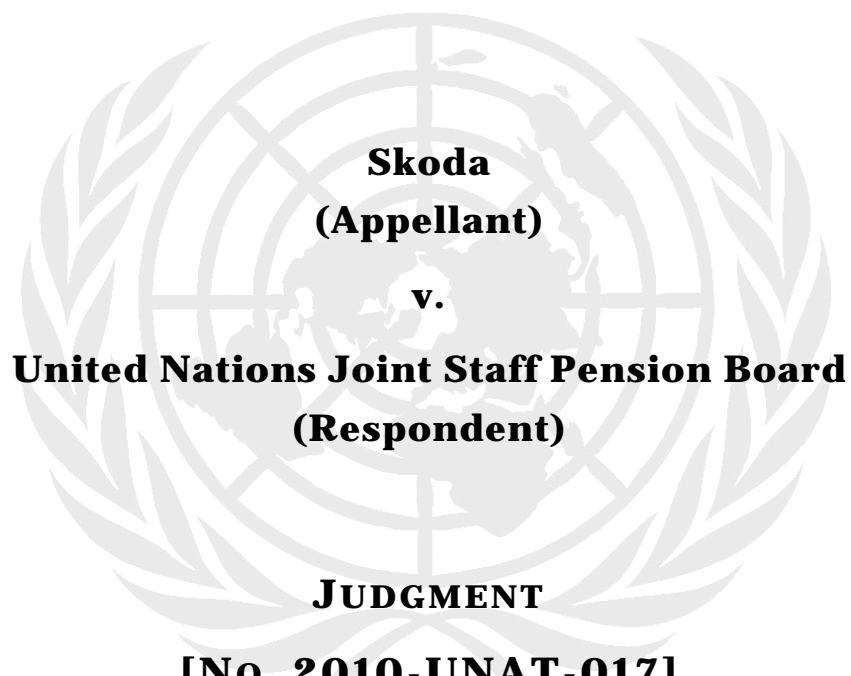




UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES



Skoda
(Appellant)
v.
United Nations Joint Staff Pension Board
(Respondent)
JUDGMENT
[No. 2010-UNAT-017]

Before: Judge Kamaljit Singh Garewal, Presiding
Judge Mark P. Painter
Judge Rose Boyko
Case No.: 2010-022
Date: 30 March 2010
Registrar: Weicheng Lin

Counsel for Appellant: Antonio Bautista

Counsel for Respondent: Dulcie Mapondera

JUDGE KAMALJIT SINGH GAREWAL, Presiding.

Synopsis

1. During the period of his secondment from the United Nations Children's Fund (UNICEF) to the World Bank, neither the Appellant, John Skoda (Skoda), nor UNICEF made any contribution to the United Nations Joint Staff Pension Fund (UNJSPF or Fund). Skoda had many opportunities, but failed to do so. He cannot now succeed in getting contributory service to accrue in his favour for the period of the secondment. The decision of the United Nations Joint Staff Pension Board is affirmed.

Facts and procedure

2. On 2 April 1976, Skoda, a staff member of UNICEF, joined the UNJSPF as a participant.

3. At the outset we would like to briefly describe the nature of the UNJSPF. In this manner we will be able to appreciate Skoda's case better and demonstrate why time is of the essence in making contributions to the Fund.

4. The scope and purpose of the Fund is to provide retirement, death, disability, and related benefits for the staff of the United Nations and other organizations admitted to the membership of the Fund. UNICEF was a member of the Fund while Skoda was a participant. The above objectives are achieved through investment of the Fund's assets, which are derived from contributions made by the participants and the concurrent contributions by member organizations. A participant's contribution is usually one third, and the remaining two thirds is the contribution of the employing member organization (article 25 of the Fund's Regulations). These are monthly contributions, and together with yields from investments, deficiency payments, and receipts from other sources make up the assets of the Fund.

5. Every full-time staff member of each member organization becomes a participant in the Fund on fulfillment of certain conditions. The question to be considered in Skoda's case is regarding the period he was on secondment with the International Bank for Reconstruction and Development (the World Bank) for the period from 14 June 1987 to 29 December 1989. During this period Skoda did not make any contribution to the

Fund and neither did UNICEF or the World Bank (except for a brief period which we shall clarify later).

