



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

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Judgment No. 2021-UNAT-1144

**Eric Bertrand Pierre Duflos  
(Appellant)**

**v.**

**United Nations Joint Staff Pension Board  
(Respondent)**

**JUDGMENT**

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Before:	Judge Martha Halfeld, Presiding Judge Graeme Colgan Judge John Raymond Murphy
Case No.:	2020-1485
Date:	29 October 2021
Registrar:	Weicheng Lin

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Counsel for Appellant: Self-represented

Counsel for Respondent: Rosemarie McClean

**JUDGE MARTHA HALFELD, PRESIDING.**

1. Mr. Duflos had two periods of participation in the United Nations Joint Staff Pension Fund (UNJSPF or the Fund). At the end of the first period from 11 December 1995 to 18 October 2000 when he worked for the United Nations Development Programme (UNDP) in the Lao People’s Democratic Republic, he received a withdrawal settlement, as he had less than five years’ participation. He subsequently re-entered the Fund on 6 June 2016 as he joined the United Nations Secretary-General’s Special Advocate for Inclusive Finance for Development (UNSGSA) in New York and worked there till May 2020. That was his second period of participation.

2. The Standing Committee of the United Nations Joint Staff Pension Board (Standing Committee and UNJSPB or the Board, respectively) upheld the decision of the United Nations Staff Pension Committee (UNSPC), which in turn confirmed the decision by the Chief Executive of Pension Administration to deny Mr. Duflos’ request for restoration of his prior contributory service, on the basis that it had been made more than one year after his re-entry into the Fund, thus beyond the time-limits prescribed by Article 24 of the Fund’s Regulations.

3. For the reasons set out below, we affirm the Standing Committee’s decision and dismiss the appeal.

**Facts and Procedure**

4. At the end of his first period of participation on 18 October 2000, since Mr. Duflos had less than five years of participation in UNJSPF while working for UNDP, he was only eligible to receive a withdrawal settlement of USD 22,842.11, which represented his own pension contribution.

5. As noted above, Mr. Duflos re-entered UNJSPF on 6 June 2016. On the next day, 7 June 2016, he completed and signed a one-page UNJSPF form titled “Designation of recipient of a residual settlement under Article 38 of the Regulations” (A/2 Form). At the bottom of the A/2 Form below the date line and the signature box appeared these words:<sup>1</sup>

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<sup>1</sup> Underline and upper case in original.

**\*NOTE: The completed form must bear your ORIGINAL SIGNATURE, no faxes or e-mails will be accepted.**

**APPLICABLE ONLY TO NEW ENTRANTS OR RE-ENTRANTS:**

**It may be possible to validate prior non-contributory service and/or restore prior contributory service, if any, under articles 23 & 24 of the Regulations, provided that you apply within one year of your entry/re-entry date to the Fund, but before separation should you separate from service earlier. For more information, please visit the UNJSPF website ([www.unjspf.org](http://www.unjspf.org)).**

6. In February 2019, Mr. Duflos visited the Client Services Section of the Fund in New York. He discussed with a Fund official the possibility of restoration of his prior contributory service (1995-2000) and sought an exception to the one-year time limit under Article 24 of the Regulations, Rules and Pension Adjustment System of the United Nations Joint Staff Pension Fund (Regulations of the Fund).

7. Mr. Duflos subsequently filed a request with UNDP for management evaluation of the denial of his request for restoring his prior contributory service. His request was forwarded to the Fund for proper review. By e-mail dated 12 June 2019, the Fund informed Mr. Duflos that the one-year time limit in Article 24 of the Regulations of the Fund was strictly applied and that the Fund had no discretion to grant his request for a waiver of the time limit.

8. On 3 September 2019, Mr. Duflos wrote a letter requesting that the Fund review the decision to deny his request for restoration of his prior contributory service. According to Mr. Duflos, he learnt “with great surprise and disappointment” about the possibility of restoration in February 2019, when he visited the Fund. Mr. Duflos stated that he did not avail himself of the opportunity to restore his prior contributory service within one year of his re-entry in the Fund, because he had not been “explicitly informed” of the provisions of Article 24 or given a chance to exercise his rights upon his re-entry in the Fund in June 2016.

9. On 14 November 2019, the UNSPC met to consider Mr. Duflos’ case among other things and unanimously confirmed the decision to deny his restoration request.

10. On 16 January 2020, Mr. Duflos appealed the UNSPC’s decision to the Standing Committee. He alleged that there was a lack of transparency in the manner in which the Fund informed staff of the policy and opportunity for restoration of prior contributory service, because the information about the possibility for restoration was buried in a small paragraph

at the end of the A/2 Form, whose primary objective was not about the possibility for restoration but about the designation of a recipient for a residual settlement in case of death. Mr. Duflos also alleged that the one-year time limit rule was unfair. In his view, it should be possible for staff to restore their prior contributory service with the Fund “whenever they want”.

11. On 8 July 2020, the Standing Committee considered Mr. Duflos’ appeal but found that he did not meet the criteria for restoration as set forth in Article 24(a) of the Regulations of the Fund and the UNJSPF did not have discretion to modify the application of Article 24 in an individual case. The Standing Committee noted that Mr. Duflos re-entered the Fund on 6 June 2016 and pursuant to Article 24(a) of the Regulations of the Fund he should have submitted a request for restoration no later than 5 June 2017. It also noted that detailed information regarding restoration was available to Mr. Duflos on the UNJSPF’s website, and that, moreover, the A/2 Form that Mr. Duflos signed on 7 June 2016 included a notification about the possibility of restoration. The Standing Committee consequently upheld the decision to deny Mr. Duflos’ request for restoration. The Standing Committee’s decision was conveyed to Mr. Duflos in a letter dated 3 August 2020.

12. Mr. Duflos appealed the Standing Committee’s decision to the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) on 1 November 2020. The UNJSPB filed an answer to the appeal on 18 December 2020.

### **Submissions**

#### **Mr. Duflos’ Appeal**

13. Mr. Duflos requests the Appeals Tribunal reverse the decision of the Standing Committee and order that his prior contributory service for 1995-2000 be restored.

14. Mr. Duflos submits that the Standing Committee erred in fact, resulting in a manifestly unreasonable decision. Contrary to the claim that the A/2 Form included a notification about the possibility of restoration, the form was not related to the restoration of prior contributory service, but to the designation of a recipient for a residual settlement and it was thus misleading. The “footnote” in the A/2 Form about the possibility of restoration appeared after his signature. Like several other people, he did not read the “footnote” properly. Mr. Duflos argues that, by affixing his signature on the form, he signed onto the content above, and not below, his signature.

15. Mr. Duflos also submits that while the word “restoration” is used by the Respondent, it is not mentioned anywhere in the A/2 Form. Moreover, if one does a search on the Fund’s website for “re-instatement” or “re-entrants”, s/he cannot find any specific information.

**The Board’s Answer**

16. The Board requests that the Appeals Tribunal dismiss Mr. Duflos’ appeal and uphold the contested decision of the Standing Committee.

17. The Board submits that the Fund correctly observed its Regulations, Mr. Duflos’ request for restoration does not satisfy the requirements of the Regulations of the Fund that restoration must be elected within one year of the recommencement of participation, and the Fund did not have discretion to make an exception to Article 24.

18. The Board also submits that the Fund fully discharged its obligation to inform Mr. Duflos in relation to restoration. The Fund has made detailed information on restoration available on its website, including a booklet that describes the restoration provisions, the full text of the UNJSPF Regulations and Rules and the Fund’s annual letters. In addition, the A/2 Form that Mr. Duflos signed on 7 June 2016 included a notice regarding restoration. It served as an additional notification for participants re-entering the Fund. Mr. Duflos never sought assistance from the Fund in respect of the possibility of restoration within the applicable time, nor is there evidence that he sought to acquaint himself with the relevant provisions at that time.

**Considerations**

19. Mr. Duflos has requested an oral hearing “to make my point clear as I feel it has not been well understood”. Oral hearings are governed by Article 8(3) of the Appeals Tribunal’s Statute and Article 18(1) of the Appeals Tribunal’s Rules of Procedure (Rules). The factual and legal issues arising from this appeal have already been clearly defined by the parties and there is no need for further clarification. Moreover, we do not find that an oral hearing would “assist in the expeditious and fair disposal of the case”, as required by Article 18(1) of the Rules, since Mr. Duflos has plainly articulated his claims in his appeal. Thus, the request for an oral hearing is denied.

20. The main issue in this appeal is whether the Standing Committee erred when it rejected Mr. Duflos' request for restoration of his prior contributory service, finding that Mr. Duflos did not meet the necessary criteria as set out in Article 24(a) of the Regulations of the Fund. Specifically, the Standing Committee upheld the UNSPC's decision, which in turn confirmed the decision by the Chief Executive of Pension Administration to deny his request of restoration of prior contributory service, on the basis that it had been made more than one year after his re-entry in the Fund, thus beyond the time-limits prescribed by Article 24 of the Regulations of the Fund.

21. In his appeal, Mr. Duflos "would like to re-instate [his] years of pension from 1995 to 2000, denied by the Standing Committee of the United Nations Joint Staff Pension [Board]". He claims that this decision contains an error on a question of fact, resulting in a manifestly unreasonable decision.

22. Article 24 of the Regulations of the Fund in force on 1 January 2015 establishes, in the relevant part, the benefit of restoration of prior contributory service with the respective contributions. According to Article 24(a), a participant re-entering the Fund on or after 1 April 2007 may, within one year of the recommencement of participation, elect to restore his or her most recent period of prior contributory service.

23. It is undeniable that Mr. Duflos re-entered the Fund on 6 June 2016 (thus, after 1 April 2007). However, he did not request the restoration of his prior contributory service within the window of opportunity of one year starting from the date on which he had recommenced his participation in the Fund, on 6 June 2016. According to the Fund, this time limit expired on 5 June 2017. Instead, Mr. Duflos only requested the benefit of restoration of his prior contributory service in February 2019. At that time, he sought an exception to the one-year time limit, but the Fund decided that this had to be strictly applied and no discretion was available for it to waive this requirement.

24. In his appeal, Mr. Duflos claims that the A/2 Form, which contained information about the time limit for restoration of prior contributory service, was misleading, because i) it was related to another matter and only mentioned the restoration of prior contributory service in passing; and ii) his signature was placed before the "footnote", which is why he did not read it.

25. The UNAT has previously adjudicated a case where there was allegation of non-compliance with the Fund's obligation to inform the participant of the applicable legal framework in a certain situation. In *Fox*,<sup>2</sup> a Pension Fund participant had sought clarification about her benefits on separation but did not receive a clarifying response about the defined benefits to which she would become entitled. The fact that Ms. Fox had conscientiously sought information from the Fund with regard to the choices that she had between alternative benefits or courses of action was determinative of the UNAT's finding that the Fund had a duty in response to a pertinent inquiry to inform the participant properly of all the alternatives open to him or her in a clear and understandable way so as to allow a proper opportunity for making an informed choice.<sup>3</sup>

26. In the present case, however, there was no such request for information at the time of Mr. Duflos' recommencement of participation.

27. Mr. Duflos argues that the information in the "footnote" was misleading because the A/2 Form was for a participant to designate a recipient of a residual settlement, and not to restore prior contributory service. This argument is not valid. Nor is his claim that his signature appeared above the "footnote". The note about the restoration of prior contributory service appeared at the bottom of the A/2 Form in a plain language under the title "APPLICABLE ONLY TO NEW ENTRANTS OR RE-ENTRANTS" in an upper case. It was one paragraph of four lines in length. The paragraph appeared immediately below the word "NOTE", which stressed the need to affix an original signature on the A/2 Form. The note was there at the moment when he signed – not added afterwards. In our view, by including this paragraph in a clear and unmistakable manner on the A/2 Form, the Fund discharged its obligation to notify re-entrants such as Mr. Duflos, at the time of their re-entry, about the possibility for them to restore their prior contributory service, while they designated recipients for pension purposes. Mr. Duflos concedes that he "did not read [the paragraph] properly". But the Fund cannot, and should not, be blamed for the lack of attention and prudence on the part of Mr. Duflos when executing such an important and consequential document.

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<sup>2</sup> *Fox v. United Nations Joint Staff Pension Board*, Judgment No. 2018-UNAT-834, paras. 44-48 & 53.

<sup>3</sup> *Ibid*, paras. 47 and 53.

28. Furthermore, there is no specific provision in the Regulations of the Fund imposing a duty on the Fund to distribute or otherwise provide further information to participants about their choices of benefit.<sup>4</sup> As mentioned above, our jurisprudence sets forth that such an obligation on the part of the Fund might only have applied had this information been requested, which was not the case. The Fund's duty of good faith includes responding appropriately to requests from participants for information regarding the exercise of their choice of benefit options. But, by the same token, this Tribunal has continually held that it is the staff member's responsibility to ensure that he or she is aware of the provisions of the Regulations of the Fund and ignorance of the law is no excuse.<sup>5</sup>

29. Moreover, in *Fox*, the UNAT found that the applicable provisions were opaque or complex,<sup>6</sup> while in this case, the opposite is true. The language of Article 24(a) of the Regulations of the Fund is clear that the time window for election to restore prior contributory service is one year from the date of re-entry in the Fund. As pointed out in *Neville*,<sup>7</sup> restoration of prior contributory service upon re-entering the Pension Fund is not automatic. If a participant re-entering the Fund elects to have his or her prior contributory service restored, he or she must give notice in writing within one year of the recommencement of participation.

30. Next, Mr. Duflos' allegation that the UNJSPF website lacks transparency or specific information on the issue of re-instatement is not tenable. The notice at the bottom of the A/2 Form signed by Mr. Duflos expressly referred to the Fund's website ([www.unjspf.org](http://www.unjspf.org)) and Articles 23 and 24 of the Regulations of the Fund, as well as the deadline of one year of the date of re-entry to the Fund. Moreover, while this notice used terms such as "restore prior contributory service", Article 24 of the Regulations of the Fund is titled "Restoration of prior contributory service". This is sufficient information to allow further search on the website.

31. As previously held in *Nock*,<sup>8</sup> restoration is an exceptional benefit, and cannot be extended beyond the limits of the applicable legal framework. As the cases show, the ability to exercise a discretion must be expressly authorized in the legal framework.<sup>9</sup> There is no provision in the Regulations of the Fund to allow the Fund to exercise discretion in such a

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<sup>4</sup> *Schepens v. United Nations Joint Staff Pension Board*, Judgment No. 2018-UNAT-830, para. 29.

<sup>5</sup> *Ibid.*, para. 33.

<sup>6</sup> *Fox, op cit.* Judgment, para. 53.

<sup>7</sup> *Neville v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-004, para. 13.

<sup>8</sup> *Nock v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-023, para. 19.

<sup>9</sup> *Neville, op cit.* Judgment, para. 14.

situation. The purpose of this strict application of discretion, only when it has been previously authorized, is to avoid unnecessary expenses related to one individual to the detriment of the whole contingent of the Fund participants who would bear the cost of any generous interpretation of the norm. Granting Mr. Duflos' appeal would be in violation of the Regulations of the Fund and at the expense of other Fund participants.

32. In keeping with the Appeals Tribunal's jurisprudence<sup>10</sup> and the principle of good faith, according to which an employer must inform employees in advance of any action that may imperil their rights or harm their rightful interests, the Fund thus complied with its duty of care and treated Mr. Duflos with due consideration in order to avoid causing him undue prejudice.

33. The appeal accordingly fails.

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<sup>10</sup>*Schepens, op cit.* Judgment, para. 29.

**Judgment**

34. Mr. Duflos' appeal is dismissed, and the decision of the Standing Committee of 8 July 2020 is upheld.

Original and Authoritative Version: English

Dated this 29<sup>th</sup> day of October 2021.

*(Signed)*

Judge Halfeld, Presiding  
Juiz de Fora, Brazil

*(Signed)*

Judge Colgan  
Auckland, New Zealand

*(Signed)*

Judge Murphy  
Cape Town, South Africa

Entered in the Register on this 9<sup>th</sup> day of November 2021 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar