

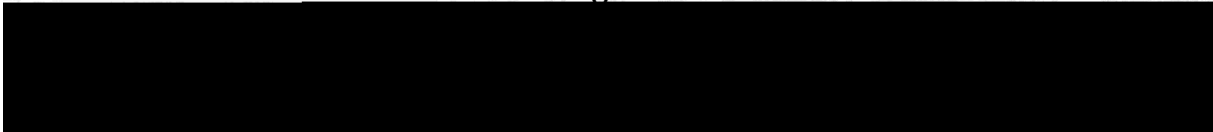


UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Case No. 2010-159



Taylor
(Appellant)



Counsel for Appellant: Self-represented

Counsel for Respondent: Bernard Cochemé

fixed amount benefit equal to twice the minimum surviving spouse's benefit under Article 34(c).

6. By letter to the Pension Fund dated 22 January 2001, the Appellant inquired about her possible entitlement to the UNJSPF benefits and also mentioned the remarriage of Taylor's third wife. By letter dated 11 April 2001, the Appellant was informed of her entitlement to a divorced surviving spouse's benefit. The benefit went into payment in May 2011, retroactive to 1 April 1999.

7. Taylor's first wife was not eligible to receive a benefit, as she had not been married to Taylor for a period of ten years during which contributions were paid to the Pension Fund as required under Article 35 *bis*(b)(i) of the UNJSPF Regulations.

8. By letter dated 14 June 2007, the Appellant requested a review of her pension benefits. She pointed out that the "major share" of the benefit was paid to the surviving spouse (third wife) which she considered "inequitable" since the third wife had only been married to Taylor for "less than two years" before his death, whereas the Appellant had been married to Taylor for "12 years". She asked whether the benefit should be divided in proportion to the duration of their marriages to Taylor and also whether the remarriage of the third wife would impact her entitlement to a UNJSPF benefit.

9. By letter dated 8 October 2007, the Pension Fund informed the Appellant that the amount payable to her was a fixed one under the UNJSPF Regulations and could not be reviewed.

10. In December 2008, the General Assembly approved certain amendments to Article 35 *bis* of the UNJSPF Regulations which came into effect on 1 January 2009 and were described by the Chief Executive Officer, UNJSPF, in his 2009 Annual Letter.

11. Following the issuance of the 2009 Annual Letter, the Appellant called the UNJSPF Geneva Office to inquire whether she would be entitled to a back payment of benefits prior to 1999. On 6 May 2009, the Appellant sent an e-mail to the UNJSPF referring to the telephone conversation. In her e-mail, the Appellant quoted from the amended Article 35 *bis*(e) that the benefit would be "payable from the first day of the month succeeding the death of the former participant".

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Pension Fund's Answer

17. The Pension Fund recalls that in December 1998, following a recommendation by the UNJSPB, the General Assembly approved new provisions in the Pension Fund's Regulations allowing former spouses of participants who retired or died in service on or after 1 April 1999 to request a surviving former spouse's benefit subject to five conditions set out in the new Article 35*bis*(b). This provision came into force as of 1 April 1999. Mindful that the change would not apply to former spouses who retired or died before 1 April 1999, the UNJSPB requested the Standing Committee to consider what could be done for former spouses not covered by the new provision.

18. Following a discussion at its session in 2000, the UNJSPB made recommendations to the General Assembly that were approved in December 2000 for a further amendment to the UNJSPF Regulations to provide a divorced surviving spouse's benefit for former spouses of former participants who separated or died in service prior to 1 April 1999, which would be payable from that date. The new provision was introduced under Article 35 *bis*(e) of the UNJSPF Regulations. The Appellant became entitled to a divorced surviving spouse's benefit under this new provision.

19. The Pension Fund submits that the change to Article 35*bis*(e) that is the subject of the present appeal was one of the changes approved by the General Assembly in December 2008. As a result of that change, the divorced surviving spouse's benefit would be payable from the date of the death of the former UNJSPF participant, irrespective of when the request was received by the Pension Fund. The report of the UNJSPB recommending the change explained that this change would concern those divorced spouses who would become eligible to an Article 35*bis*(e) benefit in or after January 2009. The Pension Fund points out that this amendment did not change the fact that all divorced surviving spouses' benefits would remain payable as of 1 April 1999 when the benefit was introduced, or from the time of death, whichever is later.

20. The Pension Fund contends that the present appeal is based on the 2009 Annual Letter of the Chief Executive Officer, which summarized the changes in relation to Article 35 *bis*(e) as "introduc[ing] an effective date for the minimum benefit payable to a surviving divorced spouse (i.e. to be payable as from time of death irrespective of when the request is received)". The Pension Fund submits that this wording needs to be read

in the context of the whole Article 35 *bis*(e) of the UNJSPF Regulations, specifically the provision that the benefit remains payable as of 1 April 1999. Under Article 49(b) of the Pension Fund's Regulations, amendments to the Pension Fund's Regulations approved by the General Assembly enter into force on the date specified by the General Assembly, but without prejudice to rights to benefits acquired through contributory service prior to that date. In the present case, the effective date of the amendment was 1 January 2009 and it applied to divorced surviving spouses where the benefit under Article 35 *bis*(e) comes into payment as a result of the death of a participant or retiree on or after 1 January 2009. Therefore the change could not be interpreted as giving rise to a retroactive payment prior to 1 April 1999.

21. The Pension Fund submits that it has correctly applied its Regulations to the Appellant's case who has not suffered any discrimination. It requests that the appeal be rejected in its entirety.

Considerations

22. The Appellant essentially seeks an amendment to the Regulations of the Pension Fund in such a way as to enable her benefit to be paid retroactively to the date of the death in service of her former husband, which was prior to 1 April 1999, disregarding the fact that the divorced surviving spouse's benefit was first introduced on 1 April 1999 and that is the reason why it has been paid since that event.

23. However, "only the General Assembly can amend the [UNJSPF] Regulations"²

24. Article 50(b) of the UNJSPF Regulations (2003), concerning the entry into force, reads:

No provision shall be construed as applying retroactively to participants in the Fund prior to the date of its entry into effect, unless expressly stated therein or specifically amended to such effect by the General Assembly with due regard to the provisions of article 49.³

² *Muthuswami et al v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-034, para. 33.

³ Article 49(b) of the UNJSPF Regulations (2003) provides: "The Regulations so amended shall enter into force as from the date specified by the General Assembly but without prejudice to rights to benefits acquired through contributory service prior to that date."

