



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

Judgment No. 2020-UNAT-997

**Clemente
(Respondent/Appellant)**

v.

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

JUDGMENT ON APPLICATION FOR INTERPRETATION

Before:	Judge John Raymond Murphy, Presiding Judge Martha Halfeld Judge Dimitrios Raikos
Case No.:	2019-1309
Date:	27 March 2020
Registrar:	Weicheng Lin

Counsel for Ms. Clemente: Self-represented

Counsel for UNJSPB: Ms. Jane Dunn Lee

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. The Applicant, the United Nations Joint Staff Pension Board (UNJSPB or the Board), has filed an application in terms of Article 11(3) of the Statute of the United Nations Appeals Tribunal (Appeals Tribunal) for an interpretation of the meaning or scope of Judgment No. 2019-UNAT-912, in the case of *Clemente v. United Nations Joint Staff Pension Board* (the Judgment).

2. In the Judgment, the Appeals Tribunal granted the appeal of Ms. Vivian Clemente, rescinded the decision of the Board to deny her widow's benefits and ordered the UNJSPB to pay a widow's benefit to Ms. Clemente within 14 days of the date of the Judgment's issuance with interest, and an additional five per cent interest, if not timely executed. The UNJSPB requests clarification regarding the calculation and payment of interest as ordered.

Facts and Procedure

3. In the Judgment, the Appeals Tribunal rescinded the UNJSPB's decision to reject Ms. Clemente's claim for a widow's benefit on the grounds that her marriage to Mr. Clemente in the Philippines was not valid because his prior marriage had not been formally annulled. The Appeals Tribunal held that since the Philippines authorities had not nullified Mr. and Ms. Clemente's marriage and had continued to recognize it, Ms. Clemente was entitled to payment of a widow's benefit. The Appeals Tribunal issued the following orders:¹

(a) The decision of the Standing Committee [of the UNJSPB] communicated on 6 August 2018 denying Ms. Clemente a widow's benefit in terms of Article 34 of the [United Nations Joint Staff Pension Fund (UNJSPF or Fund)] Regulations is rescinded;

(b) The Fund is ordered to pay Ms. Clemente a widow's benefit in accordance with Article 34 of the [UNJSPF] Regulations;

(c) The payment of the benefit in paragraph (b) of this order shall be made in future on the day of the month upon which the Fund ordinarily makes such payments to similarly entitled beneficiaries in accordance with Article 34 of the [UNJSPF] Regulations and Section I.1 of the UNJSPF Administrative Rules; and

(d) The Fund is ordered to pay Ms. Clemente within 14 days of the issuance of this Judgment the amount of the widow's benefit payable in terms of Article 34 of the [UNJSPF] Regulations for the period 29 June 2016 until the date of this Judgment,

¹ *Clemente v. United Nations Joint Staff Pension Board*, Judgment No. 2019-UNAT-912, para. 42.

together with interest on each monthly amount owing at the U.S. Prime Rate from the date the benefit was due until the date of payment and an extra five per cent shall be added to the U.S. Prime rate if this Judgment is not executed within the stipulated deadline.

4. On 19 August 2019, the UNJSPB filed an application in terms of Article 11(3) of the Appeals Tribunal's Statute seeking interpretation of the meaning and scope of paragraph 42(d) of the Judgment. Ms. Clemente did not file comments on the application.

Submissions

UNJSPB's Application

5. The UNJSPB seeks "clarification" with regard to the calculation and payment of interest to Ms. Clemente as was ordered in paragraph 42(d) of the Judgment. In this regard, it notes that Ms. Clemente did not seek interest in her appeal and thus the UNJSPB had not made any prior submissions pertaining to interest. The UNJSPB cites Article 44 of the UNJSPF Regulations, which provides that the Fund shall not be liable for interest on any due but unpaid benefits. The UNJSPB further notes that Article 1(l) and Article 11 of the UNJSPF Regulations stipulate the applicable interest rate in cases where the UNJSPF Regulations provide calculation thereof, such as in the calculation of the amount of a participant's own contribution under Article 1(o). These provisions are not applicable in the case of due but unpaid benefits, as Article 44 provides that no interest is payable in such cases.

6. The UNJSPB argues further that the Appeals Tribunal has confirmed that it has no jurisdiction to declare the UNJSPF Regulations constitutionally incompatible or to strike them down as invalid.² In light of the foregoing, it requests the Appeals Tribunal to clarify the following:

- a. whether the UNJSPF shall pay interest to Ms. Clemente regardless of the provisions of Article 44 of the UNJSPF Regulations;
- b. if the answer is affirmative, the UNJSPB requests clarification as to whether the additional five percent interest penalty ordered to be paid because Ms. Clemente's widow's benefit was not paid within 14 days of the issuance of the Judgment applies:

² *Oglesby v. United Nations Joint Staff Pension Board*, Judgment No. 2019-UNAT-914, para. 37.

- i. to only the period from the 14th day after issuance of the Judgment until the widow's benefit commenced; or
- ii. to the period from the date when each monthly amount would have been due had the benefit been paid immediately following the participant's death until the widow's benefit had commenced being paid?

7. Lastly, the Applicant notes that, although the Judgment indicated that the Secretary-General's Bulletin on Personal status for purposes of United Nations Entitlements (ST/SGB/2004/13/Rev. 1) was issued as a result of the Board's review of Article 34 of the UNJSPF Regulations, the Rules, Regulations and policies of the United Nations are developed independently of the Fund's Regulations and Rules.

Considerations

8. Article 11(3) of the Appeals Tribunal Statute provides that either party may apply to the Appeals Tribunal for an interpretation of "the meaning or scope" of a judgment. Article 25 of the Rules of Procedure of the Appeals Tribunal requires the Appeals Tribunal to decide if any such application for interpretation is admissible and if so to issue its interpretation. Following our jurisprudence, an application for interpretation will be admitted only if the meaning or scope of a judgment is unclear or ambiguous.³

9. The UNJSPB does not point to any words in paragraph 42(d) of the Judgment which are unclear or ambiguous. Paragraph 42(d) of the Judgment is clear and admits of only one interpretation. The Fund must pay Ms. Clemente within 14 days of the issuance of the Judgment the amount of the widow's benefit payable in terms of Article 34 of the UNJSPF Regulations for the period 29 June 2016 until the date of the Judgment, together with interest on each monthly amount owing at the U.S. Prime Rate from the date the benefit was due until the date of payment and an extra five per cent shall be added to the U.S. Prime Rate if the Judgment is not executed within the stipulated deadline. There is nothing unclear or ambiguous about the terms of this order. Interest is payable on each monthly amount owing from the date the benefit was due until the date of payment. The rate of interest is the

³ *Fedorchenko v. International Civil Aviation Organization*, Judgment on Correction and Revision No. 2015-UNAT-567, para. 15.

Prime Rate or Prime Rate plus five per cent. The increased rate applies if the order was not executed within 14 days of the Judgment. The application for interpretation is accordingly inadmissible on this ground alone.

10. Insofar as the UNJSPB is concerned that the order of this Tribunal is at variance with Article 44 of the UNJSPF Regulations and its own construction of its liability to pay interest to persons from whom it has unlawfully decided to withhold benefits, it has not made an application in terms of Article 11(1) of the Appeals Tribunal Statute for a revision of the Judgment “on the basis 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” or in terms of Article 11(2) of the Appeals Tribunal Statute which permits the correction of clerical, arithmetical or accidental errors or slips. It is in any event doubtful whether any decisive fact was unknown to the Appeals Tribunal and the UNJSPB at the time the Judgment was rendered or that the alleged error was of the kind contemplated in Article 11(2) of the Appeals Tribunal Statute.

11. In truth, the UNJSPB seeks to appeal against the Judgment on the alleged grounds that the Appeals Tribunal erred in making an award of interest which it believes is inconsistent with the UNJSPF Regulations. This is impermissible. Article 10(6) of the Appeals Tribunal Statute provides that the judgments of the Appeals Tribunal shall be final and without appeal.⁴ They are also definitively binding on the parties.⁵ The order of the Tribunal is decisive. There is accordingly no legal basis to revisit the issue in this case.

12. It is correct that the provisions regulating interest in the UNJSPF Regulations, including Article 44, give rise to contractual rights between the UNJSPF and its members. The award of interest in paragraph 42(d), however, is an element of the executive part of the Judgment that defines what this Tribunal requires to be done to remedy the consequences of an unlawful administrative decision. In *Warren*,⁶ we held that notwithstanding the absence of an express power in the Appeals Tribunal Statute to award interest, the discretion to award compensation may be applied to place an applicant in the same position he or she would have been in had the respondent complied with his obligations, in this case to pay the widow’s

⁴ Subject only to the narrow and restrictive provisions of Article 11 of the Appeals Tribunal Statute.

⁵ Article 10(5) the Appeals Tribunal Statute.

⁶ *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059 (Full bench, with Judge Boyko dissenting).

benefit at the appropriate time. To hold that this Tribunal has no statutory jurisdiction to order the payment of interest *sua sponte* would mean that the Tribunal would not be able to remedy the Fund's wrongful conduct by placing an aggrieved applicant in the same position she or he would have been in but for the unlawful administrative decision.

13. In the result, the application for interpretation of judgment in terms of Article 11(3) of the Appeals Tribunal Statute is inadmissible.

Judgment

14. The application is inadmissible and therefore dismissed.

Original and Authoritative Version: English

Dated this 27th day of March 2020.

(Signed)

Judge Murphy, Presiding
Cape Town, South Africa

(Signed)

Judge Halfeld
Bournemouth, United Kingdom

(Signed)

Judge Raikos
Athens, Greece

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

(Signed)

Weicheng Lin, Registrar