

2020-UNAT-1004, Larriera

UNAT Held or UNDT Pronouncements

UNAT held that UNJSPF's contention that Ms. Larriera had known since 2003 that she was not recognized as a widow by UNJSPF, interpreted as having the meaning that she should have timely filed her request for review and subsequently her appeal to UNAT at that time, was without merit. In the absence of an explicit decision by the Administration denying her the entitlement, UNAT held that Ms. Larriera could not and ought not to be expected to presume that such a decision was taken. UNAT held that Ms. Larriera's request for review was receivable *ratione materiae* and that Ms. Larriera's appeal was receivable *ratione temporis*. UNAT held that UNJSPF's contention that there could be no change to the record after the participant's separation from service to be baseless. UNAT held that the prohibition of a change in the records after separation is specifically limited to the date of birth of the participant or his or her prospective beneficiaries and it follows that there is no restriction which either prevents a participant from changing the record to acknowledge a valid marriage that occurred before separation or which prevents a spouse from reporting his or her alleged marriage to UNJSPF after separation from service. UNAT held that, as the marriage of Mr M and Ms M was concluded under French law, it was governed by French law, and that therefore their marital status could not have been unilaterally changed under Brazilian law (the law of Mr M's nationality). UNAT held that former ST/SGB/2004/4, which governed recognition of personal status for UN employment benefit purposes, was not applicable for UNJSPF pension benefit purposes. While divorce proceedings had been initiated by Mr M in the French courts and a court order had been issued allowing Mr M and Ms M to live separately, the marriage had not been dissolved and remained valid at the date of Mr M's death. The fact that Brazil recognized a different marital status than that under French law was irrelevant for the purpose of determining Ms. Larriera's entitlement to a survivor's benefit. UNAT dismissed the appeal and upheld the decision of UNJSPB.

Decision Contested or Judgment/Order Appealed

Ms. Larriera contested the decision not to recognize her as the surviving spouse of her partner (Mr M), which was made on the basis that Mr M was married to another person (Ms M). Ms. Larriera had lived with Mr M for over two years and had a determination from a Brazilian court that she and Mr M were in a stable union at the time of Mr M's death.

Legal Principle(s)

Determining marital status by reference to the law of a staff member's nationality only applies to a staff member who concluded a marriage or enters into another partnership recognized under his or her national law; it does not apply to a staff member who chose to enter into a marriage or partnership under a law other than that of his or her nationality. A participant who enters into a marriage under a law other than that of his or her nationality cannot subsequently choose to change his or her marital status under a different legal regime, ignoring the place and procedures of the marriage. An appealable administrative decision is a decision whereby its key characteristic is the capacity to produce direct legal consequences affecting a staff member's terms and conditions of appointment. Before it can be found that there was an implied administrative decision, there must be evidence that it was challenged by a specific request to desist and a refusal or failure by the Administration to desist or an implied decision in the form of a failure to take any decision in that regard. The prohibition of a change in the UNJSPF records after separation is limited to the date of birth of the participant or his or her prospective beneficiaries and nothing else. A juridical act may be void for one purpose and valid for another, or it may be void against one person but valid against another.

Outcome

Appeal dismissed on merits

Outcome Extra Text

No relief ordered; No relief ordered.

Full judgment

[Full judgment](#)

Applicants/Appellants

Larriera

Entity

UNJSPF

Case Number(s)

2019-1318

Tribunal

UNAT

Registry

New York

Date of Judgement

27 Mar 2020

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Jurisdiction / receivability (UNAT)

Temporal (ratione temporis)

UNJSPB

United Nations Joint Staff Pension Fund (UNJSPF)

Receivability (UNAT)

Survivor's benefits

Applicable Law

Secretary-General's bulletins

- ST/SGB/2004/4

UNAT Statute

- Article 2.9

UNJSPF Administrative Rules

- Rule B.2
- Rule B.3

UNJSPF Regulations

Related Judgments and Orders

2010-UNAT-095

2014-UNAT-420

2015-UNAT-508

2015-UNAT-537
2016-UNAT-669
2018-UNAT-849
2019-UNAT-912
2016-UNAT-663
2010-UNAT-016
2013-UNAT-348
2019-UNAT-969
2011-UNAT-177
2010-UNAT-007
2016-UNAT-644
2017-UNAT-716
2019-UNAT-967
2014-UNAT-481
2018-UNAT-840