



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

Judgment No. 2015-UNAT-607



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

JUDGMENT

Before: Judge Richard Lussick, Presiding
Judge Rosalyn Chapman
Judge Deborah Thomas-Felix

Case No.: 2015-714

Date: 30 October 2015

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Sergio B. Arvizú

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by Mr. Alexandre Zakharov against the decision of the Chief Executive Officer/Secretary of the United Nations Joint Staff Pension Fund/United Nations Joint Staff Pension Board (CEO and Fund or UNJSPF, and Secretary and Board, respectively) dated 25 February 2015 not to submit his case to the Standing Committee of the Board (Standing Committee). Mr. Zakharov appealed on 13 May 2015, and the Fund answered on 9 September 2015.

2. The Appeals Tribunal also has before it a “Motion for remand of appeal to the Standing Committee of the United Nations Joint Staff Pension Board” filed by the Fund on 22 May 2015 (Motion). Mr. Zakharov filed his comments on 18 June 2015.

Facts and Procedure

3. On 2 May 1980, Mr. Zakharov joined the United Nations Centre for Human Settlements in Nairobi, Kenya, as a Human Settlements Officer on secondment from the Government of the former Union of Soviet Socialist Republics (USSR). He had a fixed-term appointment for two years and was eligible to participate in the Fund upon taking up his appointment. His contract was renewed and ended on 3 August 1985.

4. Following the conclusion of a transfer agreement between the Fund and the Government of the USSR (Transfer Agreement) in 1980, Mr. Zakharov signed a Pens.E/7 form on 2 August 1985 for his pension rights to be transferred to the USSR Bank for Foreign Trade, and an application form on 5 November 1985 addressed to the Fund’s Secretary stating that he wished the terms of the Transfer Agreement to be applied to his case.

5. By letter dated 10 July 1986, the Secretary of the Fund sent a letter to the Representative of the Ministry of Social Security of the USSR advising that the sum of USD 37,917 was being transferred on account of Mr. Zakharov to the Social Security Fund of the USSR. The letter stated that “[t]his amount has become payable as a result of [Mr. Zakharov]’s separation from the United Nations ... and his election to transfer his rights from the ... Fund to the Social Security Fund of the USSR”.

6. On 28 September 1990, Mr. Zakharov joined the United Nations Economic Commission for Africa. On 6 March 1991, he wrote to the Fund expressing his interest in restoring his prior contributory service from May 1980 to August 1985. The Fund responded by letter dated 5 April 1991 that his pension rights had been transferred to the Social Security Fund of the USSR under the Transfer Agreement, as instructed in his payment instructions dated 5 November 1985 and that this period was not open to restoration “since there is no provision in this Agreement to return the funds once they have been transferred over to the Social Security Fund of the USSR”.

7. By letter dated 18 July 1991, Mr. Zakharov reiterated his wish to restore his contributory service. The Fund responded on 10 September 1991, stating that since his contributory service was over five years, he was not eligible to restore his contributory service.

8. By letter dated 13 January 1993, Mr. Zakharov contacted the Fund again, noting that the basis for his request was the Transfer Agreement, which he believed required modification. The Fund responded on 24 March 1993, recalling its previous communications and emphasizing that irrespective of Mr. Zakharov’s special circumstances, he could not restore his prior contributory service “just as any other Fund participant re-entering with [his] record of prior service”, since his prior contributory service was over five years.

9. On 31 May 1998, Mr. Zakharov separated from the Organization.

10. By communications dated 2 May 2014 and 16 June 2014, Mr. Zakharov sent an appeal to the Fund asking that the Standing Committee restore his prior contributory service from May 1980 to August 1985 pursuant to Article 30 of the UNJSPF Regulations. The Fund responded on 26 August 2014 advising Mr. Zakharov, inter alia, that his appeal was time-barred, that the Fund had no outstanding legal or financial obligations with respect to transfers made under the Transfer Agreement, and that “any questions related to the sums remitted by the Fund to the former Social [S]ecurity Fund of the USSR should be resolved by the Russian Federation, which has assumed responsibility for the rights and obligations of the former USSR under the United Nations Charter”.

11. By letter dated 25 February 2015, and in response to further communication by Mr. Zakharov, the Fund informed Mr. Zakharov that all decisions were taken in strict compliance with the Fund's Regulations and Rules, that following the decision by the General Assembly and exhaustion of all avenues, the Fund was in no position to take further action, and that it, therefore, "[wa]s unable to submit [his] case to the Standing Committee".

12. On 13 May 2015, Mr. Zakharov appealed.

Considerations

13. In its Motion, the Fund moves the Appeals Tribunal for an order remanding Mr. Zakharov's appeal to the Standing Committee. The Fund submits that the issue raised in Mr. Zakharov's appeal concerns "not only Mr. Zakharov, but over 1,500 other former employees in the [United Nations] system who were nationals of the former USSR, Byelorussian Soviet Socialist Republic and Ukrainian Soviet Socialist Republic ... whose pension rights in the [Fund] were transferred to the Governments concerned pursuant to the relevant transfer agreements between those Governments and the Fund". The Fund believes that "the correct course of action in light of the present appeal would be for the Standing Committee to first consider the case in the context of the policy issues involved and the fact that there are many other beneficiaries also affected".

14. In his comments, Mr. Zakharov challenges the accuracy of the submissions supporting the Motion. While not specifically stated, the Appeals Tribunal infers that he opposes the remand of his appeal.

15. Mr. Zakharov's appeal to the Appeals Tribunal challenges the decision by the Fund refusing to submit his case to the Standing Committee. He claims that the decision violated the "international civil servants' right of appeal" and applied the Fund's Regulations in an "arbitrary, unfair or prejudicial manner". He requests the Appeals Tribunal to order the Fund: "(a) To restore [his] contributory service for the period from 2 May 1980 to 3 August 1985 and thus enable him to benefit from a pension in accordance with article 30 'Deferred Retirement Benefit' of the UNJSPF Regulations; [and] (b) to pay to [him] with interest rates and adjustments the amount of pension benefits from 20 February 1999 to the time he would start receiving pension payments for the period from 2 May 1980 to 3 August 1986".

16. The decision of the Fund not to submit Mr. Zakharov's appeal to the Standing Committee has no legal basis. Under the Administrative Rules of the Fund, a staff member who disputes a decision of the Board has the right to refer it to the Standing Committee for review.¹ If the staff member challenges the decision of the Standing Committee, then he or she can appeal it to the Appeals Tribunal.²

17. Therefore, the Fund's decision not to submit Mr. Zakharov's appeal to the Standing Committee contravened his rights under the Regulations and Rules of the Fund by depriving him of access to the appeals process. It was thus a serious violation of his due process rights.

18. That said, the Appeals Tribunal's jurisdiction is limited to hearing appeals of decisions of the Standing Committee. The relevant part of Article 2(9) of the Statute of the Appeals Tribunal provides: "The Appeals Tribunal shall be competent to hear and pass judgement on an appeal of a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund"

19. Since Mr. Zakharov's case has not been reviewed by the Standing Committee, the Appeals Tribunal does not have jurisdiction to hear it. The Appeals Tribunal, therefore, agrees with the Fund's submission that the correct course of action is to remand the case to the Standing Committee.

Judgment

20. Mr. Zakharov's appeal is not receivable. The Fund's Motion is granted and Mr. Zakharov's appeal is remanded to the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board.

¹ UNJSPF, Administrative Rules, Section K.

² *Ibid.*, Section K.8; UNJSPF Regulations, Article 48.

Original and Authoritative Version: English

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

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Thomas-Felix

Entered in the Register on this 30th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar