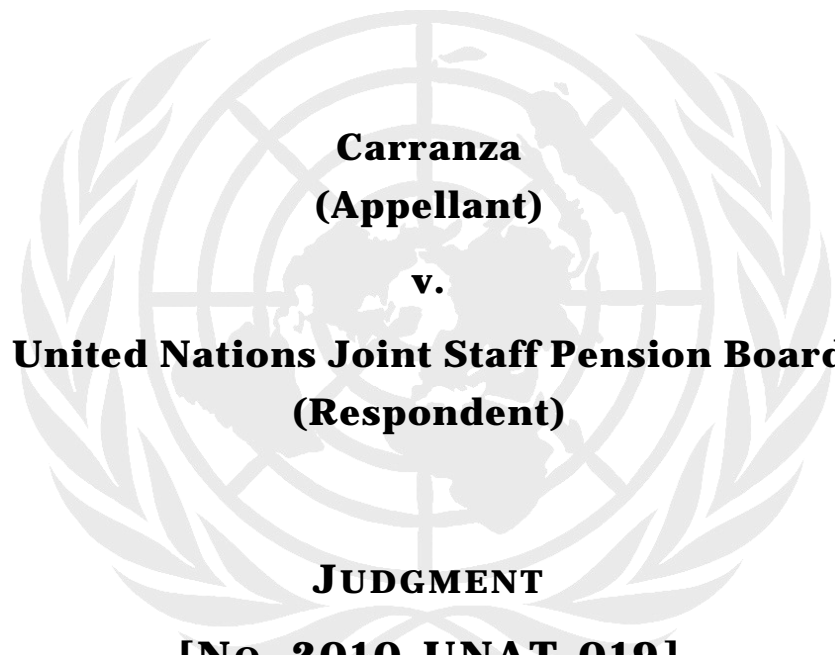




UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES

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**Carranza  
(Appellant)**  
**v.**  
**United Nations Joint Staff Pension Board  
(Respondent)**

**JUDGMENT**  
**[No. 2010-UNAT-019]**

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Before: Judge Rose Boyko, Presiding  
Judge Mark P. Painter  
Judge Kamaljit Singh Garewal

Case No.: 2010-024

Date: 30 March 2010

Registrar: Weicheng Lin

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Counsel for Appellant: Self-Represented

Counsel for Respondent: Dulcie Mapondera

**JUDGE ROSE BOYKO**, Presiding.

**Synopsis**

1. The Appellant, Carlos Antonio Garcia Carranza (Carranza), sought to restore his prior period of contributory service following the amendment to article 24 of the Regulations of the United Nations Joint Staff Pension Fund (UNJSPF or Fund). This Court affirms the interpretation of the Fund and finds that the Fund did not err in refusing to allow Carranza to restore his nearly two-year period of contributory service.

**Background**

2. Carranza is a staff member with UNHCR. He first participated in the UNJSPF for less than two years from 31 October 1988 through 20 September 1990. At the end of that period, Carranza opted for a withdrawal settlement as his pension benefit.

3. About seven months later, on 6 May 1991, Carranza re-entered the UNJSPF, again as an UNHCR staff member. Although he was eligible to restore his prior period of contributory service for the period 31 October 1988 to 20 September 1990, he applied too late and his application was refused. He applied on 29 September 1992, more than a year after he had re-entered the UNJSPF, and was informed, on 11 November 1992, that his right to restore was deemed to have been irrevocably forfeited since he had failed to exercise it within one year after his re-entering the UNJSPF.

4. On 22 December 2006, the General Assembly approved a change to article 24 of the UNJSPF's Regulations<sup>1</sup> governing the restoration of prior contributory service.

5. The amended article 24 (a) came into effect on April 2007 and reads:

A participant re-entering the Fund on or after 1 April 2007, who previously had not, or could not have, opted for a periodic retirement benefit following his or her separation from service, may, within one year of the recommencement of participation, elect to restore his or her most recent period of prior contributory service. Any participant in active service who re-entered the Fund before 1 April 2007 and was previously ineligible to elect to restore prior contributory service owing to the length of such prior service, may now do so by an election to that effect made before 1 April 2008.

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<sup>1</sup> A/RES/61/240 of 13 March 2007

6. On 28 August 2007, Carranza wrote to UNJSPF to request the restoration of his prior period of contributory service after article 24 of the UNJSPF Regulations was amended.

7. The UNJSPF rejected Carranza's request on the grounds that the amended article 24(a) of the UNJSPF Regulations concerned only "participants who previously were unable to restore prior contributory service because the length of such service was more than five years". Also, the amended article 24 was not intended to give a second chance to participants who could have but previously failed to restore prior contributory service of less than five years, within one year after re-entering in the Fund.

8. Carranza appealed on 2 December 2008 to the former United Nations Administrative Tribunal against the decision of the UNJSPF not to allow him to restore his prior period of contributory service.

9. The United Nations Joint Staff Pension Board (UNJSPB or Board) sought interpretation as to the scope of the amended article 24 (a). The Board evidently decided that the revision of article 24 did not offer a new opportunity to restore to those who had earlier failed to submit their request for restoration within a statutory one-year deadline. The Board further decided that the participants who were not satisfied had a right to appeal the decision directly to the former United Nations Administrative Tribunal, without first submitting the cases to the UNJSPF Standing Committee. On 24 December 2008, the General Assembly apparently endorsed the Board's interpretation on the scope of the revision of article 24.

#### **Submissions on Receivability**

10. The UNJSPF submits that Carranza's request for the restoration of his prior period of contributory service was time-barred. He made such a request on 29 September 1992, which was rejected as being out of time. Carranza did not appeal then, and should not be allowed to appeal now, some 17 years later.

11. Carranza submits that this appeal had nothing to do with his request for the restoration of his prior contributory service in 1992. Hence the UNJSPF's time-bar argument missed the point.

**Submissions on Merits**

12. Carranza maintains that the amended article 24 of the UNJSPF Regulations gave him a legal right to have his nearly two years of previous service restored, as the 2007 amendments to article 24 did not limit its application to periods of participation greater than five years. Accordingly the language used in the amendment, “owing to the length of such prior service”, could equally be interpreted to apply to prior service of one, two, five, or even more years.

13. Carranza disputes any interpretation given by the UNJSPF as being too narrow and discriminatory. He argues that any clarification by the Board may not outweigh the meaning of the amended article 24, as originally approved by the General Assembly.

14. The UNJSPF submits that to fall within the scope of the amended article 24 (a), a participant needs to meet three conditions: i) be an active participant; ii) re-enter the Fund before 1 April 2007; and iii) be previously ineligible to elect to restore his prior period of contributory service. Further the purpose of the amendment was not to offer a new opportunity to staff in Carranza’s situation, who although previously eligible, failed to submit their request for restoration within a statutory one-year deadline.

**Issues**

15. Does the 2007 amendment to article 24 of the UNJSPF’s Regulations governing the restoration of prior contributory service apply to Carranza’s case?

**Considerations**

16. This Court agrees with Carranza that receivability is not an issue.

17. This Court affirms the UNJSPF’s interpretation that the amendment to article 24 applies to staff who were ineligible to restore previous contributory service. The amendment in question does not apply to Carranza who was eligible to restore his prior service in 1992 and failed to do so in a timely way.

**THE UNITED NATIONS APPEALS TRIBUNAL**

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Case No. 2010-024

**Judgment**

18. This Court agrees with and affirms the UNJSPF decision.



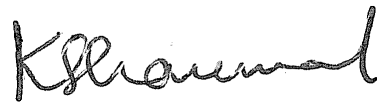
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Judge Boyko, Presiding



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Judge Painter



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Judge Grewal

Dated this 30th day of March 2010 in Geneva, Switzerland.

Original: English

Entered in the Register on this 26th day of April 2010 in New York, United States.



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Weicheng Lin, Registrar, UNAT