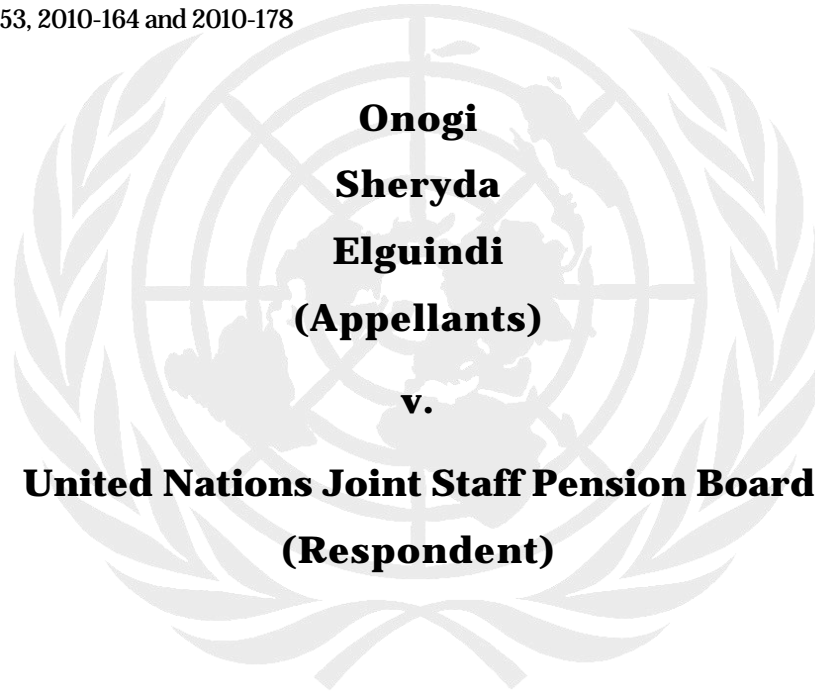




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case Nos. 2010-153, 2010-164 and 2010-178



**Onogi  
Sheryda  
Elguindi  
(Appellants)**

**v.**

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

**JUDGMENT**

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**Before:** Judge Mary Faherty, Presiding  
Judge Sophia Adinyira  
Judge Inés Weinberg de Roca

**Judgment No.:** 2012-UNAT-189

**Date:** 16 March 2012

**Registrar:** Weicheng Lin

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**Counsel for Appellants:** Onogi – Esther Shamash  
Sheryda – Self-Represented  
Elguindi – Self-Represented

**Counsel for Respondent:** Bernard Cochemé

**JUDGE MARY FAHERTY**, Presiding.

**Synopsis**

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of three separate appeals by Ms. Noriko Onogi, Ms. Sana Sheryda and Mr. Tarek Elguindi against the decision rendered by the United Nations Joint Staff Pension Board (UNJSPB) in New York on 30 July 2011 in the case reference: JSPB/SC/192/R/94900.

2. Article 45 of the Regulations, Rules and Pension Adjustment System of the United Nations Joint Staff Pension Fund (Regulations and UNJSPF or Pension Fund, respectively) provides, inter alia, as follows:

[T]he Fund may, to satisfy a legal obligation on the part of a participant or former participant arising from a marital or parental relationship and evidenced by an order of a court or by a settlement agreement incorporated into a divorce or other court order, remit a portion of a benefit payable by the Fund to such participant for life to one or more former spouses and/or a current spouse from whom the participant or former participant is living apart. Such payment shall not convey to any person a benefit entitlement from the Fund or (except as provided herein) provide any rights under the Regulations of the Fund to such person or increase the total benefits otherwise payable by the Fund.

3. Having regard to all of the circumstances and the relevant submissions in the three appeals before it, the Appeals Tribunal does not find that the manner in which the Pension Fund apportioned Mr. Elguindi's monthly pension sum was unreasonable, capricious or an abuse of its discretion.

