



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

Judgment No. 2021-UNAT-1180

**Thanaa Kamil Al-Shalchi
(Appellant)**

v.

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

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Martha Halfeld Judge Graeme Colgan
Case No.:	2020-1469
Date:	29 October 2021
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Rosemarie McClean

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Ms. Thanaa Kamil Al-Shalchi, a current staff member with the Office of the United Nations High Commissioner for Refugees (UNHCR), has contested the United Nations Staff Pension Committee's (UNSPC) decision to reject her request for restoration of her prior period of contributory service in terms of the Regulations of the United Nations Joint Staff Pension Fund (Fund or UNJSPF). The Standing Committee of the United Nations Joint Staff Pension Board (Board or UNJSPB) affirmed the decision and held that restoration was precluded by Article 24 of the UNJSPF Regulations because Ms. Al-Shalchi, after leaving the service of the Organisation in December 2006, had in 2009 selected a deferred retirement benefit pursuant to Article 30 of the UNJSPF Regulations. On appeal, the United Nations Appeals Tribunal (the Appeals Tribunal or UNAT) upholds the decision of the UNJSPB.

Facts and Procedure

2. In order to appreciate Ms. Al-Shalchi's claim more fully, it is best at the beginning to set out the provisions of the UNJSPF Regulations relevant to her case.

3. Article 30 of the UNJSPF Regulations provides for the payment of a deferred retirement benefit to staff members leaving the service of the Organisation prior to reaching retirement age. It provides that a deferred retirement benefit shall be payable to a participant whose age on separation is less than the normal retirement age and whose contributory service was five years or longer. The benefit shall be payable at the standard annual rate for a retirement benefit and shall commence at the normal retirement age, or, if the participant so elects, at any age not less than 55, provided that in such event it shall be reduced proportionately. The benefit may be commuted by the participant into a lump sum if the rate of the benefit at the normal retirement age is less than USD 1,000. Such commutation shall be equivalent to the full actuarial value of the benefit.

4. Article 31 of the UNJSPF Regulations offers staff members leaving service before retirement age a withdrawal settlement, as opposed to a deferred retirement benefit (periodic pension). It provides that a withdrawal settlement shall be payable to a participant whose age on separation is less than the normal retirement age, or if the participant is the normal retirement age or more on separation but is not entitled to a retirement benefit. The

settlement shall consist of the participant's own contributions, if the contributory service of the participant was less than five years – Article 31(b)(i); or the participant's own contributions increased by 10 per cent for each year in excess of five up to a maximum of 100 per cent, if the contributory service of the participant was more than five years – Article 31(b)(ii).

5. Article 32 of the UNJSPF Regulations allows a staff member leaving service to defer the choice of benefit for 36 months. It provides that the payment to a participant of a withdrawal settlement, or the exercise by a participant of a choice among available benefits, or between a form of benefit involving payment in a lump sum and another form, may be deferred at the participant's request for a period of 36 months. A participant who deferred a choice shall, if the choice is not made within the 36-month period, be deemed to have chosen a deferred retirement benefit if his or her age on separation was less than the normal retirement age, and in any event a form of benefit was not payable in a lump sum.

6. At the time of Ms. Al-Shalchi's separation from service from the United Nations Assistance Mission for Iraq on 12 December 2006, Article 24(a) of the UNJSPF Regulations provided for a very limited right to restore prior contributory service as follows:

A participant re-entering the Fund after 1 January 1983 may, within one year of the recommencement of participation, elect to restore his or her 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 the re-entry.

7. Thus, only participants with less than five years' prior service, who had received their own contributions plus interest as a withdrawal settlement, in terms of Article 31(b)(i), could restore prior contributory service.

8. Article 24(a) of the UNJSPF Regulations was amended by General Assembly resolution 61/240 to expand the entitlement to restore prior contributory service (which till then was limited to participants with less than five years' service who had taken a withdrawal settlement under Article 31(b)(i)). This amendment has been in effect since 1 April 2007. Article 24(a) of the UNJSPF Regulations currently in effect governing the restoration of contributory service reads:²

In certain circumstances, a participant may elect, within one year of the recommencement of participation, to restore his or her most recent period of contributory service. 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. 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 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 election to restore.

9. At its 55th session in 2008, the UNJSPB interpreted the amendment to mean that the right to restoration for those participants who re-entered the UNJSPF did not cover only those who had received a withdrawal settlement, but also those who had elected a deferred retirement benefit (full or partial) under Article 30 of the UNJSPF Regulations or were deemed to have elected a deferred retirement benefit under article 32(b) of the UNJSPF regulations during the period of 2 January 1983 and 31 March 2007, provided that payment of such benefit was not due to commence before 1 April 2007. The amendment afforded this latter category a one-time opportunity to restore such service in totality.

10. On leaving service on 12 December 2006, Ms. Al-Shalchi deferred her choice of benefit pursuant to Article 32 of the UNJSPF Regulations. Shortly before the expiry of the 36-month period for making an election, on 17 September 2009, she elected to receive a deferred retirement benefit in terms of Article 30 of the UNJSPF Regulations. She now wishes to reverse her election and restore her prior contributory service.

11. Ms. Al-Shalchi entered the UNJSPF as a participant on 1 January 1999 when she became a staff member with the Office of the Humanitarian Coordinator for Iraq in Baghdad, Iraq. She had several breaks in service prior to her separation on 12 December 2006.

12. On 18 November 2005, Ms. Al-Shalchi submitted to the Fund Form B1 titled “Notice of Election to Validate” dated 21 September 2005, wherein she requested in terms of Article 23 of the UNJSPF Regulations to validate five periods of participation:

(a) 6 September 1998 to 31 December 2003;

(b) 1 January 2004 to 30 June 2004;

- (c) 1 July 2004 to 23 October 2004 (period of break in service);
- (d) 24 October 2004 to 31 December 2004; and
- (e) 1 January 2005 to 21 September 2005

13. By letter dated 25 April 2006, the UNJSPF informed Ms. Al-Shalchi that the period of 6 September 1998 to 31 December 1998 was no longer open for validation as she had failed to submit her request within one year of recommencement of participation prescribed by Article 23 of the UNJSPF Regulations, and that 1 July 2004 to 31 December 2004 was a period of non-contractual status and thus considered a break in service for which she was not permitted to make voluntary contributions. The UNJSPF thus confirmed that Ms. Al-Shalchi had two periods of contributory service: 1 January 1999 to 30 June 2004 and 1 January 2005 through to 26 April 2006, being the date of the letter of the UNJSPF. Her period of contributory service is not in dispute.

14. As intimated earlier, subsequent to her separation from service, Ms. Al-Shalchi submitted a form dated 7 March 2007 electing to defer her choice of benefits in terms of Article 32 of the UNJSPF Regulations for a period of up to 36 months. She also submitted Form A/2 (designation of recipient of a residual settlement under Article 38), also dated 7 March 2007.

15. On 29 October 2007, the UNJSPF addressed a letter to Ms. Al-Shalchi acknowledging that she had deferred her choice and informing her that the maximum period of deferment was 36 months which would expire on 12 December 2010. The UNJSPF reminded Ms. Al-Shalchi that she was required to complete and return form PENS.E/7 with her benefit election not less than a month before the expiry date. She was informed further that if the UNJSPF did not receive this form by 12 December 2010 she would forfeit her right to a lump sum payment in accordance with Article 32(b) of the UNJSPF Regulations and would be deemed to have elected a full retirement benefit.

16. The UNJSPF's letter of 29 October 2007 also drew Ms. Al-Shalchi's attention to the provisions of Article 24(a) of the UNJSPF Regulations and other information. It stated:

We also draw your attention to article 24(a) of the Regulations that describes the conditions under which a participant re-entering the Fund may opt to restore his/her prior contributory status.

For your convenience, you may obtain information on pension issues and forms from our website...

