his record was complete and in order.

11. The Standing Committee erred in its decision by failing to consider the UNJSPF's role and responsibility as the local secretariat of the SPC and by failing to hold the UNJSPF accountable for its responsibility towards Mr. Williams. Consequently, it failed to accord Mrs. Williams a proper hearing and erred in law and process.

12. The Standing Committee denied Mrs. Williams her due process rights when it reviewed her case some 266 days after its receipt of her appeal, in violation of Article 4(c) of the UNJSPF Regulations, whose spirit and intent is to ensure that the participants and beneficiaries receive immediate action and expedited review between meetings.

13. Mrs. Williams requests that the Appeals Tribunal rescind the decision of the Standing Committee, order the Fund to pay her a widow's benefit under Article 35 *ter* of the UNJSPF Regulations and pay unspecified damages as it deems appropriate "for emotional distress, anxiety and suffering caused by the Fund's negligence and its unjustifiable, unreasonable tardiness in considering [her] appeal".

The Fund's Answer

14. Mrs. Williams has no entitlement to a benefit under Article 34(a) of the UNJSPF Regulations. Mr. Williams married Mrs. Williams on 12 March 2009. As that marriage took place after Mr. Williams's separation from service, Mrs. Williams does not fulfill the first

requirement of Article 34 of the UNJSPF Regulations, and is therefore not eligible for a widow's benefit under that provision. Although he again became a participant in the Fund from 4 July 2010 to 30 June 2012, Mr. Williams elected to be paid a withdrawal settlement for his contributions for that period pursuant to Article 40(c) of the UNJSPF Regulations. Consequently, no benefits, including the survivor's benefits, are payable in respect of that participation.

15. Mrs. Williams has no entitlement to a benefit under Article 35 *ter* of the UNJSPF Regulations. Mr. Williams neither informed the Fund of his marriage to Mrs. Williams nor requested information on the possibility of purchasing an annuity for his new spouse. There was no basis for the Fund to inform him of the option to do so. The assertions by Mrs. Williams that her late husband would have purchased an annuity under Article 35 *ter* are speculative and are made without any proof of such intention. Without the purchase of the annuity under Article 35 *ter*, Mr. Williams continued to receive his monthly pension payments in full from the Fund.

18. Mrs. Williams' claim of violation of her due process rights is not supported by the jurisprudence of the Appeals Tribunal, which held that it did not constitute an inordinate delay for the Standing Committee to hear an appeal 11 months after it had been filed. Mrs. Williams' appeal was considered by the Standing Committee at its next meeting in July 2016 in accordance with the Standing Committee's normal meeting schedule. Moreover, she has failed to present any evidence capable of sustaining an award for moral damages.

19. The Fund requests that the Appeals Tribunal dismiss Mrs. Williams' appeal in its entirety, including her request for moral damages.

Considerations

Applicable legal framework

20. The conditions for payment of a widow's benefit are set out in Article 34 of the UNJSPF Regulations (January 2007) as follows:

WIDOW'S BENEFIT

(a) 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.

21. The conditions for payment of a periodic benefit for life to a spouse married after separation are envisaged in Article 35 *ter* of the UNJSPF Regulations, as follows:¹

¹ In the 1 July 2010 edition of the UNJSPF's Regulations, Article 35 *ter* (a) reads:

"A former participant receiving a periodic benefit may be succeeded by his or her surviving spouse, 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."

SPOUSES MARRIED AFTER SEPARATION

(a) A former participant receiving a periodic benefit may elect to provide a periodic benefit for life in a specified amount (subject to paragraph (b) below) to a spouse who was not married to him or her at the date of separation. Such election shall be made within 180 days of the date of marriage ... and shall become effective one year after the date of marriage. ... The benefit shall be payable as of the first day of the month following the death of the former participant. When the election becomes effective, the benefit payable to the former participant shall be reduced in accordance with actuarial factors to be determined by the Fund's Consulting Actuary. An election under this subsection may not be revoked after it becomes effective, except by the death of the spouse, in which case it will be considered terminated as from that date.

(b) Any election made under paragraph (a) shall be subject to the following:

- (i) The amount of the periodic benefit payable to the former participant, after reduction owing to elections made pursuant to paragraph (a) above, shall be at least one half of the benefit that would have been payable without any such elections; and
- (ii) The amount of the benefit payable to the spouse shall not be larger than the amount of the benefit payable to the retired participant after reduction for the elections.

22. Moreover, Article 38 of the UNJSPF Regulations provides for the residual settlement, as follows:

RESIDUAL SETTLEMENT

(a) A residual settlement shall be payable if, upon the death of a participant and the exhaustion, as the case may be, of any entitlements due under these Regulations to

23. Article 31 of the UNJSPF Regulations provides for the withdrawal settlement:

WITHDRAWAL SETTLEMENT

(a) A withdrawal settlement shall be payable to a participant whose age on separation is less than the normal retirement age, or if the participant is the normal retirement age or more on separation but is not entitled to a retirement benefit.

(b) The settlement shall consist of:

- (i) The participant's own contributions, if the contributory service of the participant was less than five years; or
- (ii) The participant's own contributions increased by 10 per cent for each year in excess of five up to a maximum of 100 per cent, if the contributory service of the participant was more than five years.

24. Finally, Article 40 of the same Regulations, under the title "Effect of re-entry into participation", stipulates:

(a) If a former participant who is entitled to a retirement, early retirement or deferred retirement benefit under these Regulations again becomes a participant, entitlement to such benefit or to a benefit derived therefrom shall be suspended and no benefit shall be payable until the participant dies or is again separated.

(b) Such a participant who again becomes a participant and is again separated after at least five years of additional contributory service shall also be entitled, at the time of such subsequent separation, in respect of such service and subject to paragraph (d) below, to a retirement, early retirement or deferred retirement benefit, or a withdrawal settlement under article 28, 29, 30 or 31, as the case may be.

(c) Such a participant, who again becomes a participant and is again separated after less than five years of additional contributory service, shall, in respect of such service, become entitled to:

- (i) A withdrawal settlement under article 31; or
- (ii) Subject to (d) below, a retirement, early retirement or deferred retirement benefit, as the case may be, under article 28, 29 or 30, based on the length of such additional contributory service; provided,

exceed the benefits which would have been payable had the participation in the Fund been continuous.

25. The Appellant, Mrs. Williams, is the surviving spouse of Mr. Williams, who was a Fund participant. The Williams were married on 9 March 2009, approximately five months after Mr. Williams' separation from service on 12 October 2008 and remained married until he died on 18 April 2015. She, therefore, submits that she is entitled to a widow's benefit under Article 34 of the UNJSPF Regulations, and that the Respondent erred in failing to advise Mr. Williams of the necessity to purchase an annuity in order that she, as his surviving wife, receive a periodic benefit for life per Article 35 *ter* of the UNJSPF Regulations.

26. The Fund does not dispute the existence of the marriage of the Williams but submits that, since the marriage took place after the date of separation from service, Mr. Williams was required, but failed, to elect to purchase an annuity for his spouse within the time limit set forth in Article 35 *ter* of the UNJSPF Regulations.

27. The Fund further submits that the Administrative Rules require a Fund participant, under Administrative Rules B.2 and B.3, to provide information concerning, *inter alia*, the date of commencement of participation, date of birth, sex and marital status, and, as the case may be, Article 35, 24 ment 1on, dat

29. Under the applicable legislative framework as set out in Article 34 of the UNJSPF Regulations, the surviving female spouse of a participant, who was entitled to a retirement, early retirement or deferred retirement, is entitled to a widow's benefit, provided that at the date of his death in service they were married 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.

Mrs. Williams' claims for a widow's benefit and a survivor's benefit

30. In the case at hand, these conditions are not met, since Mr. Williams was separated from service on 12 October 2008 and the Appellant married him on 9 March 2009, to wit, after Mr. Williams' separation from service. Accordingly, she is not entitled to a widow's benefit, as the Respondent correctly argues. Moreover, the fact that Mr. Williams became a participant in the Fund again from 4 July 2010 until 30 June 2012 does not assist the Appellant's claim, because Mr. Williams elected to be paid a withdrawal settlement, which under the UNJSPF Regulations extinguished all rights, including survivor's benefits, in respect of that period of participation.

31. Further, with regard to the survivor's benefit, a reading of Article 35 *ter* of the UNJSPF Regulations, in conjunction with Article 34 of the same Regulations, satisfies us that, unlike a widow's benefit under the latter Article, which stems from an individual's participation in the Fund provided that all the conditions are met, the periodic benefit under Article 35 *ter* has to be purchased by a retiree who marries after separation from service. Specifically, Article 35 *ter* of the UNJSPF Regulations provides retirees, who enter into a

into the arrangement with the Fund. In the current case, Mr. Williams neither informed the Fund of his marriage to the Appellant for this purpose nor requested information on the possibility of purchasing an annuity for his new spouse. There was no obligation for the Fund to inform him of the option to do so.

33. In the present case, as is evident from the record before this Tribunal, Mr. Williams did not elect to purchase an annuity pursuant to Article 35 ter of the UNJSPF Regulations. On the contrary, he continued to receive his full monthly pension payments from the Fund, which would have been reduced had he inform

33.

36. The Respondent refutes these arguments by submitting that the Fund serves more than 72,000 beneficiaries and 120,000 participants. Unless those individuals provide information to the Fund in the prescribed manner or contact the Fund to request guidance, the Fund cannot be expected to draw inferences about an individual's intent. There was no basis, in this case, for the Fund to infer that Mr. Williams was reporting his marriage after separation from service and that he may have wished to purchase an annuity for the benefit of the Appellant, because Mr. Williams did not report his marriage to the Appellant to the Fund within one year of his marriage; he did not make any inquiry with the Fund about a surviving spouse's benefit for the Appellant; and the PENS. A/2 form that he submitted was for the purpose of designating beneficiaries for a possible residual settlement.

37. Here again, we see no merit in the Appellant's assertions, which are speculative and unsupported by evidence. The Appeals Tribunal notes that the option to purchase an annuity for a new spouse following marriage after separation from service under Article 35 *ter* of the UNJSPF Regulations has to be made by the retiree. Therefore, it was Mr. Williams' responsibility to contact the Fund if he had wished to purchase an annuity for the Appellant. Moreover, in the present case, it is evident from the record before us that Mr. Williams did not even inquire about the option to purchase an annuity for the Appellant. In this regard, the Standing Committee correctly determined that the survivor's benefit under Article 35 *ter* of the UNJSPF Regulations was the result of a voluntary decision on the part of Mr. Williams, which did not take place.

38. It is true that Mr. Williams submitted on 17 March 2009 to the Fund the PENS. A/2 form titled "Designation of recipient of a residual settlement under Article 38 of the Regulations", in which he listed the Appellant and his two sons from his previous marriage as potential recipients for the purposes of a residual settlement pursuant to Article 38 of the UNJSPF Regulations, and noted under the section on "recipient's relationship to you" that the Appellant was his wife.

39. Nevertheless, the submission of the suf[42.5(l5())T 8D.1413ddns from his pre)3.4(vlliam5137

and on account of the late participant or retire

or dependents, such as marriage, divorce, birth and/or adoption, for the purpose of eligibility for the UNJSPF benefits.

43. Furthermore, the standardized title (Designation of recipient of a residual settlement under Article 38 of the Regulations) and the content of the said PENS. A/2 form submitted by Mr. Williams are clear with respect to the benefit election being made. We are satisfied that Mr. Williams understood, particularly as there is nothing in the record before us to suggest otherwise, that he was designating potential recipients for the purposes of a residual settlement pursuant to Article 38 of the UNJSPF Regulations, as well as the meaning and the consequences of the specific choice he was making.

44. Moreover, as rightly stated by the Fund, the option to purchase an annuity for a new spouse following marriage after separation from service under Article 35 *ter* of the UNJSPF Regulations is clearly detailed and explained in the Fund's booklet on survivor's benefits. Following an amendment, the booklet was included in the CEO's 2009 annual letter, which was sent to all retirees. The UNJSPF Regulations, the booklet and the annual letter are all publicly available on the Fund's website and contain a guide to help the participants in filling out the relevant forms.

45. Specifically, the booklet entitled "Separation", made available on the UNJSPF's website (April 2008), was issued as a guide to facilitate the staff

Original and Authoritative Version: English

Dated this 31st day of March 2017 in Nairobi, Kenya.

(Signed)

Judge Raikos, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Murphy

Entered in the Register on this 26th day of May 2017 in New York, United states.

(Signed)

Weicheng Lin, Registrar