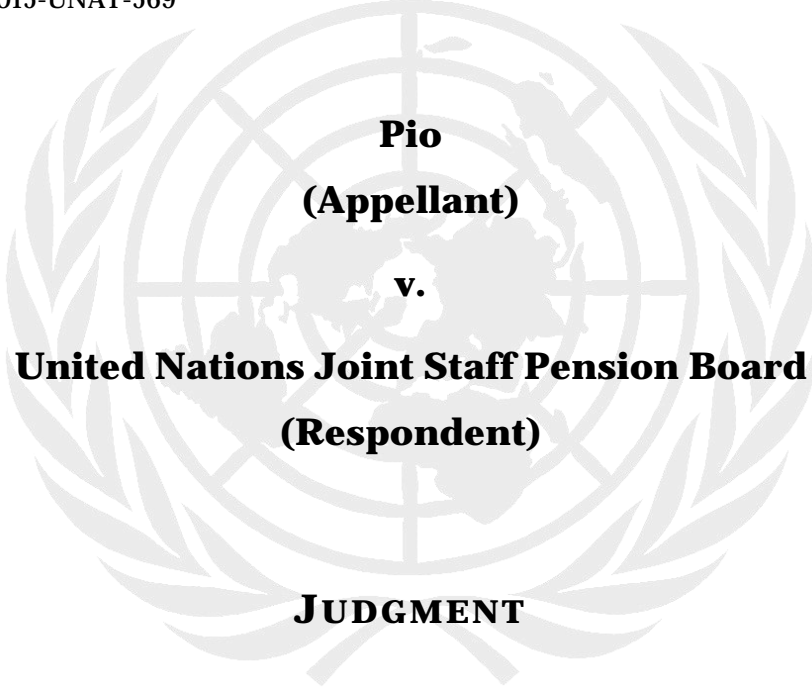




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-569



**Pio
(Appellant)
v.
United Nations Joint Staff Pension Board
(Respondent)
JUDGMENT**

Before: Judge Richard Lussick, Presiding
Judge Inés Weinberg de Roca
Judge Mary Faherty

Case No.: 2014-661

Date: 30 October 2015

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Sergio Arvizú

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Antonio Pio against a decision of the Standing Committee of the United Nations Joint Staff Pension Board (Standing Committee and Board, respectively) taken on 25 July 2014.
2. Mr. Pio appealed on 1 October 2014 and the United Nations Joint Staff Pension Fund (UNJSPF or the Fund) answered on 10 December 2014. On 25 February 2015, by Order No. 214 (2015), the Appeals Tribunal dismissed Mr. Pio's motion of 6 January 2015 seeking to reply to the Fund's answer of 10 December 2014.

Facts and Procedure

3. The following facts are uncontested:¹

... Mr. Pio, an Argentine national, is a retired Pan American Health Organization/World Health Organization (PAHO/WHO) staff member who participated in the UNJSPF from 1971 to 1994 and again, for a five-month period, from late 1994-1995. He retired in Switzerland in 1994 and opted for the "local track" pension; some years later, he relocated to Argentina.

... Mr. Pio first communicated with the UNJSPF over the Argentinian consumer price index (CPI) data on 23 January 2009, requesting that the UNJSPF "suspend" the "local track" in application of paragraph 26 of the Pension Adjustment System (PAS),^[2] but apparently did not receive a substantive response until 27 June 2011. On that date, the Special Assistant to the Chief Executive Officer (CEO) of the Fund responded: "[P]aragraph 26 only applies on a country wide basis and can not be applied to individual retirees. Therefore, your request must be denied." She continued that the situation in Argentina did "not demonstrate aberrant results" as almost all UNJSPF beneficiaries there were receiving 80 per cent of their equivalent US dollar entitlement. Whilst acknowledging that the UNJSPF was aware, and awaited the outcome, of an International Monetary Fund (IMF) study on the quality of Argentina's CPI data, she stated that "had the CPI data been non-existent, the Fund could possibly have made a case in favour of paragraph 26 being applied with respect to Argentina. However, the Fund is not in the position to challenge the official figures published by the government of Argentina."

... Mr. Pio appealed this decision [to the Standing Committee of the Board] on 16 August 2011. His request for rapid convening of the Standing Committee was denied on 23 September 2011. At its 194th meeting on 9 July 2012, the

¹ *Pio v. United Nations Joint Staff Pension Board*, Judgment No. 2013-UNAT-344, paras. 2-4.

² Regulations, Rules and Pension Adjustment System of the United Nations Joint Staff Pension Fund, Annex III - Pension Adjustment System of the United Nations Joint Staff Pension Fund.

Standing Committee rejected Mr. Pio's claim, noting that "under paragraph 14 of the [PAS], the Fund is required to use the official CPI rates for each country as published in the United Nations Monthly Bulletin of Statistics". Argentina having produced such rates, and the Bulletin having published them, the Standing Committee concluded "[t]herefore, there is no basis to suspend the application of the local currency track in accordance with paragraph 26 of the PAS". This decision was communicated to Mr. Pio by letter dated 23 July 2012.

4. On 3 October 2012, Mr. Pio appealed the Standing Committee's decision of 23 July 2012 to this Tribunal, arguing that the Fund erred in declining his request to invoke paragraph 26 of the PAS, which was applicable given that the use of official CPI data produced aberrant results. The Fund answered on 30 November 2012.

5. On 26 August 2013, the Appeals Tribunal handed down Judgment No. 2013-UNAT-344, finding in favour of Mr. Pio. The Appeals Tribunal found that the Standing Committee erred in law and fact with regard to the powers vested in the Fund under paragraph 26 of the PAS when it erroneously found that the very existence of official CPI figures for Argentina precluded them from considering Mr. Pio's case. As it had thus declined to render a decision in Mr. Pio's case, it had failed to exercise the jurisdiction vested in it. The Appeals Tribunal accordingly remanded the case to the Standing Committee for its reconsideration of Mr. Pio's application for discontinuance of the "local track" pension payment in his case and reversion to payment in US dollars.

6. On 5 May 2014, in response to Judgment No. 2013-UNAT-344, the Fund's CEO informed Mr. Pio that he had decided to suspend the application of the local currency track for the payment of pensions in Argentina with retrospective effect from 1 August 2011 and that the Fund would so inform all its beneficiaries in Argentina. This decision was based on reports of the International Monetary Fund (IMF) Executive Board dated between July 2011 and February 2013.

7. On 5 June 2014, Mr. Pio wrote to the Fund's CEO requesting that the retroactive suspension instead take effect as of January 2009, as he had consistently requested in both his appeal to the Standing Committee of 16 August 2011, and in his appeal to the Appeals Tribunal of 3 October 2012, since the inflation situation in Argentina was aberrant as from 2009 onwards.

8. On 16 July 2014, the Standing Committee convened its 196th meeting. After discussing Mr. Pio's case, it upheld the decision of the Fund's CEO that suspension of the local currency track for the payment of pension benefits in Argentina should only take effect as of 1 August 2011. It considered this date appropriate in view of the public statement of 13 July 2011 by the IMF's Executive Board that Argentina needed to improve the quality of its reporting of CPI data. Noting also that suspensions under paragraph 26 of PAS apply on a country-wide and not an individual basis, the decision as to the date of effect of the suspension could not turn solely on the request of one individual.

Submissions

Mr. Pio's Appeal

9. The statement by the IMF Executive Board on 13 July 2011 followed on the heels of a study presented by the IMF on the quality of Argentina's reporting of official data on CPI. Mr. Pio contends that it is logical to assume that the IMF report, which is not publicly available, does not refer to the official CPI data reported by Argentina in 2011 but to those reported in previous years. Mr. Pio submits that the IMF's annual reports of 2008, 2009 and 2010 already questioned the reliability of Argentina's official inflation rates on the basis of information of independent analysts, and that in 2013 the IMF recognized that inflation rates were higher than the official reported data from as early as 2007. The IMF's reports are corroborated by other sources, including official provincial statistics, private agencies' statistics, annual adjustments of nominal wages in Argentina as reported by the United Nations Economic Commission for Latin America and the Caribbean, and annual adjustments of salaries of the staff working in United Nations agencies, as demonstrated by four tables annexed to Mr. Pio's appeal. The United Nations Committee on Economic, Social and Cultural Rights also recognised that the CPI rates of Argentina's National Institute of Statistics and Census (INDEC) in the period between 2007 and 2011 lacked credibility. Consequently, since abundant information proves that the official INDEC CPI data was unreliable as of 2007, the Fund could not meet the central objective of Article 1 of the PAS, namely to ensure that a periodic benefit does not fall below the "real" value as initially established at the time of retirement adjusted for movements in the CPI. Accordingly, the Fund should suspend the local currency track retroactively to January 2009, the date of Mr. Pio's first request to the Fund's CEO.

