

# **2023-UNAT-1365, Polycarp Ambe-Niba**

## **UNAT Held or UNDT Pronouncements**

The UNAT considered an appeal by the participant in the Fund.

The UNAT found that the facts suggest that the participant's withdrawal settlement funds were paid into a bank account which had not been opened by him. At the same time, there were unanswered questions as to how the participant had bank statements and cancelled cheques from this account if he had not opened it. In addition, given the mismatch between the participant's name and the name of the holder of the bank account, there was no explanation as to why the wire transfer had been allowed to proceed and had not been rejected.

The UNAT noted that the Standing Committee had failed to consider the relevant issues of whether the Fund had discharged its onus of paying the withdrawal settlement to the participant, whether the Regulations of the Fund had been observed in payment of the withdrawal settlement and whether the Fund had acted in accordance with the implied duty of good faith.

The UNAT remanded the matter to the Standing Committee for additional fact-finding on eight specific questions.

## **Decision Contested or Judgment/Order Appealed**

A participant in the United Nations Joint Staff Pension Fund, a former staff member, contested the decision to reject his request that the Fund issue a duplicate withdrawal settlement. His request followed his claim that, due to fraud, he had not been the actual recipient of the withdrawal settlement payment disbursed by the Fund.

In the decision of 19 July 2022, the Standing Committee of the Pension Board upheld the contested decision. The Standing Committee found that the Fund had fully complied with its procedures in processing the withdrawal settlement: corresponded with the participant through his designated e-mail address; received a written, signed payment instruction form in his name, which it crosschecked with his signature on record; sought confirmation of the paper-based payment instructions form via e-mail to his designated e-mail address; and paid his withdrawal settlement into a bank account held in his name at Bank of America.

## Legal Principle(s)

An appeal before the Appeals Tribunal is not a rehearing of the matter.

The admission of additional documentary evidence by the UNAT will only be permissible in exceptional circumstances and if it is in the interest of justice and the efficient and expeditious resolution of the proceedings. The evidence will not be admissible if it was known at the time and should have been presented at the first instance level.

The UNAT's jurisdiction on reviewing a decision of the Standing Committee is a narrow one and, in many cases, restricted to assessing whether there has been nonobservance of the regulations.

The Regulations of the Fund place the onus or responsibility on the Fund to pay the withdrawal settlement to the participant and to make reasonable efforts to ensure all payments and disbursements are properly payable.

## Outcome

Case remanded

## Outcome Extra Text

The case is remanded to the Standing Committee for additional fact finding per paragraph 84 of the Judgment.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Polycarp Ambe-Niba

## Entity

UNAKRT

## Case Number(s)

2022-1729

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

31 Jul 2023

## President Judge

Judge Sandhu

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Burden of proof

Non-disciplinary

Evidence

Production of evidence

Procedure (first instance and UNAT)

Admissibility of evidence

Oral hearings

United Nations Joint Staff Pension Fund (UNJSPF)

Standing Committee of UNJSPB (UN Joint Staff Pension Board)

## Applicable Law

UNAT RoP

- Article 10.1
- Article 18.1

UNAT Statute

- Article 2.5
- Article 2.9
- Article 8.3

UNJSPF Administrative Rules

- Rule J.2

UNJSPF Regulations

- Article 4(b)
- Annex II
- Article 31(a)
- Article 48(a)

## Related Judgments and Orders

2019-UNAT-952

2018-UNAT-834

2023-UNAT-1357

2021-UNAT-1106