6. We would like to note that in cases of secondment, staff members do not lose their service lien with their parent organization. In Skoda's case, his parent organization was UNICEF. In terms of the Inter-Organization Agreement concerning Transfer, Secondment, or Loan of Staff among the Organizations Applying the United Nations Common System of Salaries and Allowances, UNICEF would be called the releasing organization and the World Bank the receiving organization. But we are uncertain if this agreement covered cases of secondment to the World Bank. We felt it necessary to clarify the position of seconded staff members because in the instant case Skoda was for many years treated by UNICEF as staff on leave without pay and not as staff on secondment. This has been the cause of all the confusion.

7. It may be noted here that the World Bank was not a member of the Fund in the same way as UNICEF was. However, the World Bank had a special agreement with UNJSPF on the continuity and transfer of pension rights of participants in the Fund and of participants in the World Bank's Staff Retirement Plan. Of course, without making any contribution, Skoda could not derive any benefit for the accrual of contributory service during the period he was on secondment with the World Bank.

8. Skoda returned to UNICEF on 30 December 1989 after his secondment with World Bank was over, and again became a participant of the Fund. During the period of secondment (14 June 1987 to 29 December 1989), the Fund received no contributions from either the participant, or UNICEF or the World Bank. According to Skoda he did receive salary from UNICEF for the period 14 June 1987 to 31 July 1987. Money was deducted from his salary by UNICEF and sent as his contribution to the Fund. Presumably, UNICEF made the corresponding contributions to the Fund during this period. But we are unclear about this aspect of the case. After 31 July 1987 all contributions stopped. Later Skoda also refunded to UNICEF \$ 5621.88, representing the excess salary he had received.

9. Skoda received an agreed termination package on 13 September 1990. Between 1991 and 1995 he was a staff member of the United Nations Department of Economic and Social Affairs (UNDESA). He separated from UNDESA on 31 January 1995, but was re-employed with UNDESA from 1999-2001, during which period he was again a participant in the Fund.

10. UNJSPF records show that Skoda was a participant for two periods: 2 April 1976 to 14 June 1987 and 30 December 1989 to 31 January 1995. During his break in service, while on secondment with the World Bank, he was not a participant in the Fund.

Submissions

Skoda's Appeal

11. Skoda relies on a number of letters, commencing with the one dated 3 April 1987 from Personnel Management Department, World Bank, to show that his appointment with the World Bank was on a secondment basis. The other letters indicating his secondment status include an inter-office memo from a UNICEF Assistant Administrative Officer dated 19 August 1987, a letter from UNICEF Division of Personnel dated 13 April 1989 extending his secondment, and UNICEF Payroll dated 13 September 1989 issued to extend his period of secondment. According to Skoda his position as staff on secondment was clear and unambiguous since the very beginning.

12. Therefore, according to Skoda the letter from the Secretary of UNJSPF dated 7 October 1997 concealed his secondment status. The Secretary wrote that Skoda entered the Fund as a participant on 2 April 1976, separated from service on 14 June 1987, re-entered the Fund on 30 December 1989 and again separated from service on 31 January 1995. But this letter explains the position quite clearly:

Although you did not elect a benefit relating to your contributory service from 2 April 1976 to 14 June 1987 and have received no payment from the Fund, you cannot link this earlier period (from 2 April 1976 to 14 June 1987) with your current period of contributory service (from 30 December 1989 to 31 January 1995) as you had accumulated more than five years of such service by the time of separation and did not re-enter the Fund within twelve months of that separation, i.e. by 15 June 1988.

The above letter also contained directions to fill out certain forms to elect the benefit of the earlier period of participation and return these to the office by 15 November 1997. It was also clarified that the World Bank was not a member organization of UNJSPF.

13. Since Skoda was on secondment from 15 June 1987 through 29 December 1989, there was no break in service and concurrent payments were made by UNICEF to UNJSPF for June and July 1987, his rights of employment including his UNJSPF participation continued. No instruction was issued to Skoda during his secondment as to

the need for him to contribute monthly to the UNJSPF during his secondment. The “special leave without pay” status was a legal fiction that UNJSPF had created without the necessary notification or instruction to either Skoda or his employers as to how to avoid the discontinuity of his UNJSPF participation. How was Skoda to know what advance payments to make regarding “concurrent contributions” to UNJSPF?

14. Upon his return to UNICEF at the end of 1989, Skoda informed UNICEF/New York that the funds provided in the secondment contract for the pension were available and asked UNICEF/New York to contact UNJSPF regarding the transfer of those funds to UNJSPF.

UNJSPF’s Answer

15. According to UNJSPF there are many issues in the appeal which are outside the purview of this Court. The finding of the UNJSPF Standing Committee not to allow Skoda to accrue contributory service retroactively for the secondment period was time-barred as it was made in 2006, 17 years after the end of his secondment to the World Bank.

16. UNJSPF also submits that Skoda had two options: (a) under articles 22(b) and 25(b)(i) of the UNJSPF Regulations and (b) under the Transfer Agreement between the World Bank and UNJSPF. But he failed to exercise either option.

Considerations

17. In our considered opinion every participant in the Fund has a stake in the success of the Fund. His or her contributions to the Fund must be kept up-to-date. The participants’ contributions make up a large part of the corpus of the Fund. The beneficiaries of the Fund are former staff members. Timely payments allow the Fund’s managers to make profitable investments. These yield financial dividends and the Fund grows, for the benefit of its participants. Thus time is of the very essence. Regulations of the Fund provide for situations where a participant has for some reason not been able to make his contributions, either because he is on leave or has left the member organization to work elsewhere, for instance the World Bank in the present case.

18. Reference can be usefully made to Articles 22(b) and 25(b)(i) of the Regulations of UNJSPF:

Article 22 (b)

Contributory service may accrue in respect of leave without pay if contributions are received by the Fund in accordance with Article 25(b).

Article 25(b)(i)

Contributions for the purpose of article 22(b) in respect of a period of leave without pay shall be at a percentage rate of pensionable remuneration of the participant equal to the applicable rates specified in [Article 25] (a) above as payable by the participant and by the employing member organization, combined. Such contributions shall be payable concurrently with such leave, by the participant in full or by the organization in full, or in part by the participant and in part by the organization.

19. The bottom-line in Skoda's case is whether he can compel UNICEF to pay to the Fund its contribution without himself making the corresponding contribution. Skoda is trying to take shelter under UNICEF's mistake of incorrectly describing his status as "leave without pay" whereas he was on secondment. The description was later corrected, but it made no difference to Skoda's case because he did not avail himself of the opportunity to make his contributions in a timely manner. It is true that for a period of about 45 days after he joined the World Bank, UNICEF paid him his salary. Out of this Skoda's contribution to the Fund was also sent. In all probability UNICEF also made a corresponding contribution, but we have been unable to confirm this from the record.

20. As his secondment was with the World Bank, Skoda should have availed himself of the provisions of Article 13 of the UNJSPF Regulations relating to transfer of pension rights. This article states that the UNJSPB

may, subject to the concurrence of the General Assembly, approve agreements with Member States of a member organization and with intergovernmental organizations, with a view to securing continuity of pension rights between the governments of such States or organizations and the Fund.

21. On 1 January 1980, an agreement came into effect between the Fund and the World Bank. Article 4 of the agreement covers cases of the type of secondment in which Skoda had found himself. This was Skoda's second choice but he again failed to exercise his rights.

22. Skoda seeks a direction to UNICEF to deposit its contribution with the Fund, for the period of his secondment. Had he made his own contribution, UNICEF would have

been duty bound to make its corresponding contribution. As he failed to perform his duty, Skoda cannot ask or expect UNICEF to perform its corresponding duty to make contributions on his account.

Judgment

23. The appeal is dismissed.

THE UNITED NATIONS APPEALS TRIBUNAL

Case No. 2010-022



Judge Garewal, Presiding



Judge Painter



Judge Boyko

Dated this 30th day of March 2010 in Geneva, Switzerland.

Original: English

Entered in the Register on this 26th day of April 2010 in New York, United States.



Weicheng Lin, Registrar, UNAT