17. On 31 August 2009, Ms. Al-Shalchi and the UNJSPF corresponded by e-mail concerning *inter alia* the payment instructions for form PENS.E/7. In her correspondence, Ms. Al-Shalchi asked for more information about the reference to restoring her prior contributory service in the letter of the UNJSPF dated 29 October 2007. She asked:

Please what do they mean by paragraph 4 of the cover letter about re-entering the Fund and restoring the contributory service ???

18. In an e-mail dated 10 September 2009, a representative of UNJSPF answered this query as follows:

Restoration is if you were a participant in the Pension Fund before your current participation and upon separation the Pension Fund reimbursed to you your own contributions plus interest, you can restore the previous participation by refunding that amount, increased by the interest to the Pension Fund.

19. On 30 October 2009, Ms. Al-Shalchi submitted the PENS.E/7 form dated 17 September 2009 which indicated her option was “option C- deferred retirement benefit for participants at any age under the normal retirement age (article 30)”. On 7 July 2010, the UNJSPF wrote to Ms. Al-Shalchi informing her that the payment of her periodic benefit (with a present value of USD 159.11 subject to cost-of-living adjustments) would commence on the day following her 62nd birthday, 15 January 2021.

20. Ms. Al-Shalchi again became a participant in the UNJSPF as a staff member of UNHCR with effect from 21 November 2012. Upon her re-entry she submitted a new A/2 form requesting to validate the period of 21 May 2012 to 20 November 2012.

21. Between 2014 and 2017, Ms. Al-Shalchi had various engagements with the UNJSPF regarding her benefits. On 25 February 2019, Ms. Al-Shalchi visited the UNJSPF's Geneva office and requested to restore her prior period of contributory service. On 17 September 2019, the UNJSPF wrote to Ms. Al-Shalchi confirming she was not eligible to restore her prior period of contributory service in terms of Article 24(a) of the UNJSPF Regulations.

22. On 11 October 2019, Ms. Al-Shalchi sought a request for review of her case by the UNSPC, which reviewed her case at its 330th meetings on 14 November 2019. By letter dated 18 November 2019, the UNSPC decided to uphold the decision of the Chief Executive of Pension Administration to deny Ms. Al-Shalchi's request for restoration on the basis that a participant who elects a deferred retirement benefit after 1 April 2007 is not eligible to restore his or her prior contributory service. Ms. Al-Shalchi had elected full deferred retirement in her election in 2009, which was after 1 April 2007.

23. On 23 January 2020 Ms. Al-Shalchi appealed the decision of the UNSPC to the Standing Committee, which reviewed the appeal at its 203rd meeting held on 8 July 2020. The Standing Committee by letter dated 3 August 2020, informed Ms. Al-Shalchi that it upheld the UNSPC's finding that she was not eligible to restore her prior contributory period of service for 1 January 1999 to 12 December 2006 because she had elected a deferred retirement benefit on 30 October 2009, which was after 1 April 2007. The Standing Committee determined that in accordance with the UNJSPF's letter of 7 July 2010, Ms. Al-Shalchi was entitled to receive a deferred retirement benefit as of 15 January 2021 for the period in issue.

24. On 13 October 2020, Ms. Al-Shalchi filed an appeal against the Standing Committee's decision. This appeal was registered with the Appeals Tribunal as Case No. 2020-UNAT-1469.

25. On 21 December 2020, UNJSPF filed its Answer.

Submissions

Ms. Al-Shalchi's Appeal

26. Ms. Al-Shalchi seeks restoration under Article 24(a) of her previous contributory service.

27. She argues that the Chief Executive erred in his interpretation of her ineligibility. Those who had elected a deferred retirement benefit (full or partial) under Article 30 of the UNJSPF Regulations or were deemed to have elected a deferred retirement benefit under Article 32(b) of the UNJSPF Regulations during the period of 2 January 1983 and 31 March 2007, provided that payment of such benefit was not due to commence before 1 April 2007, are entitled to restore prior contributory service. This latter category was given

a one-time opportunity to restore such service in totality. She submits that there is no requirement for the participant to make a positive choice before 31 March 2007. The only requirement is that the period of contributory service being requested is prior to 31 March 2007. The fact she notified the UNJSPF of her choice in September 2009 is immaterial as the relevant period of service in issue was before 31 March 2007.

28. Furthermore, the one-time opportunity to restore previous contributory service should be reasonably interpreted and considered as relates to her specific circumstances. At the time of her separation in 2006 she was in Iraq without access to the UNJSPF Regulations, so she opted to defer her choice for 36 months per Article 32. She sought information from the UNJSPF but it did not respond to her inquiry asking whether, in the event that she did not return the forms, she would be deemed to have elected a full retirement benefit. Relying on the information provided by the UNJSPF she submitted an instruction form again on 17 September 2009 under Article 30. She was not provided with the relevant information before making a choice and therefore was not presented with the “one-time opportunity” to restore her previous contributory service. Her e-mail communications with the UNJSPF indicate she acted diligently, inquired about her options, but only received partial and incomplete information in response, which she relied upon.

The Board’s Answer

29. The Board requests the Appeals Tribunal to uphold the decision of the Standing Committee and to reject the Appellant’s request for restoration on the basis that Ms. Al-Shalchi elected a deferred retirement benefit after 1 April 2007 and accordingly does not fulfil the requirements of Article 24(a) of the UNJSPF Regulations. She is thus not eligible to restore the period in question.

30. Ms. Al-Shalchi made her election for a deferred retirement benefit on 17 September 2009, which was after 1 April 2007. The UNJSPF has no discretion to deviate from the provisions of Article 24(a). The Chief Executive’s interpretation of the Regulations was confirmed by the UNSPC and the Standing Committee which has been applied consistently and the impugned decision was taken in accordance with the provisions as well as the jurisprudences of this Tribunal.

31. Ms. Al-Shalchi does not meet the requirements for restoration of prior contributory service as she did not elect a withdrawal settlement, nor did she re-enter the UNJSPF before 1 April 2007.

32. Ms. Al-Shalchi's contention that she did not have access to the UNJSPF's Regulations and Rules is not sustainable. They were at all times available on the Fund's website and information is provided through annual letters and booklets. Ms. Al-Shalchi updated the UNJSPF regularly regarding her beneficiaries, and the relevant form contained a statement on the right to validate and to restore. Ignorance of the law is not an excuse for failed compliance.

33. Moreover, the UNJSPF did not provide incorrect advice to Ms. Al-Shalchi. She freely elected initially a deferment of choice of benefit. Thereafter she elected a deferred retirement benefit in her PENS.E/7 form signed on 17 September 2009.

34. As Ms. Al-Shalchi does not meet the criteria for restoration as provided in the amended provisions of Article 24(a) of the UNJSPF Regulations and, as the UNJSPF does not have discretion to make exceptions, the Standing Committee's decision to reject Ms. Al-Shalchi's request for restoration was correct and should be upheld on appeal.

Considerations

35. Prior to the amendment of Article 24(a) of the UNJSPF Regulations in 2007, a participant re-entering the UNJSPF after 1 January 1983 was entitled to restore prior contributory service subject to the following conditions precedent being met: i) he or she applied for restoration within one year of the recommencement of participation; ii) on separation the participant became entitled to a withdrawal settlement under Article 31(b)(i) of the UNJSPF Regulations; and iii) the service was the most recent prior to the re-entry. As mentioned, this precluded participants with more than five years' service from restoring prior contributory service as the benefit under Article 31(b)(i) of the UNJSPF Regulations consists of the return of member contributions plus interest to staff members who separate with less than five years' service.

36. The amendment to Article 24(a) of the UNJSPF Regulations expanded the possibilities for restoration by participants re-entering the UNJSPF after 1 April 2007, subject (in relevant part) to the following: i) the participant elected restoration within one year of the recommencement of participation; ii) the application for restoration was in

respect of his or her most recent period of contributory service; and iii) the participant had not opted for a periodic retirement benefit following his or her separation from service *or* had before 1 April 2007 elected under Article 30 of the UNJSPF Regulations, or was deemed to have elected under Article 32 of the UNJSPF Regulations, a periodic deferred retirement benefit that was not yet in payment at the time of election to restore.

37. The amendment meant that all participants who had taken a withdrawal settlement (irrespective of their length of service) and had not opted for a periodic deferred retirement benefit would be entitled to restore prior contributory service. There are sound actuarial reasons for not extending the entitlement to restore prior contributory service to participants who had opted for a periodic deferred retirement benefit. However, as there may have been some uncertainty about the entitlement, it was decided to afford those who elected a deferred periodic retirement benefit before the amendment a once-off, exceptional, opportunity to reverse their election. Hence, participants who before 1 April 2007 opted for a deferred periodic pension benefit became entitled to restore their prior contributory service. Those who exercised their option after that date did not become so entitled.

38. While Ms. Al-Shalchi met the first two preconditions of the amended Article 24(a) of UNJSPF Regulations, she did not meet the third precondition on two fronts. First, following her separation she opted (in her PENS.E/7 form dated 17 September 2009) for a deferred retirement benefit in the form of a periodic pension. Second, her election to receive a periodic deferred retirement benefit under Article 30 of the UNJSPF Regulations took place after 1 April 2007. She thus did not fall into the exceptional category of entitled participants who opted for a deferred periodic retirement benefit. As just explained, only those participants who exercised their election for a deferred retirement benefit before 1 April 2007 are entitled to restore their prior contributory service. Ms. Al Shalchi exercised her election in September 2009.

39. Ms. Al-Shalchi's argument that she is eligible because she exercised her election in 2009 in respect of service before 2007 is not sustainable. The language of Article 24(a) of the UNJSPF Regulations is clear and unambiguous. The general principle that participants who opt for a deferred periodic retirement benefit should not be allowed to restore contributory service was subject to a once-off exception for participants who made the election prior to the United Nations General Assembly resolution mandating the amendment.

Ms. Al-Shalchi did not fall within the exceptional category. She is accordingly not entitled to restore her prior contributory service.

40. Ms Al-Shalchi complains that she did not have access to the UNJSPF Regulations. Her claim is unconvincing. The UNJSPF Regulations and Rules are available on the UNJSPF website. Participants were informed of the changes to Article 24(a), through the Chief Executive Officer's annual letters and booklets. Moreover, in the relevant period, Ms. Al-Shalchi submitted regular updates of her PENS. A/2 form (designation of beneficiary), which contains a statement on the right to validate and to restore. She also did not seek an appointment with the UNJSPF to address her issues in person.

41. While the UNJSPF has a duty to disclose information in good faith, it does not carry an obligation to educate participants individually about the precise nature and content of the provisions governing benefits. Participants are required to ascertain for themselves the nature of their benefits, especially when called upon to exercise a benefit option. If uncertain, they should seek advice not only from the staff of the UNJSPF but from independent advisers. Ignorance of the rules cannot be invoked as an excuse for a failure to comply with them.¹

42. There is no evidence that the UNJSPF provided incorrect advice to Ms. Al-Shalchi. The UNJSPF's letter of 29 October 2007 (despatched two years before Ms. Al-Shalchi chose a deferred retirement benefit) made specific reference to Article 24 of the UNJSPF Regulations as setting out the conditions for restoration. On 10 September 2009, two years after the UNJSPF's letter of 29 October 2007, Ms. Al-Shalchi requested further clarification. The UNJSPF responded with answers to her questions on 22 September 2009. She did not pursue the matter of restoration with the UNJSPF at that time. Instead, after a month, she submitted the payment instructions electing a deferred retirement benefit. One may legitimately assume that she considered her options before exercising her election.

¹ *Khan v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-559, para. 31.

43. As decided in many cases, the UNJSPF has no discretion to grant a benefit for which the UNJSPF Regulations do not provide.²

44. In the premises, the appeal stands to be dismissed.

Judgment

45. The appeal is dismissed and the decision of the Standing Committee is affirmed.

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Murphy, Presiding
Cape Town, South Africa

(Signed)

Judge Halfeld
Juiz de Fora, Brazil

(Signed)

Judge Colgan
Auckland, New Zealand

Entered in the Register on this 7th day of January 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar

² *Neville v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-004, para. 14.