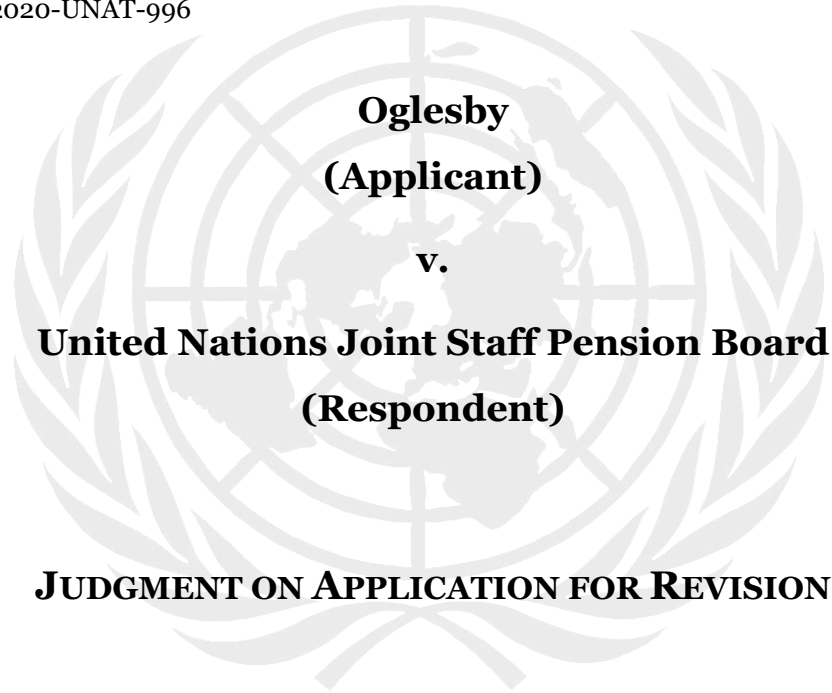




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2020-UNAT-996



**Oglesby
(Applicant)**

v.

**United Nations Joint Staff Pension Board
(Respondent)**

JUDGMENT ON APPLICATION FOR REVISION

Before:	Judge Graeme Colgan, Presiding Judge Jean-François Neven Judge Kanwaldeep Sandhu
Case No.:	2019-1307
Date:	27 March 2020
Registrar:	Weicheng Lin

Counsel for Mr. Oglesby: Ibrahim Faye

Counsel for UNJSPB: Janice Dunn Lee

JUDGE GRAEME COLGAN, PRESIDING.

1. On 29 March 2019, the United Nations Appeals Tribunal (Appeals Tribunal) rendered Judgment No. 2019-UNAT-914 in the case of *Oglesby v. United Nations Joint Staff Pension Board* dismissing the appeal of Mr. Samuel Oglesby and affirming the decision of the Standing Committee of the United Nations Joint Staff Pension Board (Standing Committee and UNJSPB, respectively). The UNJSPB had denied Mr. Oglesby widowhood benefits on the grounds that he did not qualify pursuant to Articles 34 and 35 of the Regulations of the United Nations Joint Staff Pension Fund (UNJSPF or the Fund), which required that, to receive such a prospective benefit, Mr. Oglesby be married at the time he separated from service. Mr. Oglesby separated from the Organization in 1998 after serving for nearly 25 years. At that time same-sex marriage was not legal anywhere in the world and he thus was unable to marry his partner. In affirming the decision, the Appeals Tribunal noted that its jurisdiction was limited to reviewing observance of the UNJSPF Regulations and, in this case, the UNJSPB had observed the provisions of the Regulations pertaining to widow's/widower's benefits. Since Mr. Oglesby was not married at the time of his separation from service, he was not eligible for the widowhood benefit. Mr. Oglesby has now filed an application requesting this Tribunal to revise its Judgment. We dismiss the application for revision.

Facts and Procedure

2. As noted above, Mr. Oglesby separated from service in 1998 at a time when same-sex marriage was not legal anywhere in the world. Thus, when Mr. Oglesby separated from service he was unable to marry his long-time partner. Thereafter, when same-sex marriage became legal in the United States of America, where Mr. Oglesby and his partner were domiciled, Mr. Oglesby and his partner were married. On 6 August 2018, the UNJSPB, however, communicated its decision to Mr. Oglesby denying his request for confirmation that upon his death, his spouse would be eligible for widowhood benefits. The UNJSPB found that because he was not married to his partner at the time when he had separated in 1998, his marital status was not in compliance with the requirements of Articles 34 and 35 of the UNJSPF Regulations.

3. On 5 November 2018, Mr. Oglesby appealed to the Appeals Tribunal and argued, among other things, that the UNJSPF Regulations were discriminatory, and contradicted human rights norms and the United Nations Charter. On 29 March 2019, noting its jurisdictional limits, this Tribunal issued Judgment No. 2019-UNAT-914 and upheld the UNJSPB finding that the UNJSPF had complied with the provisions of the Fund Regulations.
4. By application filed on 16 August 2019, Mr. Oglesby now seeks revision of this Judgment. The Fund filed its comments on the application on 5 September 2019.

Submissions

Mr. Oglesby's Application

5. Mr. Oglesby requests that the Appeals Tribunal order the UNJSPF to recognize his longstanding partner for surviving spouse benefits on an exceptional basis without any financial incidence or actuarial cost of annuity purchase. In support, Mr. Oglesby reiterates that his inability to marry at the time of his separation was outside of his control. The effective date of recognition of personal status for purposes of benefits under the UNJSPF Regulations follows change in national legislation and there is no retroactivity in recognizing the status of a union that may have been entered into prior to the change in legislation. In this regard, the UNJSPF has unilaterally decided to impose an added financial burden and transfer the actuarial liabilities to Mr. Oglesby, the participant, which defeats the very foundations of a defined pension benefit plan. This is also a breach of trust by the UNJSPF in shifting the actuarial costs on to Mr. Oglesby as the purchase of an annuity has resulted in the reduction of his monthly benefit in the amount of USD 1,706.44. Mr. Oglesby is 80 years old. He calculates that if he lives to 100 years old, this will cost him USD 409,545 and USD 204,772.80 if he were to live to 90 years old. This considerable financial detriment reduces his remaining lifetime's retirement income and, therefore, his purchasing power. This reduction is astronomical, senseless, and irrational especially given Mr. Oglesby's own contribution during his entire period of participation in the pension plan spanning approximately 25 years in the amount of USD 132,617.53. This situation meets the test of unreasonableness, irrationality and lack of proportionality set forth by this Tribunal in the *Sanwidi*¹ case and warrants judicial intervention.

¹ *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084.

6. Mr. Oglesby underscores that Articles 34 and 35 of the UNJSPF Regulations are not in accordance with inalienable human rights provisions or the principle of equal protection under the law. The requirement to purchase a prospective survivor benefit, as is his situation, constitutes continued discrimination against Mr. Oglesby for his sexual orientation. He says this is biased and arbitrary and warrants the Appeals Tribunal's intervention.

The Respondent's Comments

7. The Fund submits that Mr. Oglesby fails to meet the strict requirements for revision of an Appeals Tribunal judgment provided for in Article 11 of the Appeals Tribunal's Statute (the Statute), Article 24 of the Appeals Tribunal's Rules of Procedure (the Rules), and by the well-settled jurisprudence.

8. Mr. Oglesby has failed to demonstrate the existence of any new facts which were unknown to the Appeals Tribunal at the time of its Judgment. Mr. Oglesby's reference to his purchase of an annuity is not a new fact as he purchased the annuity on 5 July 2018, four months before he filed his appeal to the Appeals Tribunal. Mr. Oglesby seeks revision because he disagrees with the Appeals Tribunal's analysis. However, the revision process is of a corrective nature and is not an opportunity to reargue the earlier appeal.

9. The Fund, therefore, requests the Appeals Tribunal to reject Mr. Oglesby's application for revision.

Considerations

10. We do not propose to reiterate the conclusions of, and reasoning in, the Judgment sought to be revised. It is recent, comprehensive and lucid. This Judgment must, therefore, be read in conjunction with its earlier counterpart.

11. Mr. Oglesby asks the Tribunal to revise that Judgment delivered about one year ago on 29 March 2019. The Tribunal's power to do so lies in Article 11 (1) of the Statute, and Article 24 of the Rules.

12. These provisions are respectively:

Article 11(1) of the Statute

Subject to article 2 of the present statute, either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

Article 24 of the Rules

Revision of Judgements

Either party may apply to the Appeals Tribunal, on a prescribed form, for a revision of a judgement on the basis of the discovery of a decisive fact that was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application for revision will be sent to the other party, who has 30 days to submit comments to the Registrar on a prescribed form. The application for revision must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

13. Mr. Oglesby relies, in particular, on paragraph 37 of this Tribunal's 2019 Judgment. There, although finding merit in Mr. Oglesby's submission of non-compliance of the Fund's Regulations with Article 8 of the United Nations Charter, and Articles 1 and 7 of the Universal Declaration of Human Rights (UDHR), the Appeals Tribunal nevertheless concluded that it was unable to "apply ... directly" the Charter and the UDHR, and that it was not empowered to strike down or otherwise to decline to apply the relevant and plainly-worded Regulations of the Fund.

14. Mr. Oglesby, by his representative, has attempted valiantly and inventively to identify the discovery of a decisive fact that was, at the time the earlier Judgment was rendered, unknown to the Tribunal and to Mr. Oglesby. However, upon analysis, those claimed facts identified by him as meeting this test do not do so. Mr. Oglesby's extrapolated calculations of the losses to him of his purchase of an annuity for his spouse are starkly impressive and involve a significant element of self-sacrifice for Mr. Oglesby. However, they were both ascertainable at the date when he made his election to purchase his surviving spouse's annuity in mid-2018 (and before he brought his original proceeding in this Tribunal), and could make no difference

to the earlier Judgment being one applying an interpretation of the law to uncontroversial relevant facts. The fact(s) identified by Mr. Oglesby are not “decisive” of the decision of his case.

15. This Tribunal is the first and last independent and judicial forum on disputed United Nations pension matters. Although it is natural for a dissatisfied litigant to wish to challenge, appeal, or review an adverse decision, that is not possible unless the narrow and particular grounds are made out for revision of a judgment. In this regard, we acknowledge and follow the jurisprudence of such former judgments of the Tribunal as *Sanwidi*² and *Awe*.³

16. As we perceive the Tribunal to have been in its 2019 Judgment, we have considerable sympathy for Mr. Oglesby’s predicament and the injustice to him and to his spouse of discriminatory and outdated rules having significant financial effects on a long serving and loyal servant of the United Nations. We, too, conclude and wish to draw to the attention of the Fund, the Secretary-General of the United Nations and the General Assembly, that it is within their combined powers to right this obvious disconnection from human rights’ norms, both for Mr. Oglesby and any others in his situation. Although, as also shared by the other Judges in the earlier Judgment, we do not have actuarial evidence, we too suspect that the financial implications for the Fund and the beneficiaries of such a change may not be substantial and would be justified amply by the Fund’s congruence with United Nations-recognized human rights norms.

17. However, a case in this Tribunal for revision of the 2019 Judgment has not been made out and the application must be, and is, refused.

² *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-321, para. 8.

³ *Awe v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-735, paras. 16-22.

Judgment

18. The application for revision of Judgment No. 2019-UNAT-914 is dismissed.
19. We ask the Registrar to bring this Judgment, and its 2019 predecessor Judgment, to the attention of the Secretary-General of the United Nations and the General Assembly of the United Nations in the circumstances set out in paragraph 16 of this Judgment.

Original and Authoritative Version: English

Dated this 27th day of March 2020.

(Signed)

Judge Colgan, Presiding
Auckland, New Zealand

(Signed)

Judge Neven
New York, United States

(Signed)

Judge Sandhu
Vancouver, Canada

Entered in the Register on this 19th day of June 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar