



Federation of International  
Civil Servants' Associations

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## Tips and Information Newsletter for International Civil Servants

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### Recent Decisions of the UN Appeals Tribunal on Pension Issues

The United Nations Appeals Tribunal is vested with jurisdiction to hear appeals from decisions of the Pension Board or its Standing Committee under Article 48 of the Pension Fund Regulations. With regard to appeals of decisions on benefits and entitlements that have been considered for review by the Pension Fund, the Tribunal's strict interpretation of UNJSPF Regulations has been evident in several decisions over benefits for surviving spouses in cases of remarriage.

In *Clemente* 2019-UNAT-912, the Tribunal examined the entitlement of surviving spouses where there had been a re-marriage. In *Clemente* a widow claimed a survivor's benefit under Article 34 of the Regulations upon the death of her retired spouse. It transpired that an earlier marriage in the Philippines had never been properly terminated and the Fund therefore rejected Clemente's request. The Appeals Tribunal reversed the decision finding she was entitled. Following the Appeals Tribunal's prior jurisprudence in *El-Zaim* 2010-UNAT-007 and *Tebeyene* 2010-UNAT-016, it held,

*“In accordance with general principles of private international law, the validity of a marriage must be assessed and determined in accordance with the lex loci celebrationis, which, in the instant matter, is the law of the Philippines.”*

Thus in principle, in order for a participant's second marriage to be valid his or her previous existing marriage must be legally dissolved in accordance with the laws of the jurisdiction where it was celebrated. The UNAT expended considerable effort in

examining and interpreting the jurisprudence of the country in question (something the UNJSPF had not done) and overturned the Fund's decision, concluding that the marriage of the claimant was valid, warranting payment of the survivor's benefit since,

*“under the law of the Philippines, a marriage, even one which is void or voidable, shall be deemed valid until declared otherwise in a judicial proceeding.”* [which had not occurred]

In a subsequent case, using similar analysis, UNAT concluded the claimant, who was determined by the courts of Brazil to be in a non-traditional stable union, was not so entitled. (*Larriera* 2020-UNAT-1004) This was due to a previously existing French marriage that was still in existence under French law at the time of the staff member's death. In accordance with the principle that the marital status is determined by the law of the locality where it is concluded, the law of France prevailed.

In *Pise* 2020-UNAT-1007, the Appeals Tribunal affirmed a decision of the Fund denying a widow's benefit to a former spouse on the grounds that the staff member had elected a reduced deferred retirement benefit with a lump sum, thereby precluding a widow's benefit under the provisions of Article 34 (b) of the Regulations.

It follows from the foregoing that it is always advisable to obtain good advice from the Fund *prior* to retirement and especially in regard to estate planning for spouses and other residual beneficiaries. Participants can get information on various benefit options by consulting the Pension Fund's website ([www.unjspf.org/contact-us](http://www.unjspf.org/contact-us)) using either toll free numbers or written inquiries.

In *Oglesby* 2020-UNAT-199, the Tribunal again rejected a claim for same sex survivor's benefits based on the Regulations in force at the time while at the same time urging the Fund and the General Assembly to consider changes to the Regulations to account for this anomaly and to update its practices to conform to evolving principles of law.

In an interesting development, former CEO of the Fund, Arvizu Trevino, who retired on a disability pension, brought several cases involving claims for compensation under Appendix D of the Staff Rules, separation payments, and even compensation for harassment from staff representatives, all of which were rejected by the UN Dispute Tribunal. The claim for harassment, which is the most interesting, is under

appeal. In it, the Secretary-General was placed in the atypical position of defending the right of staff representatives to critique management.<sup>1</sup>

In 2020 the General Assembly postponed consideration of a proposal of the UN Joint Staff Pension Fund Board to restrict the application of Article 48 of the Regulations of the Fund on appeals so as to limit the jurisdiction of the UN Appeals Tribunal only to cases specifically involving benefits and entitlements of participants, as opposed to any administrative decisions on governance or other matters emanating from the Board or Standing Committee.<sup>2</sup> The proposal is one of several changes being discussed with regard to governance matters of the Pension Fund.

The proposed change follows a judgment by the Tribunal in 2019 reported in *Rockcliffe* 2019-UNAT-908 for execution of a prior UNAT Judgment concerning governance issues and specifically over eligibility of participants to run for the Board and over how to manage potential conflicts of interest. The Appeals Tribunal adhered strictly to the present wording of the Regulations and refrained from expanding the concept of conflict of interest beyond its application to participation in specific cases. While the proposed change in the jurisdiction of the UN Appeals Tribunal would have no direct effect on the ability of beneficiaries to challenge the non-observance of the Regulations in respect to their benefits and entitlements, it could have implications for the future for the representation of participants on the Pension Board.

***Disclaimer***

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<sup>1</sup> See UNDT/2020/208, UNDT/2020/205, UNDT/2020/206 and UNDT/2020/211

<sup>2</sup> A/RES/75/246 and A/RES/75/248