

2017-UNAT-728, Domzalski

UNAT Held or UNDT Pronouncements

On receivability, UNAT held that the appeal was receivable insofar as it related to the UNJSPF decision to deduct child support from the Appellant's pension in accordance with Article 45 of the UNJSPF Regulations. As to the appeal related to repayment of a sum paid directly to the Appellant's estranged spouse as child's benefit under Article 36 of the UNJSPF Regulations, UNAT held that this aspect was not receivable for failure to challenge in a timely manner the decision and that his claim regarding due process with respect to direct payments under Article 36 had no merit. On the merits of the child support (Article 45) claim, UNAT held that the salient point was whether UNJSPF correctly applied Article 45 when deducting from the Appellant's pension child support payments for his daughter resulting from a Tanzanian court order. UNAT held that there was nothing in the UNJSPF Regulations to prevent UNJSPF from assisting a retiree in satisfying his or her legal obligations by making deductions from the pension based on a voluntary agreement outside the scope of Article 45, such as the agreement on deductions reached by the Appellant and his estranged wife. However, UNAT held that for the deductions made prior to an agreement being reached (from October 2015 to January 2016), the order of the Tanzanian court did not meet the requirement of being final and executable within the meaning of Article 45, noting that the Appellant had submitted proof of his appeal against that order and that therefore there was no valid basis for the deductions. UNAT held that as Article 45 does not afford discretion to UNJSPF, UNJSPF incorrectly applied Article 45 when making deductions from the Appellant's pension and that the Standing Committee of the UNJSPB erred in law by upholding the UNJSPF's decision. UNAT granted the appeal in part, affirmed the decision of the Standing Committee of UNJSPB to the extent that it confirmed the payment of the child's benefit, and partially reversed it insofar as it related to the deductions for child support from the period of October 2015 to January 2016.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision of the UNJPSF to make deductions from his pension for child support. The Standing Committee of the UNJSPB upheld the decision, finding that the UNJSPF Chief Executive Officer acted reasonably within his discretion.

Legal Principle(s)

Notwithstanding the non-assignability of rights obtained by participants or beneficiaries of UNJSPF, UNJSPF may, to satisfy a legal obligation on the part of a participant or former participant arising from a marital or parental relationship and evidenced by a final and executable order of a court or by a settlement agreement incorporated into a divorce or other court order, remit a portion of a benefit to one or more former spouses and/or a current spouse from whom the participant or former participant is living apart. A court order which is subject to appeal is stayed and therefore neither final nor executable.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Domzalski

Entity

UNHCR

Case Number(s)

2016-966

Tribunal

UNAT

Registry

New York

Date of Judgement

31 Mar 2017

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Pension (see also, UNJSPF)

United Nations Joint Staff Pension Fund (UNJSPF)

Prior contributory service/restoration of

Applicable Law

UNAT Statute

- Article 2.9
- Article 7.2

UNJSPF Regulations

- Article 45
- Article 48