

# **2022-UNAT-1271, Carolina Larriera**

## **UNAT Held or UNDT Pronouncements**

Ms. Larriera filed an appeal.

UNAT first examined whether Ms. Larriera was entitled to file a claim under Appendix D. UNAT found that – unlike the Pension case – for the purpose of the Staff Regulations and Rules, the law of Brazil, Mr. M’s national state, was to be the law determining his marital or domestic partnership status as at the date of his death for Appendix D purposes. That status, as determined subsequently by a Brazilian court of competent jurisdiction, was that Mr. M and Ms. Larriera were, as at the date of his death (and despite his still extant French marriage to Ms. M) in a domestic partnership of equal standing to a marriage. She was, by the application of ST/SGB/2004/4 and Brazilian law, Mr. M’s “spouse”. Under Article 10.2 of Appendix D, Ms. Larriera met the definition of a “widow” for the purposes of receiving the relevant benefit payable upon Mr. M’s death in service. UNAT thus concluded that Ms. Larriera was entitled to a United Nations Staff Rules death benefit arising from her and Mr. M’s marital status.

UNAT next turned to consider whether Ms. Larriera qualified under one of the three statutory gatekeeping categories of “applicant” before the UNDT. UNAT found that as a widow and and a dependent of a deceased staff member, she was entitled, under Article 3(1)(e) of the UNDT Statute to have her appeal against the Secretary-General’s administrative decision received and adjudged by the UNDT.

UNAT granted the appeal and reversed the UNDT Judgment.

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

Before the UNDT, Ms. Larriera challenged the decision to reject her claim for compensation under Appendix D to the Staff Rules as a surviving spouse of a staff member killed in the course of official duties on 19 August 2003. The UNDT dismissed the application finding that Ms. Larriera’s application was not receivable

because she was not within one of the three classes allowed by in Article 3(1) of the UNDT Statute to make a claim to it. The UNDT found that Ms. Larriera did not come within the first category of claimant because she was not a staff member at the time she made her claim; she further did not fall within the second category because, although a former staff member, her claim “had no relation to her contractual status”. Finally, having considered UNAT's ruling in Ms. Larriera's appeal against the UNJSPF, the UNDT held that Ms. Larriera was not the deceased’s widow, and thus she had no standing to bring her claims in reliance on Appendix D of the Staff Rules. The UNDT therefore dismissed the application as not receivable *ratione personae*.

## Legal Principle(s)

The entitlement to a death benefit under Appendix D of the Staff Rules crystallises (or becomes subject to the then relevant legal principles) as at the date of death of the staff member, or perhaps more precisely and correctly, immediately before the staff member’s death. The law applicable to such entitlement is that in force at that date of death, unless any subsequent changes to that entitlement have retroactive effect covering the date of death.

The deceased staff member's national state is to be the law determining his marital or domestic partnership status as at the date of his death for Appendix D purposes.

The United Nations Tribunals are not entitled to go behind and second guess the lawfulness of national jurisdictions’ tribunals on such issues.

The French language version of Article 3(1)(c) of the UNDT Statute informs the proper interpretation and application of the English language provision. Therefore, the apparently restricted phrase “in the name of” a staff member means, in effect, the dependant of a staff member. In that sense, the phrase “in the name of” does not mean, literally, by use of the legal name of the deceased or incapacitated staff member, but means being a dependent of the named staff member.

## Outcome

Appeal granted

## Outcome Extra Text

The effect of this Judgment setting aside the UNDT's Judgment, will be that these issues will now have to be addressed in that forum. Ms. Larriera has, in respect of the issues the subject of this appeal and subject to the decision of other receivability questions, a receivable claim that may now be considered by the UNDT. The Judgment of the UNDT is accordingly set aside.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Carolina Larriera

## Entity

UNJSPF

## Case Number(s)

2021-1631

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

17 Nov 2022

## President Judge

Judge Murphy

Judge Colgan

Judge Sandhu

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Death benefit

Compensation for injury, illness or death attributable to service (Appendix D to Staff Rules)

Personal (ratione personae)

United Nations Joint Staff Pension Fund (UNJSPF)

Benefits and entitlements

Jurisdiction / receivability (UNDT or first instance)

## Applicable Law

Secretary-General's bulletins

- ST/SGB/2004/13/Rev.1
- ST/SGB/2004/4

Staff Rules

- Appendix D

UNDT Statute

- Article 3.1

## Related Judgments and Orders

2020-UNAT-1004

2011-UNAT-148