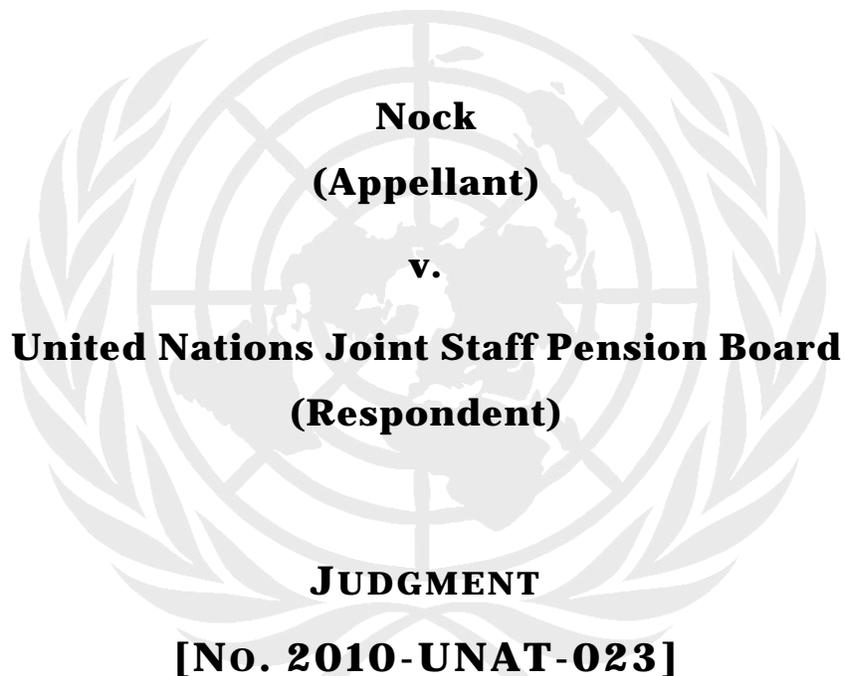




UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES



Nock
(Appellant)
v.
United Nations Joint Staff Pension Board
(Respondent)
JUDGMENT
[No. 2010-UNAT-023]

Before: Judge Luis María Simón, Presiding
Judge Inés Weinberg de Roca
Judge Sophia Adinyira

Case No.: 2010-028

Date: 30 March 2010

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Jaana Sareva

JUDGE LUIS MARÍA SIMÓN, Presiding.

Synopsis

1. The Appellant, Annette Nock (Nock), challenges the decision of the United Nations Joint Staff Pension Fund (UNJSPF or Fund) to deny her request for restoration of her first participation period on the ground that it was not her most recent period of contributory service. We find no error in this decision.

Facts and Procedure

2. Nock first participated in the Fund from 1976 to 1984 when she worked with the World Meteorological Organization and subsequently with the United Nations High Commissioner for Refugees. At the end of this participation period totaling more than seven years, Nock opted for a partial deferred retirement benefit and commuted part of her benefit into a lump sum one-time payment (USD 17,740).

3. Between June 1985 and October 1987, Nock worked for the World Health Organization (WHO) on several short-term contracts. Since each of her appointments was for less than four months, they did not qualify her for participation in the Fund. Because she had several months' break-in-service, she worked, according to the Fund's calculation, only seventeen months.

4. In June 1988, Nock re-entered the Fund and added the seventeen months through validation under article 23 of the UNJSPF Regulations. When she left the Fund in 1988, she was entitled under article 31 of the Fund Regulations, to a withdrawal settlement, a one-time payment equivalent to her own contributions plus interest. She opted for the withdrawal settlement. The benefit was paid to her in February 1991.

5. From August 1997 to February 1998, Nock served again on short-term appointments which did not qualify her for participation in the Fund.

6. On 11 February 1998, Nock re-entered the Fund for the third time when she was re-employed by the WHO. She is due to retire on 17 July 2010 at the age of 62. Nock again availed herself of the option to validate under article 23 of the UNJSPF Regulations, the service period from August 1997 to February 1998, during which she was not eligible for UNJSPF participation. She also exercised her option to restore her

second participation period covering her seventeen-month contribution between 1985 and 1987.

7. Following an amendment to article 24 of the UNJSPF Regulations, Nock requested the restoration of her first participation period (November 1976 to March 1984). On 29 September 2008, the UNJSPF Secretariat informed her that her request would not be entertained because her first participation period was not her “most recent period of contributory service”.

8. On 11 March 2009, the secretariat of the former Administrative Tribunal received an appeal from Nock against the Fund’s decision. On 17 June 2009, UNJSPF filed its Answer. Following the abolition of the former Administrative Tribunal in December 2009, the case was transferred to the United Nations Appeals Tribunal (UNAT or Tribunal).

Submissions

Nock’s Appeal

9. Nock contends that the decision under appeal is unfair and based on a “technicality” which condemns her to a precarious existence as a retiree and jeopardizes her existence as a single person in Geneva with no other source of income. Upon her retirement in July 2010, she will only have served 12 years in the WHO and will therefore only receive minimal pension allocation.

10. She claims that the amalgamation of her two pensions would enable her to face her forthcoming retirement without the present trepidation at an otherwise dire financial situation.

UNJSPF’s Answer

11. UNJSPF responds that Nock’s request for restoration of her first participation period (1976 to 1984) should be rejected because it is not her most recent prior period of contributory service upon her re-entry in UNJSPF in 1998.

12. UNJSPF stresses that the revision of article 24 in 2006 did not remove the restriction allowing only the most recent period of contributory service to be restored.

13. UNJSPF submits that Nock is entitled to a pension benefit that she has accrued from 1998 until her retirement in July 2010 (more than 12 years), including the second participation period which she had restored. She is entitled with respect to her latest participation (over twelve years) to the payment of a monthly lifetime benefit. In addition, she will receive a separate monthly lifetime benefit for her first period of participation (over seven years).

Considerations

14. The issue on appeal is whether or not Nock is entitled under article 24 of the Fund's Regulations to restore a period of contributory service which is not the most recent one.

15. In order to determine this issue, it is useful to study how this provision has evolved over time. In 1983, the United Nations Joint Staff Pension Board (UNJSPB or Pension Board) introduced several restrictions to the option to restore prior contributory service. Under article 24 of the Fund's Regulations, participants re-entering the Fund after 1 January 1983 could restore their prior contributory service only if the prior period of contributory service was for less than 5 years; the period being restored was the most recent one prior to re-entry into the Fund; and the request to restore was submitted within one year of the date of re-entry into the Fund. This provision was in effect at the time of Nock's re-entries into the Fund in 1988 and 1998.

16. In 2006, the limitation on the right to restoration for existing and future participants based on the length of prior service was eliminated. The amended article 24(a) which came into effect on 1 April 2007 provides:

A participant re-entering the Fund on or after 1 April 2007, who previously had not, or could not have, opted for a periodic retirement benefit following his or her separation from service, may, within one year of the recommencement of participation, elect to restore his or her most recent period of prior contributory service. Any participant in active service who re-entered the Fund before 1 April 2007 and was previously ineligible to elect to restore prior contributory service owing to the length of such prior service, may now do so by an election to that effect made before 1 April 2008.¹

¹ The second sentence of article 24(a) of the Pension Fund Regulations was subsequently amended to read: "Furthermore, and under the same terms and conditions, restoration of the most recent period of contributory service may also be elected if, before 1 April 2007, a participant had elected under article

17. Because inquiries and appeals arose from this amendment, the Fund's Secretariat sought interpretation from the Pension Board as to the scope of the amended article 24(a). The Pension Board *inter alia* confirmed that the amendment to article 24(a) did not remove the restriction that only the most recent period of contributory service could be restored. It decided that participants who were not satisfied had a right to appeal the decision directly to the former United Nations Administrative Tribunal (Administrative Tribunal), without first submitting the cases to the UNJSPF Standing Committee. The General Assembly approved the agreement of the Board to clarify the scope of the revision of article 24, summarized above (A/RES/63/252).

18. It is clear from the above, that Article 24 of the UNJSPF Regulations before and after its amendment in 2006 only allows for restoration of a participant's most recent period of contributory service. Nock acknowledges this restriction, but considers it a "technicality" which should not apply to her. She provides no legal reasoning to support her appeal, but merely advances humanitarian considerations and the living expenses in Geneva.

19. We cannot find any merit in Nock's appeal. She is currently participating for the third time in the Pension Fund. Under article 24 of the Pension Fund's Regulations, she may only restore her most recent period of contributory service which she did. She is not entitled to restore her first period of contributory service. Restoration is an exceptional benefit, and cannot be extended by analogy. Granting her appeal would be in violation of the UNJSPF Regulations and at the expense of other Fund participants.

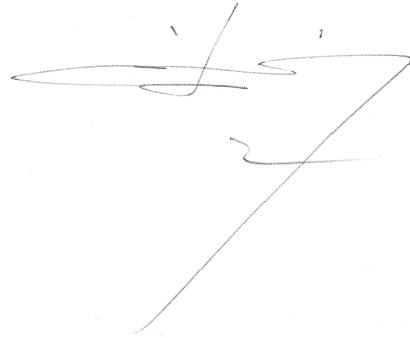
Judgment

20. In view of the foregoing, the appeal is dismissed.

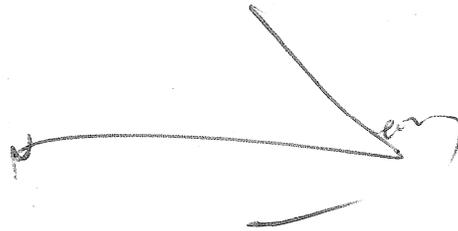
30, or was deemed to have elected under article 32, a periodic deferred retirement benefit that was not yet in payment at the time of said election."

THE UNITED NATIONS APPEALS TRIBUNAL

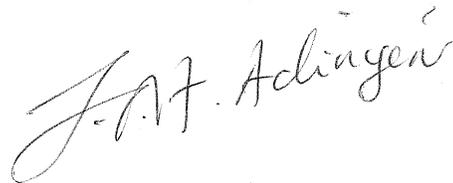
Case No. 2010-028



Judge Simón, Presiding



Judge Weinberg de Roca



Judge Adinyira

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