4. With regard to Ms. Onogi's claim of procedural defects, the Tribunal was not persuaded by her arguments that there were procedural flaws on the part of the Pension Fund such as to render the exercise of its discretion unreasonable or unlawful. Similarly, the Appeals Tribunal does not find merit in Mr. Elguindi's claim of "double dipping" in his opposition to Ms. Onogi's claim for relief from the Pension Fund.

5. The Appeals Tribunal is satisfied that the Pension Fund, in exercising its discretion as to how to apportion Mr. Elguindi's monthly pension, correctly determined that it had to take into consideration the needs of Ms. Onogi, Ms. Sheryda, the minor children of Ms. Sheryda and Mr. Elguindi and the needs of Mr. Elguindi himself. Accordingly, we see no reason to vary or set aside the decision of the Pension Fund, as upheld by the Standing Committee of

the UNJSPB, to exercise its discretion in apportioning Ms. Onogi 19 per cent, Ms. Sheryda 10.5 per cent and her two minor children 19 per cent of Mr. Elguindi's monthly pension benefit.

6. The respective appeals of Ms. Onogi, Ms. Sheryda, and Mr. Elguindi are thus dismissed.

#### **Facts and Procedure**

7. Mr. Elguindi, a dual national of Egypt and Canada, was a participant in the Pension Fund from 26 June 1977 until opting for an early retirement on 30 September 2007. Upon retiring, Mr. Elguindi elected to receive a one-third lump sum payment of his benefit in the amount of USD 436,903.18 and, starting 1 October 2007, gross monthly pension benefit of USD 5,591.41.

8. In March 1978, Mr. Elguindi married Ms. Onogi with whom he had a son in 1980. Mr. Elguindi and Ms. Onogi obtained a divorce under Muslim law in Egypt in April 2003 and also obtained a divorce decree in Canada in April 2006. In July 2003, Mr. Elguindi married Ms. Sheryda with whom he had two children. Ms. Onogi currently resides in Canada whereas Mr. Elguindi and Ms. Sheryda reside in Egypt.

9. Following Mr. Elguindi's and Ms. Onogi's divorce, a court order was issued by the Superior Court of Justice, Ontario, Canada on 30 June 2005, which stated that Ms. Onogi was entitled to spousal support for life effective from 1 July 2005 in the amount of USD 5,000 per month. The order also stated that spousal support "may" be varied upon Mr. Elguindi's retirement or should Ms. Onogi be required to pay taxes in Canada on her periodic spousal support payments. The judge ordered that Mr. Elguindi pay Ms. Onogi CAD 487,249.16 (USD 400,000) as an equalization payment; CAD 6,128 (USD 5,000) as a monthly spousal support and USD 26,000 retroactively for past spousal support.

10. In October 2007, Ms. Onogi requested that the UNJSPF deduct the USD 5,000 spousal support directly from Mr. Elguindi's pension benefit pursuant to Article 45 of the UNJSPF Regulations. In response to this request, Mr. Elguindi stated that until his September 2007 retirement he had met his equalization payments and spousal requirements and that claims moving forward should be based on the submission of a motion to the Canadian court and the issuance of a new court order. As a result of Mr. Elguindi's response,

the UNJSPF informed Ms. Onogi that it would not be able to act upon her request until all legal proceedings concerning the contested amounts of spousal support were completed.

11. On 13 May 2009, Ms. Onogi informed the UNJSPF that the legal proceedings in front of the Canadian courts had been completed on 28 April 2009, that all of Mr. Elguindi's claims had been dismissed, and that the amounts set in the Court's original 2005 Order had been maintained. Consequently, Ms. Onogi requested that the UNJSPF enforce the original order and deduct her monthly spousal support from Mr. Elguindi's pension.

12. On 13 May 2009, Mr. Elguindi was informed that the UNJSPF had been notified by Ms. Sheryda, who appears to still be his current spouse, of an order in her favour by the Egyptian courts for alimony in the amount of Egyptian Pounds (EGP) 8,000 (approximately USD 1,475) and EGP 12,000 (approximately USD 2,200) to their two minor children effective 1 March 2009. On 14 June 2009, Mr. Elguindi proposed that 40 per cent of his monthly pension benefit be deducted and directed towards Ms. Sheryda and their children.

13. The UNJSPF calculated that the payments from the combined court orders totaled USD 8,600 per month which, as of January 2010 and following the deduction of his health insurance payment, exceeded Mr. Elguindi gross monthly benefit of USD 5,265.76. Using the discretionary authority afforded to it by Article 45 of the UNJSPF Regulations, and in the interest of maintaining the total payments under approximately 50 per cent of Mr. Elguindi's monthly benefit, the UNJSPF awarded Ms. Onogi USD 1,000 per month (19 per cent of Mr. Elguindi's monthly benefit); Ms. Sheryda USD 600 per month (10.5 per cent of Mr. Elguindi's monthly benefit) and their two minor children USD 1,000 per month (19 per cent of Mr. Elguindi's monthly benefit). The UNJSPF also noted that starting in April 2012 Mr. Elguindi would be receiving an additional USD 258 per month for each of his two minor children, at which point the payments awarded to the parties would be taken under review.

14. On 30 July 2010, following the May and June 2010 appeals by each of the parties challenging the amounts awarded by the UNJSPF, the Standing Committee of the UNJSPB upheld the decision of the UNJSPF. In addition to affirming the discretion afforded to the CEO of the UNJSPF in determining the amounts to be deducted from Mr. Elguindi's pension payments, the Standing Committee expressed the view that the UNJSPF was not responsible for resolving private legal disputes and that the total amounts that could be reasonably

deducted under Article 45 should not exceed 50 per cent of a staff member's monthly pension benefit.

15. Each of the parties is appealing separately the decision taken by the Standing Committee of the UNJSPB.

### **Submissions**

#### **Ms. Onogi's Appeal – UNAT-2010-153**

16. Ms. Onogi submits that the UNJSPF decision to only deduct USD 1,000, rather than the full amount ordered by the Canadian courts, is unreasonable and the result of the incorrect application of Article 45 of the Regulations.

17. Ms. Onogi submits that the Standing Committee failed to take into account all the facts, including that Mr. Elguindi withdrew one third of the value of his pension account, thereby reducing the monies available for future pension payments as well as the fact that it had determined that the monthly payment of USD 5,000 is a separate cause of action that does not constitute double dipping.

18. Furthermore, Ms. Onogi states that while the UNJSPF does have discretionary powers to determine the monies to be awarded under Article 45 of its Regulations, it erred by failing to provide her with "cogent reasons" for the motivating factors of its decision, thereby rendering it unreasonable.

19. Ms. Onogi further states that the UNJSPF breached her due process rights by neither providing her with information regarding the additional claims that had been filed against Mr. Elguindi, nor the statements that Mr. Elguindi submitted to the UNJSPF in response to her claims, thereby depriving her of the opportunity to properly defend her claims.

#### **Ms. Sheryda's Appeal – UNAT-2010-164**

20. Ms. Sheryda appeals the quantum awarded by the UNJSPF as being insufficient. Ms. Sheryda submits as supporting evidence to her claim a recent Egyptian court order which determined that she has no other resources and that therefore, in addition to the cost of her children's education and various annual costs totaling EGP 16,260 and USD 6,785, she

should be receiving EGP 15,000 (USD 2,500) per month with an additional EGP 15,000 (USD 2,500) per month for her children.

**Mr. Elguindi's Appeal – UNAT-2010-178**

21. Mr. Elguindi submits that following the 2005 Canadian court order, Ms. Onogi received 50 per cent of the total value of his pension account which, at the time, amounted to USD 693,092 as the courts considered that there was no guarantee that Ms. Onogi would receive her share of Mr. Elguindi's pension at a later date.

22. Mr. Elguindi states that due to the fact that Ms. Onogi received a lump sump payment, in addition to the transfer of the title to two properties, and in adherence with the court order that future payments may be varied upon Mr. Elguindi's retirement, any additional payment to Ms. Onogi would be akin to allowing her to double dip into his retirement benefit. Furthermore, Mr. Elguindi adds that the amounts awarded by the Canadian courts were based on the total value of his pension benefit prior to Ms. Onogi receiving a large lump sum payment.

23. Mr. Elguindi adds that while the UNJSPF, under Article 45 of its Regulations, may direct that up to 50 per cent of the pension payments be set aside for another party, such a payment of 50 per cent of the value of his retirement account has already taken place and no future payments should therefore be awarded to Ms. Onogi.

**UNJSPF's Answers**

24. The UNJSPF filed separate answers in response to each of the three appeals under review. Considering the fact that each of the appeals deals with the same subject matter, the UNJSPF's answers have been consolidated.

25. The UNJSPF submits that that it “does not routinely or automatically endorse or implement the court orders of national courts. The application of article 45 is, therefore, based solely at the discretionary authority of the CEO [of the UNJSPF].” Indeed, under Article 45, the UNJSPF “cannot be responsible for ensuring that retirees meet their private obligations to support their families”. Rather, it “is limited to assisting participants in meeting their obligations to pay maintenance or amounts under divorce settlements”.

26. The UNJSPF submits that the former Administrative Tribunal<sup>1</sup> upheld the discretionary powers afforded by Article 45 of its Regulations and the resulting decision that as a matter of policy it would limit the maximum that can be remitted from a staff member's monthly pension benefit to 50 per cent. Consequently, "the [UNJSPF]'s action did not violate [the staff member's] acquired right to a monthly pension payment nor was the CEO's decision vitiated by arbitrariness, caprice or abuse of discretion".

27. It was only after the UNJSPF was satisfied that all the legal processes involving Ms. Onogi, Ms. Sheryda and Mr. Elguindi were final, and the various obligations for spousal support clearly established, that the UNJSPF agreed to consider the request made by each Of the parties.

28. The UNJSPF disagrees with Mr. Elguindi's assertions that Ms. Onogi's action equates to double dipping as the 30 June 2005 Canadian court order clearly sets out that there are three components to its order, a) an equalization payment, b) monthly spousal support, and c) a lump sum for additional spousal support for the period that preceded the 2005 order.

29. Similarly, on 28 April 2009, in response to Mr. Elguindi's attempt to vary the order pursuant to paragraph 115 of the 2005 order, the Canadian Court dismissed his application. Furthermore, the fact that Ms. Onogi may have other financial means or made financial gains from her investments is irrelevant to this process as that information would have been in front of the courts issuing the respective spousal support orders.

30. The UNJSPF also submits that under Article 48 of its Regulations, its decisions are only appealable to the Appeals Tribunal if the UNJSPF did not observe its own Regulations, which is not the case in these three matters.

31. The UNJSPF therefore "requests that the [Appeals] Tribunal dismiss the appeal[s] and uphold the decision of the CEO [of the UNJSPF]".

### **Considerations**

32. Article 45 of the Regulations provides, inter alia, as follows:

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<sup>1</sup> Former Administrative Tribunal Judgment No. 1253, *Applicant* (2005).

(a) [T]he Fund may, to satisfy a legal obligation on the part of a participant or former participant arising from a marital or parental relationship and evidenced by an order of a court or by a settlement agreement incorporated into a divorce or other court order, remit a portion of a benefit payable by the Fund to such participant for life to one or more former spouses and/or a current spouse from whom the participant or former participant is living apart. Such payment shall not convey to any person a benefit entitlement from the Fund or (except as provided herein) provide any rights under the Regulations of the Fund to such person or increase the total benefits otherwise payable by the Fund.

(b) To be acted upon, the requirement under the court order must be consistent with the Regulations of the Fund, as determined by the Chief Executive Officer of the Fund to be beyond any reasonable doubt, and on the basis of the available evidence. Once implemented, the assignment shall normally be irrevocable; however, a participant or former participant may request, upon satisfactory evidence based on a court order or a provision of a settlement agreement incorporated into a court decree, a new decision by the Chief Executive Officer that would alter or discontinue the payment or payments. Furthermore, such payment or payments shall cease following the death of the participant or former participant. If a designee predeceases the participant or former participant, the payments shall not commence, or if they have commenced, shall cease upon the designee's death. In the event that the payment or payments have been diminished, discontinued, or have failed to commence or have ceased, the amount of the benefit payable to the participant or former participant shall be duly adjusted.

33. The jurisdiction of the Appeals Tribunal to adjudicate on the Pension Fund's decision to award benefits to Ms. Onogi and Ms. Sheryda from Mr. Elguindi's gross monthly pension benefit is vested in Article 48(a) of the Regulations and in Article 2(9) of the Statute of the Appeals Tribunal which provide as follows:

**Article 48 of the Regulations of the Pension Fund**

(a) Applications alleging non observance of these Regulations arising out of decisions of the Board may be submitted directly to the United Nations Appeals Tribunal by:

- (i) Any staff member of a member organization which has accepted the jurisdiction of the Tribunal in Joint Staff Pension Fund cases who is eligible under article 21 of these regulations as a participant in the Fund, even after his or her employment has ceased ,and any person who has succeeded to such staff members rights upon his or her death;
- (ii) Any other person who can show he or she is entitled to rights under these Regulations by virtue of the participation in the Fund of a staff member of such member organization..."



**Article 2 of the Statute of the Appeals Tribunal**

9. The Appeals Tribunal shall be competent to hear and pass judgement on an appeal of a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund, submitted by:

- (a) Any staff member of a member organization of the Pension Fund which has accepted the jurisdiction of the Appeals Tribunal in Pension Fund cases who is eligible under article 21 of the regulations of the Fund as a participant in the Fund, even if his or her employment has ceased, and any person who has acceded to such staff member's rights upon his or her death;
- (b) Any other person who can show that he or she is entitled to rights under the regulations of the Pension Fund by virtue of the participation in the Fund of a staff member of such member organization.

34. The appeals of Ms. Onogi, Ms. Sheryda and Mr. Elguindi all fall within the scope of Article 48(a) of the Regulations and Article 2(9) of the Statute of the Appeals Tribunal.

35. The issue for consideration in the context of the present appeals is whether the Pension Fund properly exercised the discretion vested in it pursuant to Article 45 of the Regulations in awarding the sum of USD 1,000 to Ms. Onogi, USD 600 to Ms. Sheryda and an additional USD 1,000 to her two children from Mr. Elguindi's monthly pension of USD 5,265.76.

36. Both Ms. Onogi and Mr. Elguindi take issue with the decision of the Pension Fund. In this regard, Ms. Onogi claims that to only deduct USD 1,000 was unreasonable, improper and unlawful and argues that the Pension Fund failed to take into account all the facts, including Mr. Elguindi's decision to withdraw one third of his accumulated fund as a lump sum, thereby reducing the monies available for future pension payments. Ms. Onogi also argues that she should be awarded USD 5,000 (the monthly alimony awarded to her by the Canadian Courts) from Mr. Elguindi's monthly pension benefit.

37. Ms. Onogi argues that in failing to provide her with the opportunity to respond to Mr. Elguindi's representations or with details of Ms. Sheryda's request, the UNJSPF denied her due process rights. Moreover, Ms. Onogi contends that the decision not to provide her with "cogent reasons" for the decision to award her only USD 1,000 constituted an improper

exercise of the UNJSPF's discretion thus rendering the entire decision unreasonable and unlawful.

38. Mr. Elguindi argues, on the other hand, that by virtue of the fact that a payment of approximately USD 400,000, which represented essentially 50 per cent of the then value of his pension fund, was awarded to Ms. Onogi on foot of an Order of the Canadian Courts on 30 June 2005 in the course of the parties' divorce, the decision of the Pension Fund to award USD 1,000 to Ms. Onogi constituted "double dipping" into his pension fund. However, in the course of the divorce proceedings in front of the Canadian Court Mr. Elguindi was also ordered to make monthly spousal support payments of USD 5,000 to Ms. Onogi for life, subject to such variation as "may" occur upon Mr. Elguindi's retirement or should Ms. Onogi be required to pay taxes in Canada on her monthly spousal payment.

39. Ms. Onogi's request that the Pension Fund make a monthly deduction from Mr. Elguindi's monthly pension benefit was made in October 2007 following his retirement in September 2007.

40. Mr. Elguindi's response to the Pension Fund, following on Ms. Onogi's request for monthly deductions in her favour, was that he had met the Court-ordered equalisation payment and that he had complied with his spousal support obligations to Ms. Onogi until his retirement in September 2007. Mr. Elguindi argues that any further claims from Ms. Onogi would have to be adjudicated upon by the Canadian Courts.

41. Following upon the arguments of Mr. Elguindi, the Pension Fund decided that it would not take any action with regard to Ms. Onogi's application until the parties' legal proceedings had been completed (effectively until the issue raised by Mr. Elguindi had been adjudicated upon by the Canadian Courts).

42. During the period 2007 through 2009 the parties' family law proceedings were reopened in the Canadian Courts. On 28 April 2009, the Superior Court of Justice of Ontario dismissed Mr. Elguindi's application to vary the 2005 Order.

43. In the wake of the conclusion of the family law proceedings the Pension Fund recommenced its consideration of Ms. Onogi's request.

44. On 30 April 2009, the Pension Fund received a request from Ms. Sheryda for the application of Article 45 of the Regulations in respect of a Court Order obtained in March 2009 from the North Cairo First Instance Court for spousal and child maintenance. On foot of that Court Order, Mr. Elguindi was ordered to make total monthly maintenance payments of USD 3,675, broken down as follows: USD 1,475 to Ms. Sheryda and USD 2,200 to the minor children of Ms. Sheryda and Mr. Elguindi.

45. In response to Ms. Sheryda's request, Mr. Elguindi proposed that 40 per cent of his monthly pension benefit be directed towards Ms. Sheryda and their minor children.

*Mr. Elguindi's "double dipping" argument*

46. With regard to Mr. Elguindi's challenge to the Pension Fund's decision to award Ms. Onogi USD 1,000, the Appeals Tribunal is satisfied that the Pension Board correctly concluded that Mr. Elguindi's obligation to pay spousal support on foot of the Court Order of 30 June 2005, reaffirmed in April 2009, was an independent and separate obligation to the pension equalisation payment made in Ms. Onogi's favour in 2005. Thus, the Appeals Tribunal is satisfied that the Pension Fund correctly determined that Ms. Onogi's request, pursuant to Article 45 of the Regulations was not "double dipping" as contended by Mr. Elguindi.

*The rationale for Ms. Onogi's and Ms. Sheryda's claims*

47. What Ms. Onogi seeks is that the monthly pension payable to Mr. Elguindi, as administered by the Pension Fund, be used as a tool to enforce compliance with the spousal support order granted to her by the Canadian Courts. This is, essentially, also the claim made by Ms. Sheryda.

48. This is the type of situation Article 45 of the Regulations is designed to provide for, subject to the Pension Fund satisfying itself, in the first instance, that there arises a legal obligation from a marital or parental relationship on the Pension Fund participant. In the case of Ms. Onogi, Mr. Elguindi clearly has such an obligation. He has a similar obligation towards Ms. Sheryda, pursuant to the order of the Egyptian court.

49. The obligation on the Pension Fund to remit a portion of Mr. Elguindi's monthly pension benefit is however discretionary.

*The exercise of the Pension Fund's discretion*

50. With regard to Ms. Onogi's claim of procedural defects, the Appeals Tribunal was not persuaded by her arguments that there were procedural flaws on the part of the Pension Fund such as to render the exercise of its discretion unreasonable or unlawful. The Appeals Tribunal so finds having regard, in particular, to the exchange of correspondence which took place between Ms. Onogi and the Pension Fund between October 2007 and July 2010. We are satisfied that Ms. Onogi was put on sufficient notice by the Pension Fund that it was under the obligation to consider a claim other than the one being made by her and that it had to adjudicate on the competing representations then before it, including those of Mr. Elguindi himself. Furthermore, the Appeals Tribunal is satisfied that the Pension Fund gave due regard to Ms. Onogi's representations.

51. The Appeals Tribunal is satisfied, having regard to the nature of the representations made to it by Ms. Onogi and Ms. Sheryda, that the Pension Fund properly determined that their claims merited the exercise by the Pension Fund of the discretion vested in it by Article 45 of its Regulations.

52. The Pension Fund determined that the amount of Mr. Elguindi's pension payments from which it could make deductions in favour of Ms. Onogi and Ms. Sheryda was a monthly sum of USD 5,265.76. However, Mr. Elguindi's legal obligations (on foot of the respective court orders) to Ms. Onogi and Ms. Sheryda totalled a monthly sum of USD 8,600. Mr. Elguindi's legal obligations therefore exceed the monthly pension benefit he is entitled to from the Pension Fund.

53. The Appeals Tribunal is satisfied that the Pension Fund, in exercising its discretion as to how to apportion Mr. Elguindi's monthly pension, correctly determined that it had to take into consideration the needs of Ms. Onogi, Ms. Sheryda, the minor children of Ms. Sheryda and Mr. Elguindi, and the needs of Mr. Elguindi himself.

54. The Appeals Tribunal accepts the UNJSPF's submission that Mr. Elguindi's pension fund cannot be the sole panacea for settlement of Ms. Onogi's legal claims against Mr. Elguindi and, thus, the Appeals Tribunal is satisfied that the Pension Fund did not act unreasonably, arbitrarily or unlawfully in refusing Ms. Onogi's request that her monthly alimony of USD 5,000 be met entirely from Mr. Elguindi's United Nations pension.

55. The Pension Fund's function in situations such as the present, where there are competing interests, is essentially a balancing act while paying due regard to the provisions of Article 45 of its Regulations.

56. The Appeals Tribunal notes that Article 45 of the Regulations provides, in circumstances where the Pension Fund is satisfied that the Pension Fund participant has a marital/parental legal obligation, for "a portion of a benefit" to be remitted to "...one or more former spouses and/or a current spouse from whom the participant or former participant is living apart".

57. Having regard to all of the circumstances presented in the three appeals before it, the Appeals Tribunal does not find that the manner in which the Pension Fund apportioned Mr. Elguindi's monthly pension sum was unreasonable, capricious or an abuse of its discretion.

58. In all the circumstances the Appeals Tribunal sees no reason to vary the apportionment of Mr. Elguindi's monthly pension benefit, as made by the Pension Fund and upheld by the Standing Committee.

59. In the course of its submissions in the Onogi appeal, the UNJSPF makes reference, inter alia, to the manner in which the Pension Fund approaches an application made pursuant to Article 45 of the Regulations. The UNJSPF submits that the Pension Fund's approach, as upheld by the Standing Committee in July 2010, is that a deduction from the benefits of a Pension Fund participant "will not normally exceed 50 per cent of the gross UNJSPF monthly benefit paid to the retiree". The Appeals Tribunal is satisfied that the articulation of its policy in such terms gives implicit recognition to the fact that there may be instances where the equitable exercise of its discretion calls for an apportionment in excess of fifty per cent.

60. With regards to the claims made by Ms. Onogi and Ms. Sheryda for the application of Article 45 of the Regulations in their favour, the Pension Fund determined that a total sum of USD 2,600 be deducted from his monthly pension: 19 per cent for Ms. Onogi, 10.5 per cent for Ms. Sheryda and 19 per cent for Ms. Sheryda's two minor children.

61. As already set out herein, the Appeals Tribunal is satisfied, having regard to all of the circumstances in the three present appeals, that the respective apportionments constitute a reasonable and equitable exercise of the Pension Fund's discretion.

62. Accordingly, the Appeals Tribunal finds no basis to vary or set aside the decision of the Pension Fund as upheld by the Standing Committee.

**Judgment**

63. The respective appeals are dismissed.

Original and Authoritative Version: English

Done this 16<sup>th</sup> day of March 2012 in New York, United States.

*(Signed)*

Judge Faherty, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Weinberg de Roca

Entered in the Register on this 7<sup>th</sup> day of May 2012 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar