



George G. Irving, Esq.¹

Tips and Information Newsletter for International Civil Servants

September 2025

Recent Jurisprudence of the United Nations Appeals Tribunal on UN Joint Staff Pension Matters

Under Article 48 of the UNJSPF Regulations and Section K of the UNJSPF Administrative Rules, appeals of decisions of the Standing Committee, acting on behalf of the Pension Board, are made to the United Nations Appeals Tribunal (UNAT).

UNAT Jurisprudence

In reviewing these cases, the UNAT cited an important principle in its judgment *Ambe-Niba* 2023-UNAT-1365 involving the payment of a withdrawal settlement. UNAT remanded the case to the Standing Committee for a fuller determination of the facts, noting the important principle of duty of care, consistent with the implied requirement to act in good faith, applicable to all pension decisions. This principle has been recalled in a number of decisions.

Issues Regarding Spousal Benefits

Many of the more recent cases being appealed involve claims for the payment of benefits to widows or widowers (surviving spouses of participants) or divorced surviving spouse benefits under Article 35 bis of the Fund's Regulations. These benefits are governed by statute and generally guided by the law of the country of nationality of the participant. There have been several claims recently arising from disputes over the designation of beneficiaries or interpretations of national matrimonial law.

¹ George Irving is a former UN staff member who served on the Pension Board; he is presently a private attorney located in the US whose practice includes International Administrative Law and who has over thirty years' experience acting as counsel in cases before the UN Dispute and Appeals Tribunals and the ILO Administrative Tribunal.

In 2024, UNAT rejected a claim based on an alleged life partnership that was not legally recognized: “It follows that the Standing Committee of the Board cannot be faulted for finding that, at the time of Mr. Potgieter’s death, a permanent life partnership between him and Ms. Briel was not recognized by the Fund for the purposes of Article 34 of the Fund’s Regulations or the 2016 Guidelines when Mr. Potgieter had not reported Ms. Briel as his spouse to the Fund, contrary to the requirements of Section B of the Fund’s Rules.” ²

While divorced surviving spouses are eligible to receive a former spouse’s benefit under the Regulations, that entitlement is subject to strict requirements. Article 35 bis of the Regulations provides, in relevant parts, that:

(a) Any divorced spouse of a participant or former participant, separated on or after 1 April 1999, who was entitled to a retirement, early retirement, deferred retirement or disability benefit, or of a participant who died in service on or after that date, may, subject to the provisions of article 34(b) (applicable also to widowers), request a former spouse's benefit, if the conditions specified in paragraph (b) below are fulfilled.

b) Subject to paragraph (d) below, the divorced spouse is entitled to the benefit set out in paragraph (c) below, payable prospectively following receipt of the request for a divorced surviving spouse's benefit, if, in the opinion of the Chief Executive of Pension Administration, all of the following conditions are fulfilled:

(i) The participant had been married to the former spouse for a continuous period of at least ten years, during which contributions were paid to the Fund on account of the participant or the participant was awarded a disability benefit under article 33 of the Regulations;

(ii) The participant's death occurred within 15 years of the date when the divorce became final, unless the former spouse proves that at the time of death the participant was under a legal obligation to pay maintenance to the former spouse;

(iii) The former spouse has reached the age of 40. Otherwise, the benefit entitlement shall commence on the day immediately following the day that age is reached; and

(iv) Evidence is provided that a divorce settlement does not have an express renouncement of UNJSPF pension benefit entitlements.

These requirements are strictly applied. In a case reported in 2024³, the appellant was not eligible to receive a divorced surviving spouse’s benefit under Article 35 bis of the Regulations, Rules and Pension Adjustment System of the UNJSPF (Regulations) because she had not been married to the late participant, for a continuous period of at least ten years, during which he paid contributions to the Fund.

² *Briel* 2024-UNAT-1480, para 37

³ *Isasi* 2024-UNAT-1447

Changes in Named Beneficiaries

UNAT has also reviewed disputed claims of changes in beneficiaries. Disputes over claims have sometimes arisen over changes reported by someone other than the participant. Both the Pension Fund and UNAT have emphasized that changes to beneficiaries must be capable of verification. The Pension Fund usually requires original signatures on its documents. As noted recently in *Gencyas* 2025-UNAT-1534, para.64,

“Section B.5 of the Administrative Rules provides that any changes in the designation of the beneficiary of the residual settlement shall be specified by the participant “in writing”, “on a form provided for the purpose by the secretary of the committee”. The prescribed Pens.A/2 form, in the footnote, clearly requires that it had to bear an “original signature”.”

However, the Judgment also notes the practice of the Fund to accept a thumbprint that is authenticated. *Gencyas* involved a change in beneficiary evidenced by a thumbprint, but it was rejected on the basis that it lacked authentication by an appropriate official and by an accompanying medical certificate.

Calculation of Entitlements

UNAT has also reviewed some cases involving the calculation of benefits. In a recent judgment ⁴, UNAT voiced its reluctance to question technical determinations by the Fund, stating,

“Judges are not to set the levels of benefits in the UNJSPF on the basis of their financial acumen or their own perceptions of equity, which are matters of policy for the UNJSPF, best left to its specialists with appropriate expertise. ⁵ As a result, we noted that it is the lowest tier of judicial review that therefore applies in such instances....

“It was recognized by the former United Nations Administrative Tribunal in *Gretz et al.* that when the Fund makes changes in the pension adjustment system, it has an obligation to respect certain fundamental principles, and modifications must not be arbitrary, but reasonable, and must be adapted to the aim of the system: adjustment of pensions to cost-of-living changes in the various countries of residence of the retired staff members. In that matter it was found that the 1.5 percentage point reduction made in the first adjustment payable after 1 January 1985 was a reasonable economy measure justified to prevent an increasingly serious diminution of the Fund’s assets, making it impossible to assure adequate benefits for beneficiaries.”

The term “reasonable economy measures” is critical and will no doubt be cited in the future.

⁴ *Pozenel* 2025-UNAT-1515, para. 31

⁵ Citing *Pise v. United Nations Joint Staff Pension Board*, Judgment No. 2020-UNAT-1007, para. 29. 20 *Mehmet Selman Ergüden v. United Nations Joint Staff Pension Board*, Judgment No. 2022-UNAT 1198, para. 38.

Finally, a very recent judgment *Robyn* 2025-UNAT-1573 dealt with the Pension Adjustment System and in particular with paragraph 26 (a) concerning the application of the two-track system. That provision allows the Pension Fund to suspend application of the two-track system by which an entitlement may be established in local currency rather than the US dollar equivalent if that amount is higher. It is a complex system and paragraph 26 (a) addresses cases in which the application of the two-track system leads to “aberrant results.” The Chief Executive of Pension Administration (CEPA) makes this determination and UNAT confirmed the practice as long as it provides reasonable justification for the resulting decision. In effect UNAT deferred to the CEPA’s authority to make the decision, in this case suspending the application of the two-track system to Slovakia. The one concession to the retiree was that the Appeals Tribunal agreed with him that three months’ notice was inadequate and awarded him six-months’ advance notice as more reasonable.

Recent judgments of UNAT as a whole reflect a strict adherence to Pension Fund Regulations and Rules as well as deference to the Fund in how those rules are applied.

Dated, August 2025

Disclaimer

These resources and articles are provided for the convenience of FICSA members and do not constitute legal advice, are not intended to be a substitute for legal advice, and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any matters you or your organization may have. The views expressed are those of the author(s) and do not necessarily reflect those of FICSA.