10. Mr. Pio also contends that the Standing Committee violated several fundamental principles of natural justice in rehearing his appeal at its July 2014 meeting. In particular, he alleges that the Standing Committee failed to respect the directions of this Tribunal in the cases of *Ansa-Emmim* and *Pio* to the Board as to the conduct of appeal proceedings,³ in that: (a) he was not invited to attend the July 2014 meeting and was thus denied the chance to be heard, as well as a chance to respond to the Fund's reply, whereas the Fund was represented at the meeting; (b) the presence of the Fund's advisers at the meeting, as well as the involvement of the Fund's CEO, who is also the Standing Committee's Secretary, in preparing the resultant report demonstrate that the Fund influenced the July 2014 meeting; and (c) the fact that Mr. Pio was denied the opportunity to respond to the Fund's reply meant that the Standing Committee's decision may have been based on incomplete evidence. He also contends that the Standing Committee's members "very likely had insufficient time to study the three appeal cases" before it.

11. Mr. Pio requests that the Appeals Tribunal: (a) rescind the contested decision; (b) direct that the suspension of the local currency track take retroactive effect as of January 2009; (c) consider whether the Fund's CEO abused his discretion in failing to address Mr. Pio's January 2009 claim in a timely manner and ultimately delaying for two and a half years; and (d) reiterate to the Board that its appeal procedures to the Standing Committee must respect the essential principles of natural justice.

The Fund's Answer

12. While acknowledging that there had been statements by the IMF and in the press generally concerning the reliability of Argentina's reporting relating to national CPI data prior to August 2011, the Fund could not reliably base itself on those sources for the purpose of suspending the local currency track in Argentina at an earlier date. The IMF's press release of 13 July 2011 marked the first official statement by that body regarding its concerns with CPI data and the Fund thus found that the proper date for suspension of the local currency track in Argentina was 31 July 2011. The IMF's previous issuances had not been as conclusive and had not laid out the remedial measures that would form the basis for the censure of Argentina in February 2013 after it had failed to make the required progress in regard to implementing remedial measures to improve their data reporting.

³ Citing *Pio v. United Nations Joint Staff Pension Board*, Judgment No. 2013-UNAT-344; *Ansa-Emmim v. United Nations Joint Staff Pension Board*, Judgment No. 2011-UNAT-155.

13. Further, while Mr. Pio requests the backdating of the suspension of the PAS in Argentina to January 2009, he, along with the other 21 Fund beneficiaries in Argentina, had already benefitted from amendments introduced to paragraph 23 of the PAS in 2005, which were designed to address the issues he raised. As the Fund indicated in its response of 1 October 2012, for the quarter ending 31 December 2012, Mr. Pio received 23 per cent more than he had been receiving had the amendments to paragraph 23 not been introduced.

14. As Mr. Pio was only one of 22 beneficiaries in Argentina affected by the Standing Committee's decision to suspend the local currency track as of 1 August 2011, the Fund cannot base its suspension decision only on his request to the Fund. The Fund has to take into account the overall circumstances. There were also no appeals regarding the date of the suspension of the PAS from the other 21 beneficiaries, including Mr. Larghi.

15. Regarding alleged due process violations in the hearing of Mr. Pio's appeal, this Tribunal held in *Larghi* that it was not persuaded that Mr. Larghi's due process rights were violated by reason of his not being present before the Standing Committee at the time it considered his appeal.⁴ The Appeals Tribunal also failed to find any shortcomings in the procedures of the Standing Committee meetings in either Mr. Pio's or Mr. Larghi's prior cases.⁵

16. As to the amount of time the Standing Committee's members had at their disposition to study, inter alia, Mr. Pio's appeals case, as per the Standing Committee's procedures, appeal cases are handed out to those members who are nominated to sit at the Standing Committee meeting on a Wednesday on the preceding Friday.

17. Concerning Mr. Pio's claims relating to the Standing Committee's independence, this Tribunal noted in *Larghi* that Mr. Larghi's similar concerns were "alleviated both by the fact that Mr. Larghi's case is presented in written form to the Standing Committee and by the composition of that body, which includes representatives of [the Federation of Associations of Former International Civil Servants (FAFICS)]".⁶

⁴ *Larghi v. United Nations Joint Staff Pension Board*, Judgment No. 2013-UNAT-343, para. 38.

⁵ *Pio v. United Nations Joint Staff Pension Board*, Judgment No. 2013-UNAT-344, para. 48; *Larghi, ibid.*, para. 38.

⁶ *Larghi, ibid.*, para. 38.

18. The Fund asks that the Appeals Tribunal dismiss Mr. Pio's appeal in its entirety and uphold the decision of the Standing Committee affirming the CEO's decision that 31 July 2011 was the correct date for suspension of the local currency track in Argentina.

Considerations

Appeal on the merits

19. In Judgment No. 2013-UNAT-344, the Appeals Tribunal remanded Mr. Pio's case to the Standing Committee for reconsideration of his application for discontinuance of the "local track" pension payment and reversion to payment in US dollars.

20. The CEO of the Fund has discretion to either discontinue or suspend the "local track" currency pursuant to paragraph 26 of the PAS, which provides:⁷

(a) For countries where the application of the local-currency track would lead to aberrant results, with wide fluctuations depending on the precise commencement date of the underlying benefit entitlement, establishment of a local currency base amount in accordance with section C may be discontinued by the Chief Executive Officer of the Pension Fund. In such cases, the Chief Executive Officer shall duly inform the Board or the Standing Committee of this action, as soon as feasible.

(b) Aberrant results in (a) above may be due, *inter alia*, to:

- (i) Very high inflation rate and an exchange rate which either remained fixed or whose fluctuation was very limited in relation to the level of the inflation rate;
- (ii) The 36-month average of exchange rates covered different currency units or included a currency unit that was no longer applicable;
- (iii) Substantial depreciation of the local currency, combined with non-existent, inconsistent or outdated information on the movement of the country's consumer price index.

(c) For countries where up-to-date CPI data is not available, after examining possible alternative sources of cost-of-living data and taking into account the particular circumstances of the beneficiaries residing in those countries, the application of the local currency track may be suspended; such suspensions shall apply only prospectively, with due notice given to the beneficiaries concerned.

⁷ As per Regulations, Rules and Pension Adjustment System of the United Nations Joint Staff Pension Fund, JSPB/G.4/Rev. 17, in effect as of January 2007, Annex III - Pension Adjustment System of the United Nations Joint Staff Pension Fund.

21. On 5 May 2014, the Fund's CEO decided to suspend the application of the local currency track for the payment of pensions in Argentina with retrospective effect from 1 August 2011. The CEO's decision states:

In accordance with Paragraph 26 of the [PAS], a further review was undertaken of the issues pertaining to the CPI data of Argentina. Of particular note have been the reports issued by the [IMF] Executive Board between July 2011 and September 2012, culminating in the action taken in February 2013, in accordance with Article VIII, Section 5 of the Articles of the IMF. This is the first time that the IMF has used those provisions with respect to any member country. The IMF is a UN Specialized Agency, and a globally recognized authority on economic and financial indicators.

Pursuant to the systematic review and using the discretion conferred upon me as [CEO] under Paragraph 26 of the PAS, I have decided to suspend the application of the local currency track in Argentina with effect from 1 August 2011. [...]

22. Mr. Pio wrote to the Fund's CEO requesting a review of that decision, pointing out that the "IMF annual reports, which were approved by the IMF Executive Board, indicated that the official data on inflation in Argentina were not reliable from 2007 onward" and requesting that the retroactivity of the suspension of the local currency track take effect from January 2009.

23. In the decision now under appeal, the Standing Committee upheld the decision of the CEO. It decided as follows:

[...] The Committee found that although there had been previous statements concerning the CPI data in Argentina, the statement by the Executive Board of the International Monetary Fund (IMF) on 13 July 2011 was the first step that publicly confirmed that the reporting of CPI data by the Government of Argentina was not in compliance with obligations under the Articles of Agreement of the IMF. In the Committee's view, none of the prior issuances by the IMF prior to the statement of 13 July 2011 had clearly stated that the IMF Executive Board recognized the need for Argentina to improve the quality of its reporting of the CPI data, and to bring the quality of its data reporting into compliance with the obligations under the IMF Articles of Agreement and to implement appropriate measures under discussion between the Government of Argentina and the IMF.^[8]

Following review of the situation in February and September 2012, a declaration of censure was issued at a meeting of the IMF Executive Board on 1 February 2013; the declaration was issued pursuant to Article VIII, Section 5 of the IMF Articles of Agreement as there had been insufficient progress in the remedial measures since the review

⁸ Original emphasis.

in September 2012; the statement of 13 July 2011 had provided for an assessment of progress made within 180 days. Since the timeline for remediation was initiated by the statement of the IMF Executive Board on 13 July 2011, the issuance of the declaration of censure was additional clear and convincing proof to the Standing Committee that the date of 31 July 2011, and no earlier date, was the legitimate date for suspension of the two-track in Argentina. [...]

24. Mr. Pio submits that since the IMF's annual reports for 2008, 2009, and 2010 had questioned the reliability of the Argentina official inflation rates on the basis of independent analysts, and since "abundant information proves that the official INDEC CPI data was unreliable as of 2007", the Fund should suspend the local currency track retroactively to January 2009, the date of his first request to the Fund's CEO.

25. We hold that there was nothing arbitrary about the impugned decision of the CEO. It was based on reports of the IMF Executive Board between July 2011 and February 2013. Good reason has been established for the CEO deciding on 31 July 2011 as the proper date for the suspension of the two-track system in Argentina, notwithstanding that there were previous statements regarding the reliability of CPI data in Argentina.

26. Accordingly, we are satisfied that such decision was a proper exercise of the CEO's discretion, which the Standing Committee was entitled to uphold.

27. We find that Mr. Pio has not established that such a decision was an abuse of the CEO's discretion or was in any way erroneous or unlawful.

Alleged violations of due process rights

28. Mr. Pio alleges that the Standing Committee violated several principles of natural justice when it reviewed his appeal at its July 2014 meeting.

29. The allegations Mr. Pio raises in his appeal are similar to those raised in the appeal by Mr. Larghi, which the Appeals Tribunal rejected in Judgment 2013-UNAT-343. In that decision we held as follows:⁹

... In the present case, we are not persuaded that Mr. Larghi's due process rights were violated by reason of his not being present before the Standing Committee.

⁹ *Larghi v. United Nations Joint Staff Pension Board*, Judgment No. 2013-UNAT-343, paras. 38-40 (internal cite omitted).

There is no suggestion from the correspondence furnished to this Tribunal that he sought to be heard in person. We are satisfied from the contents of the 23 July 2012 letter that all the documentation furnished by him in support of his appeal was submitted to the Standing Committee. While Mr. Larghi has raised the concern that his appeal is submitted to the Standing Committee by the very person whose decision he is appealing, we are satisfied that this concern is alleviated both by the fact that Mr. Larghi's case is presented in written form to the Standing Committee and by the composition of that body, which includes representatives of FAFICS.

... As we have already set out, the shortcomings evident in the present case concern the Standing Committee's erroneous interpretation of the PAS provisions, a situation which has now been remedied by our decision to remand Mr. Larghi's appeal from the Pension Fund CEO's decision back to the Standing Committee.

... In *Ansa-Emmim*, we stated 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." This is the standard we have set for appeals before the Standing Committee.

30. In his letter dated 8 January 2014 to the Secretary of the Board, Mr. Pio requested to be present at the meeting of the Standing Committee scheduled to reconsider his application for discontinuance of the "local track" pension payment, pursuant to the remand of the matter by the Appeals Tribunal. However, there is no evidence that Mr. Pio requested to be present at the Standing Committee's deliberations at which the currently impugned decision, namely to suspend the application of the local currency track as of 1 August 2011, was reached. In any event, he concedes that he "was able to submit in writing his points of view to allege that his rights had been affected by the Pension Fund decision regarding the date for the retroactivity of the reversion to the dollar track for the payment of his pension benefit".

31. Noting, as in *Larghi*, the presence of FAFICS at the Standing Committee meeting pursuant to Administrative Rule B.9 of Appendix 2 to the Pension Fund's Rules of Procedure, we are not persuaded that Mr. Pio's due process rights were violated by reason of his not being present before the Standing Committee.

32. Mr. Pio also speaks of the "suspicion that the Standing Committee was not a fully independent and impartial body". He further claims that, because he had no opportunity to reply to the Respondent's arguments, "the contested Standing Committee decision might be based on incomplete evidence", and the Standing Committee members "very likely had

insufficient time to study the three appeal cases [before it], review the Regulations and Rules, check previous judgments on similar cases and consult legal experts (in general the SC members are not lawyers). They had no time to properly give the cases the full attention the cases deserved.” In our view, these are instances of pure conjecture on Mr. Pio’s part.

33. The procedure adopted by the Standing Committee in deciding Mr. Pio’s case was the same procedure applied in *Larghi’s* case, which the Appeals Tribunal found did not violate Mr. Larghi’s due process rights.¹⁰ Similarly, in the present case, we are not persuaded that the procedure of the Standing Committee violated Mr. Pio’s due process rights in any way.

34. Lastly, Mr. Pio requests “that the Tribunal considers whether the Pension Fund [CEO] did or did not commit abuse of discretion for having delayed for two and a half years his decision regarding the request made by the Appellant in January 2009 and in seven subsequent letters about the suspension of the local track for the payment of his pension benefit”.

35. Delivering advisory opinions is not a function of this Tribunal, as it is not empowered with advisory jurisdiction. Mr. Pio’s request is therefore not receivable *ratione materiae*.

36. For the foregoing reasons, the appeal fails.

Judgment

37. Mr. Pio’s appeal is dismissed in its entirety and the decision of the Standing Committee is affirmed.

¹⁰ *Larghi, ibid.*

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Faherty

Entered in the Register on this 18th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar