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THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2015-UNAT-575

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definition of “net” in Mr. Gomez’ case which is unsupported by any rule or precedent and based on unsound logic.

12. Should the Appeals Tribunal find that the UNJSPF’s routine definition of “net” pension benefit was not the appropriate definition to apply in Mr. Gomez’ case, the appropriate body to adjudicate on the definition could be the Austrian Tribunal. The UNJSPF’s actions have, however, specifically prevented such ruling being provided by the Austrian judiciary. When requested for an indication as to Mr. Gomez’ pension benefit, the UNJSPF provided only the gross figure. Had the UNJSPF provided what it itself defines as gross and net pension benefits, it would have been available to the Austrian Court to decide within its jurisdiction whether Mr. Gomez’ ASHI payments represented part of his net pension benefit. Having created the conditions whereby this issue was not defined by the Austrian Court, the UNJSPF should be estopped from applying any definition of “net” other than that routinely used within their organization.

13. Should clarification be required on this issue, it would be available to Mr. Gomez’ former spouse to request such. Mr. Gomez relied on the UNJSPF

other costs that might be incurred in seeking clarification from the Austrian Tribunal as to the proper definition of his “net” pension benefit under Austrian law.

The UNJSPF’s Answer

16. The issue in this case concerns the nature of the ASHI premium and its relationship to a retiree’s UNJSPF pension benefit entitlement and whether it serves to create what the retiree has called his “net pension”. The arrangement for the Fund’s role in facilitating the deduction of ASHI premiums was put into place following consideration of a proposal by Secretaries of Staff Pension Committees in 1983 that the Fund facilitate the collection of health insurance premiums for ASHI and pay them directly to the member organization. A model memorandum of understanding between the Fund and UNJSPF member organizations was thereafter developed in respect of the deduction of ASHI premiums from pension benefit entitlements and IAEA entered into its agreement with the Fund on 9 November 2005.

17. Under the agreement, a pension beneficiary has to provide the Fund with authorization to remit to a third party part of the monthly pension benefit due to him or her in accordance with the Fund’s Regulations. ASHI deductions are therefore not covered by the Fund Regulations and the amount that is paid to a retiree after deduction of ASHI premiums cannot be deemed to be the net pension of a retiree. The amount of the premium is based on a direct relationship between the former employing organization and the retiree, and the Fund merely facilitates the collection of the premium. The decision by a retiree to enter into such agreement is voluntary and can be revoked at any time. Moreover, not all retirees or beneficiaries choose to subscribe to after health insurance offered by their former employing organization.

18. Both the Austrian judgments of 5 November 2012 and 13 March 2013 regard the notarial deed as obligating Mr. Gomez to pay part of his earnings to his former spouse. The Fund’s CEO based his decision on the interpretation that the notarial deed states that the amount payable is 50 per cent of Mr. Gomez’ average net income *or* his retirement pension. The reference to *net* income applies to his salary while there is no qualification regarding his pension. Unless there is a clear basis for using a different amount for the deduction, deductions to third parties under Article 45 are effected from the full or gross monthly pension benefit entitlement of a retiree, and not from any net amount that would take into account ASHI deductions or other deductions under Article 45 of the Regulations. Since the ASHI deduction does not bear any relationship to the benefits established under the Fund’s Regulations, the base amount for application

of the 50 per cent is Mr. Gomez' full monthly benefit and not the amount payable after deduction of ASHI contributions.

19. Turning to Mr. Gomez' request for compensation for legal fees and other costs that "might" be incurred in seeking clarification from the Austrian Tribunal as to the proper definition of his "net" pension benefit under Austrian law, the prudent course of action would have been to seek clarification first at the time he challenged the decision of the Fund's CEO or before starting the appeal process and seeking damages for a course of action that he may or may not take. There is no proof of such request and therefore, such compensation would be purely speculative.

20. The Fund asks that the Appeals Tribunal reject Mr. Gomez' appeal in its entirety.

Considerations

21. Mr. Gomez has challenged the Standing Committee's decision to deny his request under Article 45 of the Regulations of the Fund that his former spouse be paid 50 per cent of his monthly periodic pension benefit after the deduction of his ASHI premium. He contends that the Standing Committee erred in law in its interpretation of the phrase "net base pension benefit", thereby derogating from the ordinary definition of that phrase.

22. Generally speaking, the term gross pension is used to describe the aggregate pension before the deduction of taxes and other statutory deductions. Net base pension benefit therefore is the sum which is left after compulsory/statutory deductions.

23. It is noteworthy that in this case, Mr. Gomez's retirement benefit from the Fund including the monthly periodic pension benefit is not subject to taxation and/or payment

Since there are no statutory deductions from Mr. Gomez' monthly periodic pension benefit there is in fact no net base premium benefit to be considered by the Fund. Therefore, any challenge with respect to the application and meaning to the words "gross" and "net" is a journey into the realm of semantics.

26. In view of the foregoing, we uphold the decision of the Standing Committee.

27. We also find that there is no proper basis to support the claim for legal fees; therefore that claim is dismissed.

Judgment

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Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Faherty

(Signed)

Judge Lussick

Entered in the Register on this 18th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar