



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

Judgment No. 2013-UNAT-348



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

JUDGMENT

Before: Judge Sophia Adinyira, Presiding
Judge Luis María Simón
Judge Mary Faherty

Case No.: 2012-391

Date: 21 June 2013

Registrar: Weicheng Lin

Counsel for Appellant: Raphael Eghan

Counsel for Respondent: Bernard Cochemé

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mrs. Trang Sidell against a decision of the Standing Committee of the United Nations Joint Staff Pension Board (UNJSPB) dated 23 July 2012. Mrs. Sidell appealed on 15 October 2012, and the United Nations Joint Staff Pension Fund (UNJSPF or the Fund), as Respondent, answered on 13 December 2012.

Facts and Procedure

2. The Appellant, Mrs. Sidell, is the widow of Mr. Robert Sidell. Mr. Sidell was a staff member of the United Nations Development Programme (UNDP) working for the Office for Project Services (UNOPS) in Sudan, Vietnam and Ethiopia from August 1986 to June 2002 in three periods of time (13 August 1986 to 14 August 1990; 9 August 1991 to 6 December 1995; and 25 June 1997 to 30 June 2002). Mr. Sidell was married twice. His first marriage ended in divorce in August 1999. Mrs. Sidell and Mr. Sidell were married in December 2000, while they both were stationed in Ethiopia. Mr. Sidell was separated from service on 30 June 2002. He died on 6 May 2010.

3. Mrs. Sidell was also a staff member working as a Finance and Administrative Officer for UNOPS, starting her United Nations career in 1993 in Danang, Vietnam. She was assigned to Ethiopia in March 1998. Mrs. Sidell became a participant of the Pension Fund in May 1998. Upon her separation from service on 30 June 2002, Mrs. Sidell received a withdrawal settlement as her participation in the Pension Fund was less than five years and she was not vested in the Pension Fund.

4. Despite their marriage, both Mr. and Mrs. Sidell were listed as “single” in UNOPS’ personnel action forms dated 10 September 2002, which were copied to Mr. Sidell and Mrs. Sidell. At the time of his separation on 30 June 2002, UNDP’s records showed Mr. Sidell as having divorced in August 1999 and made no mention of his remarriage.

5. Upon separation, both Mr. Sidell and Mrs. Sidell received their separate entitlements for repatriation at the single rate, despite their marriage.

6. In October 2003, Mr. Sidell wrote to the UNJSPF, noting that he was listed as divorced in his pension records and requesting forms for reporting his marriage to Mrs. Sidell. At the request of the UNJSPF, Mr. Sidell mailed first a copy of his

marriage certificate and then the original to the UNJSPF. The UNJSPF filed the submitted documents, but did not communicate further with Mr. Sidell on this matter.

7. By letter dated 1 August 2010, Mrs. Sidell informed the UNJSPF of her husband's death and requested payment of a widow's benefit.

8. The UNJSPF responded on 10 November 2010. Mrs. Sidell was informed that a widow's benefit was not payable to her because she had not been reported to the Fund as being married to Mr. Sidell at the time of the latter's separation.

9. Mrs. Sidell appealed to the Standing Committee of the UNJSPB against the decision not to pay her a widow's benefit. On 23 July 2012, the Fund conveyed to her the decision of the Standing Committee of the UNJSPB, upholding the contested decision. The Standing Committee noted that the UNJSPF's Administrative Rule B.3 requires that participants report their dependants prior to separation from service and there were no exceptional circumstances to justify any deviation from that requirement. The Standing Committee also noted that Mr. Sidell had reported his August 1999 divorce from his first wife to UNDP, that he had been meticulous in his correspondence with the Fund, and that he had received repatriation entitlements at a single rate.

Submissions

Mrs. Sidell's Appeal

10. Mrs. Sidell submits that she is entitled to a widow's benefit according to Article 34(a) of the UNJSPF Regulations. She is the surviving spouse of Mr. Sidell, who was a participant in the Fund. The Sidells were married at the date of Mr. Sidell's separation and remained married until his death.

11. Furthermore, Mrs. Sidell submits that in accordance with the jurisprudence of the Appeals Tribunal, the Fund is not permitted to refuse payment of a widow's benefit solely on the grounds of Rule B.3 of the Administrative Rules of the UNJSPF. Such a rigid interpretation of the Administrative Rules is unpersuasive, in particular as the language of Administrative Rule B.3 does not demand this. In any event, the Fund has in previous cases corrected its records after the separation of a participant. Thus, it is arbitrary for the Fund to refuse to alter its records concerning the Sidells.

12. Mrs. Sidell also submits that exceptional circumstances existed in this case, as demonstrated by the fact that the Fund, after receiving the marriage certificate, never communicated to the Sidells that Mrs. Sidell was not eligible for a widow's benefit.

13. Mrs. Sidell, therefore, requests the Appeals Tribunal to reverse the decision of the Standing Committee and to order the Fund to pay her a widow's benefit. In addition, Mrs. Sidell requests the Appeals Tribunal to order the Fund to pay her a lump sum, equal to the amount of the benefit she would have received, had the Fund started paying from the date her entitlement crystallized, and to order the Fund to compensate her for the mental anguish and stress caused by its actions.

The Fund's Answer

14. The Fund submits that Article 34(a) of the UNJSPF Regulations cannot be read in isolation but has to be seen in conjunction with Administrative Rules B.2 and B.3 of the UNJSPF. It is the responsibility of the participant to provide information to the Fund about his or her personal status. Mr. Sidell did not provide this information to the Fund prior to his separation.

15. The Fund further submits that it is not arbitrary to strictly adhere to the wording of Rule B.3, as otherwise the entire functionality of the Fund would be jeopardized. The Fund has to be able to establish the financial risks and liabilities for payment of benefits in the future and therefore needs certainty of who the dependants are.

16. The Fund, thus, requests the Appeals Tribunal to dismiss the appeal and to uphold the Decision of the Standing Committee.

Considerations

17. The conditions for payment of a widow's benefit are set out in Article 34 of the UNJSPF's Regulations, as follows:

WIDOW'S BENEFIT

(a) A widow's benefit shall ... be payable to the surviving female spouse of a participant who was entitled to a retirement, early retirement, deferred retirement or disability benefit at the date of his death, or who died in service, if she was married to

him at the date of his death in service or, if he was separated prior to his death, she was married to him at the date of separation and remained married to him until his death.

18. Mrs. Trang Sidell is the surviving spouse of Mr. Robert Sidell, who was a Fund participant. The Sidells were married at the date of Mr. Sidell's separation and remained married until he died. She therefore submits that she is entitled to a widow's benefit.

19. The Fund does not dispute the existence of the marriage of the Sidells but submits that Mr. Sidell was required, but failed, to report his marriage to UNDP and the Fund to have his record and marital status amended, before he separated from service in 2002.

20. The Fund further submits:

The Administrative Rules make clear the obligation on the part of an employing organization and a participant under Administrative Rules B.2 and B.3 to report his or her dependants and Administrative Rule B.3 goes on to state that there can be no change to the record after separation from service.

21. The UNJSPF Administrative Rules B.2 and B.3 provide:

B.2 The information shall normally include the name of the participant and the date of commencement of participation, date of birth, sex and marital status, and, as the case may be, the names and dates of birth of the participant's spouse, children under the age of 21, and secondary dependants; the organization shall verify, to the extent possible, the accuracy of the information furnished.

B.3 The participant shall be responsible for providing the information in rule B.2 above and for notifying the organization of any changes which occur therein; the participant may be required to submit documentary or other proof of such information to the organization or the secretary of the committee. No change in the records relating to the date of birth of a participant or his or her prospective beneficiaries shall be accepted after the date of the participant's separation.

22. The Appeals Tribunal notes that the information a participant is required to provide under Administrative Rule B.2 is: the name of the participant and the date of commencement of participation, date of birth, sex, marital status and the names and dates of birth of the participant's spouse, children under the age of 21 and secondary dependants. Administrative Rule B.3 places the responsibility of any changes in the data on record on the participant.

23. The last sentence of Administrative Rule B. 3 provides: “*No change in the records relating to the date of birth of a participant or his or her prospective beneficiaries shall be accepted after the date of the participant's separation.*” The language is clear and ought to be given its plain and ordinary meaning.

24. The prohibition of a change in the records after separation is specifically limited to the *date of birth of the participant or his or her prospective beneficiaries*, and nothing else.

25. Mrs. Sidell correctly submits that the language of B.3 does not prevent a participant from changing his or her record to acknowledge a valid marriage that occurred before separation.

26. The Appeals Tribunal notes that the Sidells were negligent in not reporting their marriage before their separation from service. Mr. Sidell, however, notified the Fund in October 2003 of his marriage to Mrs. Sidell, and the Fund requested him to provide his original marriage certificate, which he did. However, the Fund did not follow up with Mr. Sidell about the matter.

27. By remaining silent, we find that the Fund created a reasonable expectation on the part of the Sidells that Mr. Sidell's pension record was corrected and that his marriage to Mrs. Sidell was recognized by the Fund. In the circumstances, it is unreasonable to deny the widow her entitlements.

28. The parties mentioned the cases of *Tebeyene v. United Nations Joint Staff Pension Board* (Judgment No. 2010-UNAT-016); former Administrative Tribunal Judgment No. 1478, *Clarke* (2009); *El Zaim v. United Nations Joint Staff Pension Board* (Judgment No. 2010-UNAT-007); and *Ansa-Emmin v. United Nations Joint Staff Pension Board* (Judgment No. 2011-UNAT-155). This Tribunal considered these cases, but found them irrelevant to the present case as the circumstance in each was different.

29. The appeal therefore succeeds.

Consequential Orders

30. The Tribunal recognizes the additional new obligations on the Fund by providing Mrs. Sidell with a widow's benefit. Had the neglect to inform the Fund of the Sidells' marriage been the fault of UNDP, pursuant to Article 25(e) of UNJSPF Regulations, the UNDP would have been required to pay the actuarial cost due for the error.

31. Since there was no error on the part of UNDP and the Fund has to bear this extra cost (caused by the negligence of Mr. Sidell in not reporting his marriage prior to his separation from service in June 2002), this Tribunal deems it equitable to order that the payment of the widow's benefit by the Fund should start from the date of this Judgment.

32. All other reliefs are rejected.

Judgment

33. The appeal is allowed. The decision of the Standing Committee of the UNJSPB is set aside.

34. It is hereby ordered that the UNJSPF pay Mrs. Sidell her widow's benefit starting from the date of this Judgment. All other reliefs are rejected.

Original and Authoritative Version: English

Done in New York, United States.

(Signed)

Judge Adinyira, Presiding
21 June 2013

(Signed)

Judge Simón
28 June 2013

(Signed)

Judge Faherty
28 June 2013

Entered in the Register on this 26th day of August 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar