

Introduction

1. The Applicant filed an application contesting the decision of the Advisory Board on Compensation Claims (“ABCC”) which she describes as follows:

to deduct from the Applicant’s entitlement to compensation as a surviving spouse the amount of pension benefits being paid although she is not receiving any part of those benefits.

Historical and procedural background

2. On 19 August 2003, there was a terrorist bombing attack at the United Nations headquarters in Baghdad, Iraq. Mr. Sergio Vieira de Mello (a Brazilian national), the then United Nations High Commissioner for Human Rights and Special Representative of the Secretary-General in Iraq, was killed in the attack.

3. At the time of his death, Mr. Vieira de Mello was married to Mrs. Annie Vieira de Mello. The couple had married under the French law.

4. In January 2003, Mr. Vieira de Mello had initiated divorce proceedings against Ms. Annie Vieira de Mello in France. On 23 May 2003 a French court issued an order allowing the parties to live separately and authorized them to file an application for divorce. The court did not dissolve their marriage. Less than three months following the order, Mr. Vieira de Mello died, on 19 August 2003.

5. However, prior to the attack, the Applicant had also formed a family with Mr. Vieira de Mello and had accompanied him to Iraq. Thegdsaj T ily ck,

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with the death of the late Mr. Vieira de Mello was USD 2,776.78, and the Applicant would be eligible for USD 1,388.39 ($2,776.78 \div 2$) as of January 2024.

22. On 19 January 2024, the Applicant requested management evaluation of the of ABCC's decision. She challenged the decision to reduce her entitlement for compensation under Appendix D, arguing that subtraction of the total UNJSPF benefit, to which she is not entitled, from the total Appendix D compensation is unfair and penalizes her.

23. On 23 February 2024, the Management Advice and Evaluation Section issued its decision and upheld the contested decision.

24. On 16 April 2024, the Applicant filed the application mentioned in para. 1 contesting the ABCC decision.

25. The Respondent filed his reply on 17 May 2024 and requests the Tribunal to reject the application. He contends that the contested decision is legal, rational and procedurally fair.

26. By Order 54 (NBI/2024), the Duty Judge invited the Applicant to file a rejoinder and invited the parties to explore resolving the dispute amicably.

27. On 7 June 2024 the Applicant filed a rejoinder as directed.

28. On 20 June 2024 the parties informed the Tribunal that they were unable to reach a settlement agreement.

29. On 5 August 2024 the case was assigned to undersigned Judge.

30. On 19 August 2024 by Order 108 (NBI/2024) the parties were invited to file their respective closing submission by 13 September 2024, which they did.

Submissions

Applicant's submissions

31. The Applicant acknowledges that the plain meaning of art. 4.1 of the Appendix D entails reduction of the ABCC benefit by any amount paid to any person entitled to a benefit under the rules of the Pension Fund. However, her contention is that based on logic and fundamental fairness, it is wrong to deduct theoretical amounts that are not being paid to the recipient.

32. The Applicant further seeks to rely on the words uttered by the Deputy Secretary-General in 2004 referring to the attack in Iraq, where he stated, among others, that:

It is important to recognize that a crisis is not business as usual...It also recognizes the importance of the need for flexible administration of rules while meeting minimum accountability requirements. This approach should come from the highest levels for it to infuse through the response.

33. The Applicant emphasizes and echoes the words of the Deputy Secretary-General and maintains that they should not be ignored. She requests that that her case be afforded the duty of care as contained in the statement of the Deputy Secretary-General.

34. As remedies, the Applicant requests:

- a. Rescission of the contested decision and recalculation of the benefit paid to her with no deduction for pension benefits paid to third parties;
- b. Correction of official records of service to reflect that the Applicant was the lawful spouse of Mr. Vieira de Mello; and
- c. Compensation for delays and moral damages.

The Respondent's submissions

35. The Respondent submits that the Organization lawfully deducted the pension benefit from the co1(service)62 cm T /FAAu iAdent's submissions

divided the net compensation between Mrs. Vieira de Mello and the Applicant. The Applicant has not cited any rule or regulation that entitles her to more. Deducting the pension benefit from Mrs. Vieira de Mello's portion only, would contravene the letter and legislative intent of the law.

36. The Respondent elaborates that the compensation payable under art.10.2(b) is the "annual compensation" payable to the widow(s). Applying the formula in art. 10.2(b), the annual compensation payable in the present case is USD89,926.40. The plain language of art. 4.1 requires a deduction of the pension benefit from "any compensation payable" under art. 10.2. The deduction is required whether there is one or more widows and whether one or all receive a pension benefit. Once the net annual compensation is determined after the deduction, art. 10.2(b)(ii) requires the Organization to divide that amount "equally among the widows". The Applicant has not identified any legal basis for her claim.

37. The Respondent maintains that if the ABCC pays the Applicant without deducting the pension benefit as required under art. 4.1, this would result in the total payment to the two widows being more than what would have been paid to one widow, which is contrary to the General Assembly's intent. It would also result in an unequal division of the annual Appendix D compensation contrary to the letter of art. 10.2(b)(ii) of Appendix D.

38. Regarding the Applicant's contention that she should be afforded the duty of care as a victim of terrorist attack, the Respondent avers that the Organization has fulfilled its commitments to victims of terrorist attacks and those who have otherwise died in service. The Staff Rules and Regulations apply equally to every staff member regardless of the circumstances of their death in service.

39. Accordingly, the Respondent requests the Tribunal to reject the application. Further, the Applicant is not entitled to any remedies sought. The Applicant has produced no evidence of harm caused by the contested decision nor provided any evidence of delay and of subsequent harm caused by the delay.

40. In relation to the Applicant's request for correction of official records of service to reflect her as the lawful spouse of Mr. Vieira de Mello; the Respondent

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comprehension problems, the text of the rule must be interpreted upon its own reading, without further investigation (

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.

56. In the calculation of the benefit for the survivor, therefore, the theoretical

67. The acknowledgement of the Applicant's right to compensation under Appendix D in its full amount with no deductions from the early moment she was entitled to the benefit (pursuant to Judgment 2022-UNAT-1271, par. 29), plus interests for the delayed payment, can fully satisfy her position and does not leave any room for additional damages.

68. Finally, the Applicant's request, for correction of official records of service