



**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** René M. Vargas M.

BOUTROUE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**SUMMARY JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

N/A

## **Introduction**

1. By application filed on 4 April 2014, completed on 22 April 2014, and registered under Case No. UNDT/GVA/2014/012, the Applicant contests the:

a. “unacceptable length by [the Office for the Coordination of Humanitarian Affairs (“OCHA”)] to finalise [his] early retirement dossier”; and

b. “level of [his] pension ... much lower ... than information officially provided by [the United Nations Joint Staff Pension Fund (“UNJSPF”)] to [him] on 20 March 2012”.

2. The Applicant states that the decisions were taken by the Chief, Human Resources Management, OCHA, United Nations Office at Geneva (“UNOG”) (decision 1.a above) and by the Chief, UNJSPF, Geneva Office (decision 1.b above).

3. By Order No. 56 (GVA/2014) of today, the Tribunal ordered that the application be split into two cases and that the case at hand address exclusively the challenge against the decision of the UNJSPF (decision 1.b above).

## **Facts**

4. The Applicant is a former staff member of OCHA, who had been on secondment to the United Nations Development Programme (“UNDP”) and on special leave without pay prior to his separation.

5. By estimate dated 20 March 2012, the UNJSPF Office in New York provided the Applicant with an estimate of his pension entitlements with 24 June 2012 used as his expected date of separation from service; the estimate also included a notice drawing the Applicant’s attention to the fact that it was “unaudited [and] based on information provided by [his] employing organization” and that “an accurate determination [could] be made only after [his] separation from service [had] actually taken place, at which time all data would be audited”.

6. The Applicant was separated from service on 30 June 2012, at age 55.
7. According to the Applicant, on 15 February 2014, he received his pension entitlement letter advising him about his actual entitlements under the UNJSPF Regulations— including retroactive payments made—upon his separation from service from OCHA on 30 June 2012. The Applicant claims that the amounts of the benefits contained in the pension entitlement letter were considerably lower than those contained in the estimate of 20 March 2012.
8. On 4 April 2014, the Applicant filed before this Tribunal a “motion for intervention” and, upon the Tribunal’s request to complete his submission with the respective “Application on Merits” form he did so on 22 April 2014.

#### **Applicant’s submissions**

9. The Applicant states that he was provided with inaccurate estimates and that if he had known his actual level of pension, he would have postponed his decision for early retirement. The Applicant argues that on the basis of wrong information provided by UNDP and OCHA, the UNJSPF estimate of 20 March 2012 contained a benefit that was overestimated by some 20%. In order to bring his pension up to the level of the estimate of 20 March 2012, he requests to be given the opportunity to make up for two years of contributions.

#### **Consideration**

10. Article 9 of the Tribunal’s Rules of Procedure on summary judgment provides that:

A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law. The Dispute Tribunal may determine, on its own initiative, that summary judgment is appropriate.

11. The Tribunal notes that, as a first step, it has to determine if it is competent to examine an application directed against a decision from the UNJSPF. Since the Tribunal’s competence is a matter of law which can be decided even if it has not

been raised by the parties and without the application being served to the Respondent (see *Christensen* 2013-UNAT-335; *Bofill* UNDT/2013/141; *Lee* UNDT/2013/147; *Kostomarova* UNDT/2014/027), it considers it appropriate to issue a summary judgment. Notwithstanding the reasoning in *Prisacariu* (UNDT/2014/045), in the United Nations internal system of administration of justice it has been accepted as an appropriate tool to deal with issues of receivability (see *Gehr* 2013-UNAT-313).

12. The scope of the Tribunal's jurisdiction is clearly determined and limited by art. 2.1(a) of its Statute, which provides:

#### Article 2

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment.

13. The Tribunal considers that the Applicant does not contest an administrative decision taken by the Secretary-General as the Chief Administrative Officer of the United Nations. According to art. 4 of the UNJSPF Regulations, the Pension Fund, as a multimember organisation, is administered by the Pension Board, a staff pension committee for each member organization and a secretariat to the Board and to each such Committee; the Secretary-General has no role in the Fund's administration.

14. The Tribunal further notes that the UNJSPF is not one of the organizations or entities with which a special agreement has been concluded, under the terms of art. 2.5 of its Statute, to establish the Tribunal's jurisdiction.

15. In view of the foregoing, the Dispute Tribunal does not have jurisdiction over decisions of the UNJSPF. The Tribunal further observes that it is only the United Nations Appeals Tribunal ("UNAT") who is competent to entertain

appeals against decisions of the UNJSPF. Indeed, art. 2.9 of the UNAT Statute states that:

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.

16. Moreover, sec. K of the UNJSPF Administrative Rules provides for an internal Review and Appeals procedure before the Staff Pension Committee of each member organization and/or the Standing Committee. More specifically, sec. K.5 provides that:

A review shall be initiated by delivery to the secretary of the staff pension committee, or to the Secretary of the Board if the review is by the Standing Committee, within ninety days of receipt of notification of the disputed decision, of a notice in writing stating the points of fact or of law contained in the decision which are disputed, and the grounds upon which the request for the review is founded; the staff pension committee, or the Standing Committee as the case may be, may nevertheless, upon good cause shown, accept for review a request notice of which was delivered after the expiry of the period prescribed above.

17. It follows from the above that the Applicant has to follow different procedures if he wants to contest the decision of UNJSPF. Having concluded that it is not competent to examine the present application, the Tribunal cannot entertain any further considerations with respect to the Applicant's claims.

### **Conclusion**

18. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

*(Signed)*

Judge Thomas Laker  
Dated this 24<sup>th</sup> day of April 2014

Entered in the Register on this 24<sup>th</sup> day of April 2014

*(Signed)*

René M. Vargas M., Registrar, Geneva