



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Neville
(Appellant)

v.

United Nations Joint Staff Pension Board
(Respondent)

JUDGMENT

[No. 2010-UNAT-004]

Before:	Judge Sophia Adinyira, Presiding Judge Kamaljit Singh Garewal Judge Rose Boyko
Case No.:	2009-005
Date:	30 March 2010
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Bernard Cochemé

JUDGE SOPHIA ADINYIRA, Presiding.

Synopsis

1. This is a pension case. The Appellant Elizabeth Neville (Neville) has three periods of participation in the United Nations Joint Staff Pension Fund (UNJSPF or Pension Fund). When she entered the Pension Fund for the third time in 1998, she requested restoration of her prior contributory service. Her request for restoration of her first period of participation was denied on the grounds that the Pension Fund's Regulations and Rules only allowed restoration of the most recent period of contributory service. Neville appealed to the United Nations Joint Staff Pension Board (UNJSPB or Pension Board). She argued that upon her second entry into the Pension Fund in 1997, she intended to restore her first participation, but could not do so as she was not given medical clearance and was therefore separated from the WHO prematurely after eight months. Because she was deprived of the last four months of the year in which she could have restored her prior contributory service at FAO, an exception should be made in her case. The Pension Board dismissed her appeal. It also rejected her request for convening a Medical Board to review the correctness of her medical classification on the grounds that her case was not a disability case. This Court affirms the decisions of the UNJSPB.

Facts and Procedure

2. Neville's first participation in the Pension Fund was from 18 August 1985 to 30 June 1987 as a staff member of the Food and Agriculture Organization (FAO). At the end of this participation period, totaling less than five years of contributory service, Neville became entitled to a withdrawal settlement which was paid to her in July 1987. On 2 June 1997, Neville entered the service of the World Health Organization (WHO) and became a participant in the UNJSPF for the second time. After she joined, she was asked to undergo a medical examination. On 5 February 1998, she was advised that she had not been given medical clearance and that she was therefore only eligible for contracts of less than six months in duration. Consequently, she ended her participation in the Pension Fund, effective 31 January 1998, accepting a withdrawal settlement for the eight-month period of service. She continued to work, under short-term contracts and a one-month Special Services Agreement (SSA), until the end of July 1998.

3. Following a review of her case in July 1998, she became eligible for appointments of more than six months. She entered the Pension Fund for the third time and requested restoration of all her prior contributory service.

4. The Pension Fund processed the restoration of her second contributory service. Her request for restoration of her first contributory service with the FAO was however denied on the grounds that it had not been made within a year of re-entering the Pension Fund. Neville wrote to the UNJSPF on 21 February 2000 and, not having received a reply, again on 22 December 2000, requesting restoration of her prior contributory FAO service. In its reply of 27 March 2001, the Pension Fund quoted Article 24 (a) of its Regulations which stipulates that the period restored must be the most recent period prior to re-entry. As Neville's most recent period of participation prior to her re-entering the Fund on 1 August 1998 was the period of 2 June 1997 to 31 January 1998, only that period was open for restoration. She was advised that the period of contributory service with the FAO should have been restored when she became a participant in the Pension Fund the second time, in June 1997. Therefore, her request was denied.

5. Following further correspondence on the subject with WHO and the UNJSPF between 2001 and 2006, Neville requested the WHO Staff Pension Committee (WHO/SPC) to consider her case for restoration under Section K.5 of the UNJSPF Administrative Rules, including review by a Medical Board under Section K.7. On 25 July 2008, the WHO/SPC denied her application. Neville appealed the decision of the Pension Committee to the Standing Committee of the UNJSPB on 22 September 2008. On 22 July 2009, she was advised that the Standing Committee, at its meeting of 15 July 2009, upheld the decision not to restore her prior contributory service, as her "request had not been submitted within the mandatory deadline". Her request for convening a Medical Board was also rejected on the grounds that "her case did not concern a disability case".

6. On 14 October 2009, Neville filed an appeal with the United Nations Appeals Tribunal. The Pension Fund filed its Answer on 17 December 2009.

Submissions

Neville's Appeal

7. Neville challenges the decision of the Pension Board, dated 22 July 2009 confirming the decisions taken by the WHO/SPC to reject her requests (1) to restore her first contributory service with the FAO; and (2) to establish a Medical Board pursuant to Section K.7 (a) of the UNJSPF Administrative Rules.

8. Neville submits that the WHO/SPC failed to give sufficient regard to the reason why it was unable to restore her first period of contributory service within one year of the

recommencement of her participation in the Pension Fund. She argues that upon her re-entry into the Pension Fund on 1 August 1997, it had been her intention to restore her first participation, but she could not do so as she was not given medical clearance and therefore separated from the WHO after eight months. She was therefore deprived of the last four months of the year in which she could have restored her prior contributory service at FAO. Therefore an exception should be made in her case. Neville requests the Appeals Tribunal to overturn the concurrent findings of UNJSPB and WHO/SPC; and to order a restoration of her first prior contributions to the Pension Fund.

9. Neville further contends that the WHO/SPC erred in concluding that there were no grounds to establish a Medical Board pursuant to UNJSPF Administrative Rule K.7(a) because her case did not concern disability. She contends that it was as a result of her entry medical examination that she had to leave the Pension Fund on 31 January 1998; and that she was thereby denied the remaining 4 months of the year in which she could have restored her prior contribution service with the FAO. She argues that the establishment of a Medical Board to review the correctness of her medical classification is therefore highly relevant to her case and that such review was not excluded under Section K.7 a) of the Pension Fund's Administrative Rules.

UNJSPF's Answer

10. The UNJSPF responds that the appeal is without merit. It mainly claims that Neville has failed to exercise her option to restore her first period of participation in a timely manner within her second period of participation in the Pension Fund as required by Article 24 of the UNJSPF Regulations in effect at the time of her re-entry into the Fund.

11. In response to Neville's request for a Medical Board, the UNJSPF states that there are no legal grounds to establish a Medical Board in her case. It submits that the UNJSPF Administrative Rules govern the establishment of a Medical Board in cases where the award of a UNJSPF disability benefit is in dispute. It argues that the issue in contention, namely the conclusion reached by Neville's employing organization WHO in the context of her medical clearance, falls outside the scope of the UNJSPF's Administrative Rules.

Considerations

12. Article 24(a) of the Pension Fund's Regulations and Section F.1 of the Pension Fund's Administrative Rules govern the restoration of a participant's prior contributory service. Article 24(a) of the Pension Fund's Regulations in force in 1997 and 1998 - at the time of Neville's second and third re-entry into the Pension Fund - provides:

A participant re-entering the Fund after 1 January 1983 may, within one year of the recommencement of participation, elect to restore his prior contributory service, provided that on separation the participant became entitled to a withdrawal settlement under article 31(b)(i), and provided further that the service was the most recent prior to his re-entry.

Section F.1. of the Pension Fund's Administrative Rules stipulates:

A participant who elects to restore prior contributory service as a former participant under article 24(a) of the Regulations shall give notice in writing of such election to the secretary of the staff pension committee of the member organization by which he or she is employed not later than one year after the re-commencement of participation and in any case prior to the date of separation if earlier.

These provisions are not different from the current UNJSPF Regulations and Rules.

13. Having carefully considered both parties' submissions, we find no merit in Neville's first ground of appeal. Restoration of prior contributory service upon re-entering the Pension Fund is not automatic. If a participant re-entering the Fund *elects* to have restored his or her prior contributory service, he or she must give notice in writing no later than one year after the recommencement of participation. Where there is a separation within less than one year after the recommencement of participation then the notice must be given before the date of the separation. The period which can be restored is only the *most recent prior to his or her re-entry*. As pointed out by the UNJSPF, Neville had prior notice of her separation and she could have exercised her right to restore her first participation prior to the time of her separation in accordance with Section F.1 of the Pension Fund's Administrative Rules. She however failed to do so.

14. The UNJSPF has no discretion under Article 24(a) of its Regulations to make an exception in Neville's case. The decision by the Standing Committee not to restore Neville's prior contributory service with the FAO did not violate her rights. This ground of appeal must therefore fail.

15. We now turn to Neville's second ground of appeal that the WHO/SPC erred in concluding that there were no grounds to establish a Medical Board pursuant to Section K.7 of the Pension Fund's Administrative Rules. Section K.7 (a) provides:

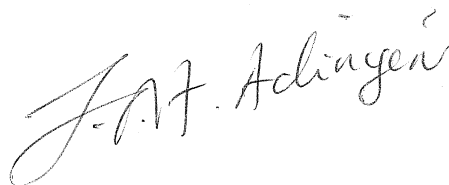
Where the outcome of the review turns in whole or in part on the medical conclusions on which the disputed decision was based, the staff pension committee, or the Standing Committee as the case may be, shall obtain the advice of a medical board on the correctness or otherwise of such conclusions before proceeding with the review.

16. It is clear from the correspondence between Neville and the WHO/SPC and the UNJSPB, respectively that Neville's application for review solely related to the issue of restoration of her first period of participation in the Pension Fund when she was a staff member of the FAO. We note that Neville only raised the issue of her medical clearance to justify why she failed to request restoration of her first participation when she re-entered the Pension Fund. However, we found this explanation irrelevant since the Neville could have filed her request in a timely manner *before* her separation. Any challenge that may be lawfully raised by Neville against her medical clearance is not within the jurisdiction of the UNJSPF to consider as the review before the Pension Board did not involve a disability claim.

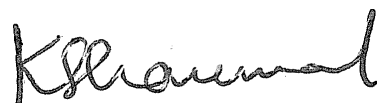
17. The decision by WHO/SPC and UNJSPB not to restore Neville's first participation was not based on any medical conclusion but on her failure to request restoration within the prescribed time limit under the Regulations and Rules of the Pension Fund. Accordingly there is no legal basis for setting up of a Medical Board. Neville's second ground of appeal is therefore dismissed.

Judgment

18. In view of the foregoing, the appeal is dismissed in its entirety.



Judge Adinyira, Presiding



Judge Garewal



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