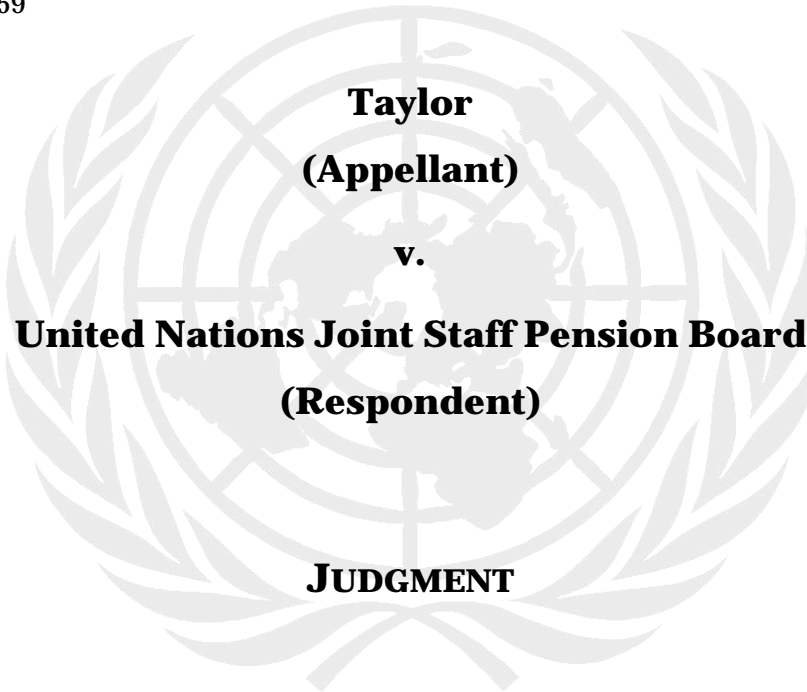




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2010-159



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**Before:** Judge Luis María Simón, Presiding  
Judge Sophia Adinyira  
Judge Mark Painter

**Judgment No.:** 2011-UNAT-156

**Date:** 8 July 2011

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** Self-represented

**Counsel for Respondent:** Bernard Cochemé

**JUDGE LUIS MARÍA SIMÓN**, Presiding.

### Synopsis

1. As the Appellant did not establish that the Pension Fund acted against its Regulations, this Tribunal affirms the administrative decision not to modify her benefit as a divorced surviving spouse to be paid retroactively to the date of the death of her former husband, prior to 1 April 1999.

### Facts and Procedure

2. Vernon Maurice Taylor (Taylor), a national of the United Kingdom, worked for the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and was a participant in the United Nations Joint Staff Pension Fund (UNJSPF or Pension Fund) from 14 June 1962 until his death in service on 27 July 1981.

3. Taylor was married three times. His second spouse, Irmgard Margot Taylor (Appellant), was married to Taylor from 1 April 1967 until their divorce on 30 November 1977.<sup>1</sup> Taylor subsequently married his third spouse on 12 January 1978, and she became entitled to a widow's benefit upon his death in 1981.

4. At the time of Taylor's death, the UNJSPF Regulations did not provide benefits for divorced surviving spouses such as the Appellant. A divorced surviving spouse's benefit for former spouses of former participants who retired or died in service *on or after* 1 April 1999 was subsequently approved by the General Assembly in December 1998 and became effective on 1 April 1999. Article 35*bis* of the UNJSPF Regulations was adopted to provide for this new benefit.

5. In December 2000, the General Assembly approved an amendment to the UNJSPF Regulations to provide a divorced surviving spouse's benefit for former spouses of former participants who separated from service *prior to* 1 April 1999, but with effect from that date under Article 35*bis*(e) of the UNJSPF Regulations, which provides for a

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<sup>1</sup> This information is taken from the Pension Fund's answer. The Appellant states, on the other hand, that she was married to Taylor for 12 years, that she was divorced from Taylor on 11 September 1979, and that Taylor died on 30 June 1981.

fixed amount benefit equal to twice the minimum surviving spouse's benefit under Article 34(c).

6. By letter to the Pension Fund dated 22 January 2001, the Appellant inquired about her possible entitlement to the UNJSPF benefits and also mentioned the remarriage of Taylor's third wife. By letter dated 11 April 2001, the Appellant was informed of her entitlement to a divorced surviving spouse's benefit. The benefit went into payment in May 2011, retroactive to 1 April 1999.

7. Taylor's first wife was not eligible to receive a benefit, as she had not been married to Taylor for a period of ten years during which contributions were paid to the Pension Fund as required under Article 35*bis*(b)(i) of the UNJSPF Regulations.

8. By letter dated 14 June 2007, the Appellant requested a review of her pension benefits. She pointed out that the "major share" of the benefit was paid to the surviving spouse (third wife) which she considered "inequitable" since the third wife had only been married to Taylor for "less than two years" before his death, whereas the Appellant had been married to Taylor for "12 years". She asked whether the benefit should be divided in proportion to the duration of their marriages to Taylor and also whether the remarriage of the third wife would impact her entitlement to a UNJSPF benefit.

9. By letter dated 8 October 2007, the Pension Fund informed the Appellant that the amount payable to her was a fixed one under the UNJSPF Regulations and could not be reviewed.

10. In December 2008, the General Assembly approved certain amendments to Article 35*bis* of the UNJSPF Regulations which came into effect on 1 January 2009 and were described by the Chief Executive Officer, UNJSPF, in his 2009 Annual Letter.

11. Following the issuance of the 2009 Annual Letter, the Appellant called the UNJSPF Geneva Office to inquire whether she would be entitled to a back payment of benefits prior to 1999. On 6 May 2009, the Appellant sent an e-mail to the UNJSPF referring to the telephone conversation. In her e-mail, the Appellant quoted from the amended Article 35*bis*(e) that the benefit would be "payable from the first day of the month succeeding the death of the former participant".

12. By e-mail dated 13 January 2010, the UNJSPF explained to the Appellant that she was not entitled to a back payment of amounts prior to 1 April 1999 because

the intention of the amendment was to foresee payment of the benefit as of 1 April 1999 or from the first day of the month succeeding the death of the former participant, whichever is later. This is so, among other reasons, because the divorced surviving spouse's benefit, covered by article 35 bis, did not exist before 1 April 1999 and when enacted its effective date was set to 1 April 1999. (Emphasis in original)

13. The Appellant then submitted an appeal to the Standing Committee of the United Nations Joint Staff Pension Board (Standing Committee and UNJSPB or Pension Board, respectively). The Standing Committee considered the appeal at its 192<sup>nd</sup> meeting in July 2010 and upheld the decision of the Pension Fund. The Pension Fund informed the Appellant of the Standing Committee's decision by letter dated 30 July 2010.

14. On 20 October 2010 the Appellant appealed the decision of the UNJSPB. The Pension Fund answered on 9 December 2010.

### Submissions

#### Taylor's Appeal

15. The Appellant submits that the benefit she has received since 1999 represents two-thirds of the minimum pension entitlement while the "major share" goes to the surviving spouse who had been married to Taylor for "less than two years". Because the Appellant had been married to Taylor for "12 years", she contends that "the existing apportionment is inequitable". Further, the amendments to the UNJSPF Regulations removed the marriage penalty for widows so that the surviving spouse is entitled to the same pension as before her remarriage. This constitutes discrimination of the status of a divorced spouse and an "upgrading" of the status of a surviving spouse who remarried. She points out that it is common knowledge that a married woman is economically in a better position than a divorced woman.

16. The Appellant submits that the General Assembly in its 2009 session had the intention to take into account the legitimate claims from divorced spouses, including the duration of their marriage. None of the new Regulations however apply to cases like hers "which date back a long time".

**Pension Fund's Answer**

17. The Pension Fund recalls that in December 1998, following a recommendation by the UNJSPB, the General Assembly approved new provisions in the Pension Fund's Regulations allowing former spouses of participants who retired or died in service on or after 1 April 1999 to request a surviving former spouse's benefit subject to five conditions set out in the new Article 35*bis*(b). This provision came into force as of 1 April 1999. Mindful that the change would not apply to former spouses who retired or died before 1 April 1999, the UNJSPB requested the Standing Committee to consider what could be done for former spouses not covered by the new provision.

18. Following a discussion at its session in 2000, the UNJSPB made recommendations to the General Assembly that were approved in December 2000 for a further amendment to the UNJSPF Regulations to provide a divorced surviving spouse's benefit for former spouses of former participants who separated or died in service prior to 1 April 1999, which would be payable from that date. The new provision was introduced under Article 35*bis*(e) of the UNJSPF Regulations. The Appellant became entitled to a divorced surviving spouse's benefit under this new provision.

19. The Pension Fund submits that the change to Article 35*bis*(e) that is the subject of the present appeal was one of the changes approved by the General Assembly in December 2008. As a result of that change, the divorced surviving spouse's benefit would be payable from the date of the death of the former UNJSPF participant, irrespective of when the request was received by the Pension Fund. The report of the UNJSPB recommending the change explained that this change would concern those divorced spouses who would become eligible to an Article 35*bis*(e) benefit in or after January 2009. The Pension Fund points out that this amendment did not change the fact that all divorced surviving spouses' benefits would remain payable as of 1 April 1999 when the benefit was introduced, or from the time of death, whichever is later.

20. The Pension Fund contends that the present appeal is based on the 2009 Annual Letter of the Chief Executive Officer, which summarized the changes in relation to Article 35*bis*(e) as "introduc[ing] an effective date for the minimum benefit payable to a surviving divorced spouse (i.e. to be payable as from time of death irrespective of when the request is received)". The Pension Fund submits that this wording needs to be read

in the context of the whole Article 35*bis*(e) of the UNJSPF Regulations, specifically the provision that the benefit remains payable as of 1 April 1999. Under Article 49(b) of the Pension Fund's Regulations, amendments to the Pension Fund's Regulations approved by the General Assembly enter into force on the date specified by the General Assembly, but without prejudice to rights to benefits acquired through contributory service prior to that date. In the present case, the effective date of the amendment was 1 January 2009 and it applied to divorced surviving spouses where the benefit under Article 35*bis*(e) comes into payment as a result of the death of a participant or retiree on or after 1 January 2009. Therefore the change could not be interpreted as giving rise to a retroactive payment prior to 1 April 1999.

21. The Pension Fund submits that it has correctly applied its Regulations to the Appellant's case who has not suffered any discrimination. It requests that the appeal be rejected in its entirety.

#### Considerations

22. The Appellant essentially seeks an amendment to the Regulations of the Pension Fund in such a way as to enable her benefit to be paid retroactively to the date of the death in service of her former husband, which was prior to 1 April 1999, disregarding the fact that the divorced surviving spouse's benefit was first introduced on 1 April 1999 and that is the reason why it has been paid since that event.

23. However, "only the General Assembly can amend the [UNJSPF] Regulations".<sup>2</sup>

24. Article 50(b) of the UNJSPF Regulations (2003), concerning the entry into force, reads:

No provision shall be construed as applying retroactively to participants in the Fund prior to the date of its entry into effect, unless expressly stated therein or specifically amended to such effect by the General Assembly with due regard to the provisions of article 49.<sup>3</sup>

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<sup>2</sup> *Muthuswami et al v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-034, para. 33.

<sup>3</sup> Article 49(b) of the UNJSPF Regulations (2003) provides: "The Regulations so amended shall enter into force as from the date specified by the General Assembly but without prejudice to rights to benefits acquired through contributory service prior to that date."

25. The criteria proposed by the Appellant to pay the benefit are not in force to be applied to her case. Hence, she is not entitled to what she claims for and she has not persuaded this Court that the Standing Committee did not comply with the Regulations of the Pension Fund.

26. The different treatment of the surviving widows, spouses, or divorced spouses, and the effective date on which the benefit is to be paid were established by the General Assembly for reasons and goals different from those on which the Appellant bases her appeal. We find that the Regulations of the Pension Fund do not grant the Appellant what she claims for, and that the Pension Fund correctly applied the UNJSPF Regulations.

27. Therefore, the impugned decision must be affirmed.

**Judgment**

28. This Tribunal dismisses the present appeal.

Original and Authoritative Version: English

Dated this 8<sup>th</sup> day of July 2011 in Geneva, Switzerland.

*(Signed)*

Judge Simón, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Painter

Entered in the Register on this 29<sup>th</sup> day of August 2011 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar