

2023-UNAT-1323, Elena Korotaeva

UNAT Held or UNDT Pronouncements

The UNAT dismissed the appeal.

The UNAT first held that the UNDT erred in law in retroactively applying WMO Staff Rule 193.3(c) when it examined her right to a termination indemnity. At the time the impugned decision was taken, only the 2019 WMO Staff Regulations and Rules were in force and should have been applied. The UNDT made an error in applying the 2020 law based on the Secretary-General's submission of the wrong version of the WMO Regulations and Rules to the UNDT.

The UNAT affirmed the UNDT's finding that the Administration's response to a request for management evaluation is not a reviewable administrative decision.

The UNAT concluded that the application of the 2019 WMO Staff Rule 193.3(c) would not lead to a different conclusion compared with the application of the 2020 WMO Staff Rule 193.3 (c) in the UNDT process. The UNAT found that the change of wording from "pension benefit" to "retirement benefit" in WMO Staff Rule 193.3(c) made no difference for the purpose of deciding the Appellant's eligibility to receive such kind of benefit due to her separation.

The UNAT further found that the UNDT correctly dismissed Ms. Korotaeva's contention that Article 32 of the UNJSPF Regulations allowed her to defer her entitlement to a retirement benefit, thus avoiding the provision of WMO Staff Rule 193.3(c). Such deferment did not affect the entitlement date as of which Ms. Korotaeva's benefit was to be calculated and WMO Staff Rule 193.3(c) remained applicable.

Therefore, the UNAT found that the Appellant was not entitled to a termination indemnity pursuant to the applicable WMO Staff Rules.

Decision Contested or Judgment/Order Appealed

By Judgment No. UNDT/2021/158, the UNDT dismissed Ms. Korotaeva's application contesting the decision not to pay her a termination indemnity upon separation from service due to abolition of post.

At the outset, the UNDT found that Ms. Korotaeva misconstrued the nature of the outcome of the management evaluation when it identified the IOO's MER response as the final impugned decision. The UNDT concluded that it would not adjudicate her arguments in relation to the IOO's responses to her request for management evaluation.

Turning to the question of whether the contested decision was lawful, the UNDT found that since the decision had been made on 18 May 2020, the 2020 version of the WMO Staff Regulations and Rules was applicable. The UNDT noted that it followed from WMO Staff Regulation 9.3 and WMO Staff Rules 193.2(d) and 193.3(c) and Article 28 of the UNJSPF Regulations, that a WMO staff member is not eligible to the payment of a termination indemnity, if his or her age at the time of separation from service was the normal retirement age or more, the contributory service was five years or longer, and he or she was entitled to a retirement benefit. Since Ms. Korotaeva had joined WMO on 1 July 1999, her normal retirement age was 62 pursuant to Article 1 of the UNJSPF Regulations. When she separated from the Organization, she was 63 years old, she had thus exceeded the normal retirement age and contributed to the UNJSPF for more than five years. Since this entitled her to a retirement benefit, Ms. Korotaeva was ineligible for the payment of a termination indemnity.

Finally, the UNDT dismissed Ms. Korotaeva's contention that Article 32 of the UNJSPF Regulations allowed her to defer her entitlement to a retirement benefit, thus avoiding the provision of WMO Staff Rule 193.3(c). The UNDT found that such deferment did not affect the entitlement date as of which Ms. Korotaeva's benefit was to be calculated and WMO Staff Rule 193.3(c) remained applicable. She was thus ineligible for the payment of a termination indemnity.

Ms. Korotaeva appealed.

Legal Principle(s)

The Rule in force at the time an impugned decision was taken should prevail.

The Administration's response to a request for management evaluation is not a reviewable administrative decision.

Pursuant to Article 28 of the UNJSPF Regulations, the entitlement of a retirement benefit turns on two requirements, namely the age and the length of contributory service at the time of separation.

There is no connection between the reason of the separation of service and the qualification for a termination indemnity.

Deferment of the retirement benefit does not affect the entitlement date as of which the benefit is to be calculated and paid pursuant to Article 28 of the UNJSPF Regulations.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Elena Korotaeva

Entity

WMO

Case Number(s)

2022-1666

Tribunal

UNAT

Registry

New York

Date of Judgement

12 Apr 2023

President Judge

Judge Gao

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Definition

Termination indemnities

United Nations Joint Staff Pension Fund (UNJSPF)

Administrative decision

TEST -Rename- Benefits and entitlements-45

Applicable Law

UNJSPF Administrative Rules

UNJSPF Regulations

- Article 28
- Article 32

WMO Staff Regulations and Rules

- Rule 193.2