
APPEALS TRIBUNAL
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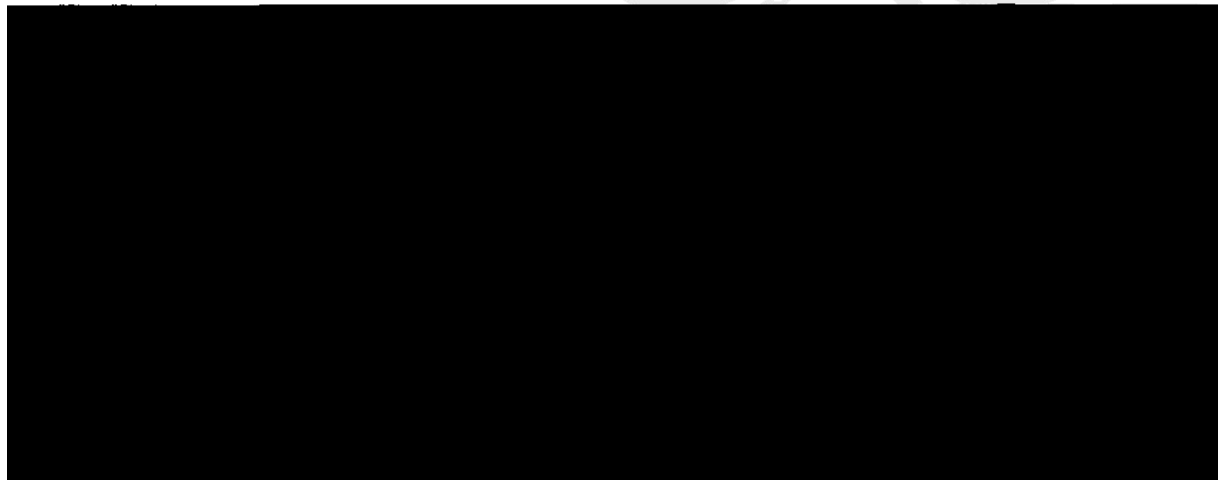
Judgment No. 2014-UNAT-464

Vorobiev
(Appellant)

v.

United Nations Joint Staff Pension Board
(Respondent)

JUDGMENT



JUDGE R

THE UNITED NATIONS APPEALS TRIBUNAL

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depend on the combined benefits that one is expected to receive from the “receiving” Plan when the staff member eventually separate[s].⁴

12. On 8 March 2007, Mr. Vorobiev withdrew his holdings from the Provident Fund.

13. On 26 March 2007, the Fund SLO sent Mr. Vorobiev a follow-up to her e-mail of 20 February 2007, stating:

[The Fund] is now consulting with the CTBTO secretariat regarding certain issues related to your transfer request. You will be contacted again upon the conclusions of the discussions. ... These talks do not change the principle already conveyed that at a maximum, UNJSPF can only recognize as pensionable in UNJSPF a period that is equal to the total length of actual past CTBTO service performed by you; however, they concern the practical steps to be taken in this case.

14. On 27 March 2007, the Fund SLO wrote to the Personnel Office of CTBTO regarding Mr. Vorobiev's transfer request and asked CTBTO to look into the matter. The Fund SLO advised CTBTO that Mr. Vorobiev would have an “excess balance” if his entire Provident Fund holdings were transferred to the Fund and the Fund could not retain that “excess balance”. She noted that Mr. Vorobiev's situation was “not foreseen” in the Transfer Agreement between CTBTO and the Fund. Therefore, the Fund SLO proposed a process that might allow CTBTO to retain the “excess balance” after Mr. Vorobiev's Provident Fund holdings were transferred on a 1:1 basis to the Pension Fund.

15. On the same day, the Personnel Office of CTBTO advised the Fund SLO that Mr. Vorobiev had decided not to transfer his Provident Fund benefits to the Fund and had withdrawn his Provident Fund holdings, stating that “[i]n light of the above, his separation from the Provident Fund has been completed”.

16. On 27 March 2007, the Fund SLO wrote to Mr. Vorobiev seeking clarification about his decision not to transfer his Provident Fund holdings to the Fund. Mr. Vorobiev answered: “I am very willing to hear what is the new procedure, especially in what respect it is different it is [sic] from the previous one, and will make my decision once I hear from you, as required by the Transfer Agreement.”

⁴ Emphasis and capitalization in original.

17. On 28 March 2007, the Fund SLO replied to Mr. Vorobiev, stating that “there are no new ‘arrangements’”. Moreover, she advised Mr. Vorobiev that there are other matters in which the Fund “deals directly with the organization, not with the individuals. There are no policy issues involved, and of course these are almost, if you have decided not to transfer.” She then suggested that Mr. Vorobiev should contact the Chief of the UNJSPF Geneva Office if he had any further questions.

18. On 30 June 2007, the Finance Officer and Officer-in-Charge, UNJSPF Geneva Office, e-mailed Mr. Vorobiev:

Please note that a transfer of pension rights entails a transfer between organizations.

As you have taken out your “pension funds” from the CTBTO Provident Fund you are no longer eligible for a[...] transfer of your pension rights.

....

We therefore regret not to be able to proceed.

19. On 4 July 2007, the Chief, UNJSPF Geneva Office, advised Mr. Vorobiev that the Transfer Agreement no longer applied to him and he could not transfer his holdings to the Fund since he had withdrawn his holdings from the Provident Fund and, thus, received a benefit. It was further explained that “‘transfers’ are between organizations and from an individual to an organization. What you propose, being separated from the Provident Fund of CTBTO, is a ‘voluntary additional contribution’ (i.e. an individual buys additional years of contribution), which is not accepted by our present Fund’s Rules and Regulations.”

20. Mr. Vorobiev did not seek review by the Standing Committee of the 4 July 2007 decision.

Please be reminded that the CTBTO had informed the Fund by email of

Submissions

Mr. Vorobiev's Appeal

26. The Standing Committee did not find that Mr. Vorobiev's request was time-barred, and the Appeals Tribunal should accept that finding. In the event the issue of timeliness is raised on appeal by the Respondent or the Appeals Tribunal *sua sponte*, Mr. Vorobiev contends that his request is timely since the Fund and CTBTO were uncertain in July 2007 "respecting circumstances where an excess balance resulted from the actuarial calculation". It was not until 2010 and 2011 that the Fund made a final decision as to how to treat a staff member's excess balance, i.e., allowing an excess balance to be disposed of by agreement between the staff member and CTBTO.

27. Under the jurisprudence of the Administrative Tribunal of the International Labour Organization, an organization should not be allowed to assert time-bar where information has been withheld from the staff member in violation of its duty of good faith. The Fund officials did not properly advise Mr. Vorobiev that the treatment of a staff member's excess balance was under review and he would be advised of the outcome in due course, as it should have.

28. Under principles of equitable estoppel and good faith, the Fund is precluded from denying Mr. Vorobiev's "rights under the Transfer Agreement". The Fund has a fiduciary duty to its participants to provide accurate information, and Mr. Vorobiev was justified in

30. Mr. Vorobiev requests that the Appeals Tribunal “rescind the contested decision and order specific performance and order: i) the Pension Fund to calculate the actuarial value of [his] years of service with CTBTO under the conditions that prevailed at the time he initially made the request; and ii) the Pension Fund to allow [him] to pay the foregoing amount directly to the Pension Fund to receive credit for years of contributory service”.

The Fund's Answer

31. Mr. Vorobiev withdrew his pension from the Provident Fund in March 2007. Thus, he received a benefit, which under Article 2 of the Transfer Agreement between CTBTO and the Fund thereafter precluded him from transferring his Provident Fund pension to the Fund.

32. Mr. Vorobiev withdrew his pension from the Provident Fund while the Fund was actively seeking solutions about how to handle his novel situation, i.e., what to do about his “excess balance” in the Provident Fund. Rather than wait until this administrative matter was decided, he acted preemptively and withdrew his pension. This was his choice; not the Fund's decision. Mr. Vorobiev has had the b8.3.9()-7.2(f)1 0 TD ich .4(Tr fu order:)D ise7 0 TD ihe

submitted by a staff member “who is eligible under article 21 of the regulations of the Fund as a participant in the Fund”.⁵ Article 7(2) of the Statute requires that an appeal of a Standing Committee decision must be filed within 90 days of receipt of the decision.

35. Section K of the Fund’s Administrative Rules (Administrative Rules), in effect in 2007, required that the Standing Committee’s review of any decision by the Secretary of the UNSJPB “shall be initiated ... within sixty days of notification of the decision appealed against ...”. “[N]evertheless, upon good cause shown”, the Standing Committee may “agree to consider an appeal ... which was delivered after the expiry of the period prescribed above”.

36. Under Articles 2(9)(a) and 7(2) of the Statute, a decision by the Standing Committee is a prerequisite to judicial review by the Appeals Tribunal. Yet, Mr. Vorobiev did not seek review by the Standing Committee of the 4 July 2007 decision to preclude him from transferring his Provident Fund holdings to the Fund under Article 2 of the Transfer Agreement due to the fact that he had withdrawn his holdings from the Provident Fund. Instead, five years later, he requested that the Fund reopen and review his case.

37. The Fund denied Mr. Vorobiev’s request to reopen and review his case on the ground that “the Fund cannot entertain your request to review a decision taken back in 2007. You should have pursued the matter further earlier, eventually through formal recourse mechanisms, back in 2007.” The Standing Committee upheld this decision, and the Standing Committee’s decision is on appeal before the Appeals Tribunal.

38. The Fund’s use of the word “entertain” is similar to our use of the word “receive”. Under Section K of the Administrative Rules, Mr. Vorobiev was required to seek review by the Standing Committee of the 4 July 2007 decision within sixty days. However, he did not.

⁵ See also *Larghi v. UNJSPB*, Judgment No. 2013-UNAT-343, paras. 13-14; *Pio, v. UNJSPB*, Judgment No. 2013-UNAT-344, paras. 18-19; *Muthuswami v. UNJSPB*, Judgment No. 2010-UNAT-034, para. 19. Similarly, Article 48 of the Pension Fund Regulations, in effect in 2007, provided for appeals to the former United Nations Administrative Tribunal of decisions by the Standing Committee acting on behalf of the Pension Board:

“(a) Applications alleging non-observance of these Regulations arising out of decisions of the Board may be submitted directly to the United Nations Administrative Tribunal by:

(i) Any staff member of a member organization which has accepted the jurisdiction of the Tribunal in Pension Fund cases who is eligible under article 21 of these Regulations as a participant in the Fund.”

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Original and Authoritative Version: English

Dated this 17th day of October 2014 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Adinyira

Entered in the Register on this 22nd day of December 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar