



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

Case No. 2010-168



Before: Judge Inés Weinberg de Roca, Presiding
Judge Kamaljit Singh Garewal
Judge Mary Faherty

Judgment No.: 2011-UNAT-158

Date: 8 July 2011

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Bernard Cochemé

JUDGE INÉS WEINBERG DE ROCA, Presiding.

Synopsis

1. The United Nations Appeals Tribunal (Appeals Tribunal) has repeatedly held that it “has been strictly enforcing, and will continue to strictly enforce, the various time limits”.¹

2. Taking into account that Harry Laeijendecker (Laeijendecker) not only made the request for disability benefits some 29 months after expiration of the time limit but also failed to submit any medical report, no circumstances justify departing from this jurisprudence.

Facts and Procedure

3. Laeijendecker worked as a Computer Information Systems Assistant at the International Court of Justice (ICJ) in The Hague, Netherlands, and participated in the United Nations Joint Staff Pension Fund (UNJSPF or Pension Fund), from 1 April 1994 to 22 December 2003, when he separated from service. It is not clear on which ground Laeijendecker’s service was discontinued. According to Laeijendecker, he reported sick at the end of August 2003, and he subsequently contested the decision to separate him from the ICJ, first with the ICJ’s Registrar, and later with the ICJ’s Conciliation Committee.

4. According to the UNJSPF, the ICJ submitted to the UNJSPF a notification about Laeijendecker’s separation on 22 March 2004. On 10 May 2004, the ICJ informed the Pension Fund that Laeijendecker had not provided his instructions for pension benefits payment, since he was challenging his separation from service.

5. On 14 August 2004, Laeijendecker emailed a request to the UNJSPF for his 2003 annual statement.

6. By e-mail dated 28 February 2006, the UNJSPF asked the ICJ for assistance in obtaining from Laeijendecker the confirmation of his choice of benefit in relation to his

¹ *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-043.

participation in the UNJSPF, by 22 December 2006 at the latest, i.e. 36 months after separation.

7. By letter dated 12 June 2006, the ICJ brought the UNJSPF's request to Laeijendecker's attention and asked him to submit his payment instruction to the UNJSPF either directly or through the ICJ Personnel Department.

8. In a letter dated 21 September 2006 to the UNJSPF, Laeijendecker complained that the letter of 12 June 2006 from the ICJ was the first correspondence that he had received from the ICJ, and that he had never been informed of any rights or obligations associated with his separation. Laeijendecker expressed his belief that he was entitled to a disability benefit under the terms of Article 33 of the Regulations, Rules and Pension Adjustment System of the UNJSPF (UNJSPF Regulations). Laeijendecker stated that he remained incapacitated since his separation from the ICJ.

9. In a letter dated 29 March 2007, the Deputy Chief, Participation and Entitlements Section, UNJSPF, advised Laeijendecker that his case could not be submitted to the United Nations Staff Pension Committee (UNSPC) for consideration for a disability benefit, because Laeijendecker did not submit his request for a disability benefit within four months after the date of his separation as required under UNJSPF Administrative Rule H.5, nor did he produce any argument or documentary evidence in support of exceptional circumstances for the late submission of his request.

10. In a letter dated 11 September 2007 to the attention of the Standing Committee of the United Nations Joint Staff Pension Board (Standing Committee and UNJSPB, respectively), Laeijendecker reiterated his request for a disability benefit. He maintained that there were exceptional circumstances that had prevented him from requesting a disability benefit sooner. He complained of "administrative abandonment" and failure to provide him with information about the four-month time limit, and argued that he should not be penalized for the ICJ's failure to request a disability benefit on his behalf. According to Laeijendecker, he could not have filed the disability claim sooner: it was not clear whether his state of ill-health was of a permanent nature; his disorders had to be further investigated; his appeal against his separation was on-going; his eyesight was regularly impaired; and he had to seek legal advice and linguistic assistance.

Laeijendecker alleged that he had consulted Dutch specialists, who could confirm his full disability as a permanent condition.

11. In a letter dated 8 October 2008, the Chief of the UNJSPF Office in Geneva informed Laeijendecker of the scheduled meeting of the UNSPC on 19 November 2008 and the UNJSPF's intention to submit his case for consideration for a disability benefit at that meeting. He invited Laeijendecker to confirm his wish to pursue the matter and to submit a summary of the exceptional circumstances and an up-to-date medical report from his treating physician in support of his claim for a disability benefit by 31 October 2008.

12. In a reply letter dated 30 October 2008, Laeijendecker confirmed his wish to pursue his case. Regarding evidence of exceptional circumstances, Laeijendecker requested that his previous letters be forwarded to the UNSPC. As for an up-to-date medical report, Laeijendecker stated that his medical history files were not at his disposal, but gave the UNSPC the permission to contact his family doctor directly for the needed information.

13. On 24 November 2008, the Chief of the UNJSPF Office in Geneva informed Laeijendecker of the outcome of the UNSPC's deliberations on 19 November. The UNSPC had rejected Laeijendecker's request for a disability benefit as non receivable because it had not been submitted within the time limit, and there did not appear to be any exceptional circumstances warranting a waiver of the time limit.

14. In a letter dated 5 February 2009 to the UNSPC, Laeijendecker contested the decision by the UNSPC to reject his request for a disability benefit, and challenged the UNSPC to refute his arguments about the exceptional circumstances.

15. At a meeting held on 22 April 2009, the UNSPC examined Laeijendecker's request for review of its 19 November 2008 decision. It confirmed its earlier decision in respect of Laeijendecker's disability request. According to the Chief of the UNJSPF Office in Geneva, the UNSPC concluded that Laeijendecker's appeal against his separation from the ICJ

could not be entertained as exceptional circumstances justifying submission of [his] request some 3 years after [his] date of separation from service in 2004. Additionally, the UNSPC noted that after [his] separation from service in 2004, [Laeijendecker was]

in contact with the Fund concerning access to [his] Annual Statement and that it was only when the Fund requested [his] payment instructions in 2006 that [he] came forward with [his] disability request.

16. By letter dated 10 July 2009, Laeijendecker appealed the decision of the UNSPC to the United Nations Joint Staff Pension Board (UNJSPB or Pension Board). He reiterated his contentions that the ICJ had failed to initiate a disability claim with the UNJSPF on his behalf, and that he was not aware of the disability claim procedure until 2006. In his view, the rejection by the UNSPC of his request was “a show of arbitrariness” and an “abuse of power”, because the UNSPC itself had failed to comply with the time limits. According to the Respondent, the UNJSPF received Laeijendecker’s letter of 10 July 2009 after the 2009 annual meeting of the Standing Committee of the Pension Board. Consequently, Laeijendecker’s case was held for submission to the Standing Committee of the Pension Board in 2010.

17. The Standing Committee of the Pension Board reviewed Laeijendecker’s appeal at its meeting on 21 July 2010. It decided to uphold the decision of the UNSPC to reject Laeijendecker’s request for a disability benefit. The Standing Committee of the Pension Board found that Laeijendecker did not submit any explanation of issues constituting exceptional circumstances that had prevented him from submitting a request to the UNSPC for a disability benefit in a timely manner. It also found that Laeijendecker had failed to provide any medical report in support of his request that established that he was incapacitated at the time of his separation from service in December 2003.

18. On 20 November 2010, the Registry of the Appeals Tribunal received an appeal from Laeijendecker against the decision of the Standing Committee of the Pension Board. The UNJSPF filed an answer on 9 December 2010.

19. Under e-mail dated 11 January 2011, Laeijendecker sent additional documents in response to the UNJSPF’s answer. The additional documents included notes prepared by a doctor of an organization used by the Dutch authorities to undertake assessments of workers’ sick leave. In two notes dated 27 November 2003 and 7 January 2004, Dr. Liem indicated, under the heading “Ability to fulfill duties of present post”, Laeijendecker had “0.0% ability as of 27 November 2003” and “0.0% ability as of 7 January 2004”. Dr. Liem also stated in the two notes that Laeijendecker’s prognosis with respect to resuming work activities “[could] not be indicated”.

Submissions

Laeijendecker's Appeal

20. Laeijendecker maintains that the fact that he filed his submission late does not disqualify him from seeking recourse before this Tribunal, as he has pointed out several exceptional circumstances. Laeijendecker states that he applied within four months after receiving information about his Pension Fund status from the UNJSPF in 2006. It was beyond his control to have received such information in such a belated manner. He was under the impression that his case was being dealt with by the ICJ. Due to his illness, he was medicated and not capable of seeing the matter through. He did not submit certain medical documents earlier, because he was under the impression that the UNJSPF would follow his advice and authorization to contact the relevant medical practitioners for pertinent medical information.

21. Under the Universal Declaration of Human Rights, Laeijendecker has the right of security in the event of unemployment, sickness, or disability.

22. Neither the UNSPC nor the UNJSPB has provided reasoning for their decisions, thus depriving Laeijendecker of due process.

23. There is every appearance that the UNJSPF was conspiring with the ICJ in subjecting Laeijendecker to discriminatory treatment.

UNJSPF's Answer

24. The UNJSPF requests that this Court dismiss the present appeal as there is no basis for a waiver of the time limit under Administrative Rule H.5(a) for submission of a request by Laeijendecker for a disability benefit. Laeijendecker presented employment related issues as justification for the late submission of his disability request, but those issues would not have prevented him from submitting a disability request in a timely manner.

25. In addition, Laeijendecker failed to provide medical information to the UNSPC sufficient to make a determination. It would appear by his own admission that his condition only deteriorated to the level that would have warranted consideration of a

disability benefit according to the Dutch authorities some years after his separation from service, but not at the time of his separation in December 2003.

26. Laeijendecker was given the opportunity to submit the required medical reports but did so only in January 2011, in response to the UNJSPF's answer. The issue before this Court is whether the decision of the UNSPC to deny the disability benefit was correct in light of the evidence available to it at the time that it considered his request in November 2008 and his request for review in April 2009.

Considerations

27. The Regulations, Rules and Pension Adjustment System of the United Nations Joint Staff Pension Fund (UNJSPF or Pension Fund Regulations), in effect in 2003 at the time of Laeijendecker's separation from the ICJ, stipulate, in Article 33:

(a) A disability benefit shall, subject to article 41, be payable to a participant who is found by the Board to be incapacitated for further service in a member organization reasonably compatible with his or her abilities, due to injury or illness constituting an impairment to health which is likely to be permanent or of long duration.

(b) The benefit shall commence on separation or, if earlier, on the expiration of the paid leave due to the participant and shall continue for as long as the participant remains incapacitated, provided that after age 55 incapacity shall be deemed to be permanent.

28. Section H.5 "Determinations of Incapacity and Inability to Engage in Gainful Employment" of the UNJSPF Regulations reads:

a) The request shall be in writing, addressed to the secretary of the committee, and in the case of a participant shall be made not later than four months after the date of separation or commencement of leave without pay, unless in the opinion of the committee there are exceptional circumstances justifying submission of the request at a later date.

(b) The request shall state the material facts on which the organization or the participant relies and the conclusions which are deduced therefrom, and shall be accompanied where practicable by a report from the medical officer of the organization, or a medical practitioner retained by the participant, as the case may be.

29. Laeijendecker was separated from service in December 2003. He explains that the delay until September 2006, when he submitted a request for disability benefit, occurred because he was contesting his separation and at the time it was not clear that his state of ill-health was of a permanent nature.

30. The record of the case shows that on 1 November 2006 Laeijendecker was contesting the outstanding payment by the ICJ and requested access to his personal e-mails and files that were located on the ICJ servers ICJ04, 09 and 10 as part of his defense before the Conciliation Committee.

31. On 11 September 2007, when he reiterated his request for a disability benefit to the Standing Committee of the UNJSPB, Laeijendecker stated that “local health professionals are not authorized to draft explicit medical certificates except with the explicit approval of the patient”. He further stated that “[he] would elect however at this initial administrative stage not to disclose their names and contact information, and certainly pending a more diligent response... [He trusts] the Committee w[ould] understand [his] reluctance vis-à-vis transfers of personal medical information...”

32. Laeijendecker made the request, not within four months, but more than two years later. On this occasion, he did not furnish a report from a medical practitioner or from a medical officer.

33. The Appeals Tribunal has repeatedly held that it “has been strictly enforcing, and will continue to strictly enforce, the various time limits”.²

34. Taking into account that Laeijendecker only made the request some 29 months after the expiration of the deadline and then did not submit any medical report, no circumstances justify departing from our jurisprudence.

35. In light of the foregoing, the appeal is not receivable.

² *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-043; see also *Ibrahim v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-069; *Harding v. Secretary-General of the United Nations*, Order No. 44 (2011); *Meron v. Secretary-General of the United Nations*, Order No. 42 (2011); and *Islam v. Secretary-General of the United Nations*, Order No. 7 (2010).

Judgment

36. The appeal is dismissed.

Original and Authoritative Version: English

Dated this 8th day of July 2011 in Geneva, Switzerland.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Garewal

(Signed)

Judge Faherty

Entered in the Register on this 29th day of August 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar