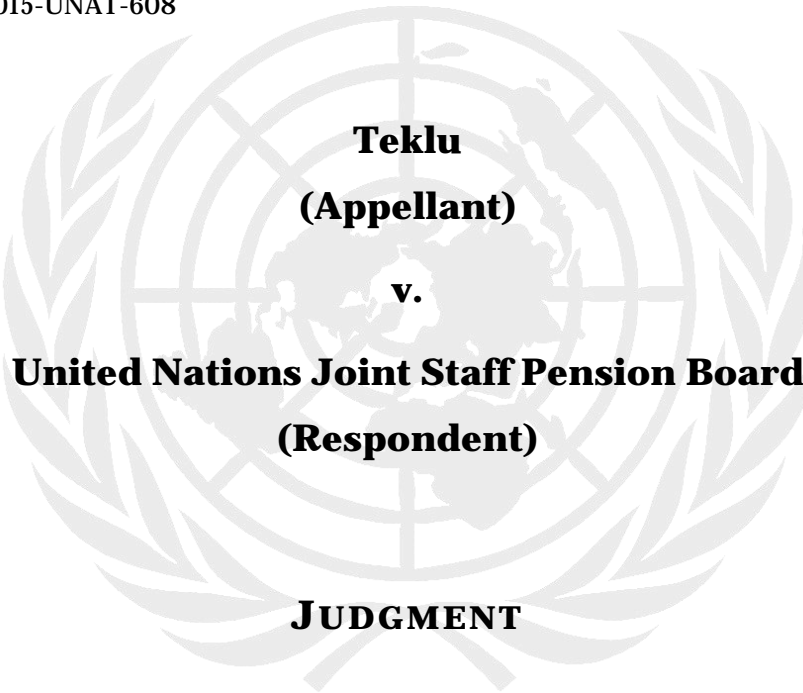




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-608



Before: Judge Mary Faherty, Presiding
Judge Rosalyn Chapman
Judge Inés Weinberg de Roca

Case No.: 2014-665

Date: 30 October 2015

Registrar: Weicheng Lin

Counsel for Appellant: George Irving

Counsel for Respondent: Sergio Arvizú

JUDGE MARY FAHERTY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Tesfaye Teklu, on behalf of his deceased wife, Ms. Wagaye Assebe, against a decision of the Standing Committee of the United Nations Joint Staff Pension Board (Standing Committee or Committee and Board, respectively) made on 25 July 2014. Mr. Teklu appealed on 21 October 2014 and the United Nations Joint Staff Pension Fund (UNJSPF or the Fund) answered on 16 December 2014.

Facts and Procedure

2. Ms. Assebe was a United Nations employee since 1985. Her last position was as a G-7 Administrative/Programme Assistant in the Office of the Special Advisor on Africa (OSAA).

3. After being diagnosed with an illness, on 9 July 2013, Ms. Assebe visited the Fund's offices in person to enquire as to her options should she be unable to continue to work, including the possibility of a disability pension should she separate from the United Nations prior to age 55. She also signed, and submitted to the Fund a Pens.A/2 form for the designation of a recipient of a residual settlement under Article 38 of the Regulations, Rules and Pension Adjustment System of the Fund (Fund Regulations). She designated Mr. Teklu, being her spouse, and her daughter as her survivors, and designated her daughter as her residual beneficiary to receive 100 per cent of her residual settlement.

4. In view of her extended sick leave, on 17 October 2013, Ms. Assebe submitted a written request for termination of her appointment for reasons of health.

5. On 29 November 2013, the Assistant Secretary-General for the Office of Human Resources Management (ASG/OHRM) informed Ms. Assebe by letter that her request for termination was granted and that her permanent appointment would be terminated as of 30 November 2013.

6. On 2 December 2013, Ms. Assebe passed away.

7. On 23 December 2013, after being informed of the death of Ms. Assebe, the Fund requested the Executive Office charged with OSAA (EO/OSAA) matters to relay to Mr. Teklu that they required Ms. Assebe's signed payment instructions form (Pens.E/7) with respect to her choice of benefit following her separation from service.

8. On 27 December 2013, the EO/OSAA e-mailed Mr. Teklu and requested that he advise the Fund whether he had found his wife's signed Pens.E/7 payment instructions form.

9. On 28 January 2014, Mr. Teklu wrote to the Fund notifying them of his wife's intention to request an early retirement benefit under Article 29 of the Fund Regulations, with a one-third lump sum commutation for the benefit of their daughter. He explained that his wife had been unable to complete the necessary payment instructions immediately after her separation due to the sudden deterioration of her health.

10. On 26 February 2014, Mr. Teklu forwarded a Pens.E/7 payment instructions form that he had signed on behalf of his wife to the Fund reflecting the instructions set out in his letter of 28 January 2014.

11. On 27 May 2014, the Fund rejected Mr. Teklu's payment instructions as follows:

[...]

As discussed, this is to [...] confirm that Ms. Assebe, who separated from service on 30 November 2013, did not submit payment instructions prior to her passing away on 2 December 2013. Unfortunately, and it is deeply regrettable that under the Regulations and Rules of the Fund, we are only in position to consider this as a deferred retirement benefit under article 30, as no choice had been made by Ms. Assebe. Administrative Rule J.2, also of the Regulations of the Fund, stipulates that it is the participant, from whom the benefit derives, who shall specify in writing the benefit and any commutation thereof elected in accordance with the Regulations. The Payment Instructions form (Pens.E/7) that you submitted on 26 February 2014 on behalf of your late spouse, in which you requested an early retirement benefit with one third payable in lump sum, is therefore unfortunately not acceptable.

A widower's benefit under article 35 of the Regulations is now therefore payable to you as from 3 December 2013. As discussed, this benefit is estimated to be US\$ 22,973 per year, payable to you for life with cost of living adjustments in accordance with the UNJSPF Pension Adjustment System.

[...]

12. On 3 June 2014, Mr. Teklu addressed a letter to the Fund's Chief Executive Officer (CEO) requesting review of the decision of 27 May 2014. Mr. Teklu explained that his wife had not managed to provide the Fund with signed payment instructions before her passing on 2 December 2013, as she had been waiting for her request for early termination to be accepted, which it was, after some delay, on 29 November 2013. Mr. Teklu provided testimonial evidence and other documents in support of his contention that, notwithstanding the absence of a completed Pens.E/7 form, his wife had opted for an early retirement benefit with a lump sum payment prior to her death.

13. On 16 July 2014, the Standing Committee convened its 196th meeting at which it discussed, inter alia, Mr. Teklu's case.

14. On 25 July 2014, the Senior Legal Officer, UNJSPF, advised Mr. Teklu that after reviewing the contested decision the Standing Committee had decided to uphold it. The letter to Mr. Teklu advised as follows:

The Standing Committee considered your request at its 196th meeting held on Wednesday, 16 July 2014. The documentation presented to the Standing Committee included your request dated 3 June 2014. The Standing Committee was very sympathetic to the circumstances of the case. However, it found in particular that Article 30(b) of the Fund's Regulations requires that a participant make the election him/herself for an early retirement benefit, and that under Administrative Rule J.2, the participant is required to complete the payment instruction form him/herself. There is no provision in the Regulations for a third-party election. Therefore, the Committee upheld the decision of the Secretary/CEO to deny the request for the early retirement benefit under Article 29(e) and confirmed that without the payment instructions signed by [...] Ms. Assebe before her death, a deferred retirement benefit became payable to her upon her separation from service, and a widower's benefit under Article 35 of the Regulations became payable to you as her spouse, upon her death. The Committee further noted that the only estimate that had been requested by Ms. Wassebe [sic] following her visit to the Fund in July 2013 was [...] for a disability benefit; therefore, there was no clear evidence or indication to the Fund that she was, indeed, intending to request an early retirement benefit. [...]

Submissions

Mr. Teklu's Appeal

15. Mr. Teklu submits that the legal question for review is whether there was “reasonable and equitable exercise of the Pension Fund’s discretion” by the CEO and the Standing Committee. Mr. Teklu submits that by failing to exercise the necessary and appropriate discretion, the Fund’s decision was an abuse of authority arrived at through a process that failed to respect his right to due process. The Fund Regulations ensure equitable treatment and prevent abuse, but they cannot account for every situation that may arise. Where compliance with the letter of law is impossible, it is the obligation of good administrators to make decisions in accordance with the spirit of the law.

16. The circumstances of the case are exceptional in that Ms. Assebe was prevented from communicating her decision to exercise her rights under the Fund Regulations through no fault of her own. By the time the Organization granted Ms. Assebe’s request to terminate her appointment, she was incapable of executing the pertinent separation documents. Mr. Teklu contends that the right to elect the form of entitlement is guaranteed to all participants under Article 27 of the Fund Regulations and it is that right which he wishes to enforce in order to carry out Ms. Assebe’s wishes.

17. Mr. Teklu further argues that it is logical to suppose that in foreshortening her employment, Ms. Assebe intended to rely on an early retirement benefit with a one-third lump sum option, especially since her prognosis was uncertain and she was giving up any other source of income. The Fund’s reliance on Article 32(b) of the Fund Regulations¹ is misplaced as there was no factual basis for assuming Ms. Assebe wished for a deferred retirement benefit. On the contrary, Mr. Teklu produced evidence that Ms. Assebe had intended to opt for an early retirement benefit with a lump sum payment as soon as the Organization would have approved her request for termination from service. The imposition of a deferred retirement benefit on an already deceased participant effectively cancels any entitlement.

¹ Article 32(b) of the Fund Regulations provides: “A participant who deferred a choice under (a) above shall, if the choice is not made within the period by submitting applicable payment instructions, be deemed to have chosen a deferred retirement benefit if his or her age on separation was less than the normal retirement age.”

18. While there is no specific provision in the Fund Regulations that addresses the situation, an analogy can be drawn to Article 46(d), which prohibits the forfeiture by a participant of the right to a retirement, early retirement, deferred retirement or disability benefit, by reason of failure to submit payment instructions if the exercise of the right has been “prevented by circumstances beyond the control of the beneficiary”. Moreover, Article 46(e) vests the Board with discretion to restore any benefit that has been forfeited if, in its opinion, the circumstances so warrant. Mr. Teklu submits that these provisions could be applied *mutatis mutandis* to cases where a participant is unable to submit the necessary paperwork but whose intentions are clear. The Fund’s interpretation of its Regulations affords the maximum economy to the Fund while depriving Mr. Teklu and his family of the choice of benefit most beneficial to their situation.

19. Mr. Teklu also raises due process concerns in relation to the manner in which the Standing Committee reviewed his wife’s matter. In particular, Mr. Teklu claims that: it is not clear what evidence was presented to the Standing Committee, and he was subsequently advised the meeting did not consider his wife’s will; of the evidence that was presented, this was at the discretion of the very person against whom Mr. Teklu was appealing; he was not allowed to express his views or give oral testimony before the Standing Committee meeting; there is no clear record of deliberations from the Standing Committee meeting; and the Fund’s refusal to exercise its discretion in his particular case lacked clearly articulated reasons and overlooked the fact that his wife had clearly indicated an intention to provide the maximum financial entitlement to her daughter by filling out a Pens.A/2 form designating the latter as her residual beneficiary in the case of her death. The Standing Committee’s reasoning also ignores his wife’s subsequent termination request and runs counter to information provided by Mr. Teklu from close friends, relatives and testamentary documents.

20. Mr. Teklu requests that the Appeals Tribunal rescind the contested decision and restore his right to enforce Ms. Assebe’s preference for an early retirement benefit with payment of a lump sum portion.

The Fund’s Answer

21. The Fund argues that unlike the language of Article 30(a) of the Fund Regulations that sets out the conditions for payment of a deferred retirement benefit, the language of Article 29 in respect of an early retirement benefit clearly requires that the participant elect the

early retirement benefit in order to receive it. Hence, according to the clear and ordinary meaning of Article 30, when a participant, who has not reached normal retirement age, fails to elect a benefit, the default position is that he/she becomes entitled to a deferred retirement benefit pursuant to Article 30(a).

22. Mr. Teklu's argument drawing an analogy with Article 46(d) of the Fund Regulations on the forfeiture of benefits is misconceived as Article 46(d) concerns a pension benefit entitlement that has already been determined in accordance with the Fund Regulations, which is not the situation here. In this case, at the time of Ms. Assebe's separation from service the benefit had not been determined, thus there was no benefit to be re-established in accordance with Article 46(d) of the Fund Regulations.

23. The only circumstance in which the Fund can accept a payment instructions form that has been completed by a third party on behalf of a participant or former participant is when that third party is acting as a legally appointed guardian during the lifetime of the participant or former participant. In this case, Mr. Teklu completed the form in his capacity as the executor of the late Ms. Assebe's estate, after her death.

24. The Fund's Administrative Rules² make clear that the participant is responsible for completing the payment instructions form with his/her choice of benefit. While Mr. Teklu's circumstances are unfortunate, the Fund cannot act based on unfulfilled intentions and an *ex post facto* decision. To do so would constitute a risk to the Fund. Mr. Teklu's situation is analogous to that of staff members who die in service in circumstances that prevent them from making an election of benefit. In such instances, the Fund determines benefits payable in respect of their participation in accordance with its Regulations, and not based on what may have been the wishes or intention of the deceased participant or assertions of family members and friends after the event.

25. Further, delay in the finalization of the agreed termination between Ms. Assebe and the United Nations did not prevent Ms. Assebe from submitting payment instructions to the Fund. Many participants submit payment instructions to the Fund or their Human Resources Office prior to the finalization of their separation.

² Fund Regulations, Annex I – Administrative Rules of the United Nations Joint Staff Pension Fund.

26. The Fund is a rule-based organization and its Regulations account for every situation that may arise from Fund participation. The Fund needs to strictly adhere to its Regulations and Rules, maintain consistency in its decisions and uniformity in the application of Fund Regulations to ensure equal treatment amongst all participants and beneficiaries. It must also avoid any selective interpretation of the Fund Regulations based on what may seem to be exceptional circumstances in individual cases, but are in fact not so. By setting the condition of a clear election on the part of a participant, the Fund has protected itself and must continue to be protected by relying on the express intent and irrevocable choice by a participant.

27. Regarding alleged due process violations in the hearing of Mr. Teklu's appeal, Mr. Teklu has not provided any support for his assertions regarding the consideration of his case by the Standing Committee. The 25 July 2014 letter informing him of the Committee's decision stated that the Committee was guided by the Fund Regulations as applied to the facts of the case. To say that the Committee reached its decision by relying solely upon the fact that Ms. Assebe had inquired about a disability benefit several months prior to her death is unfounded and absurd. Further, the Appeals Tribunal previously failed to find any shortcomings in the procedures of the Standing Committee meetings in either Mr. Pio's or Mr. Larghi's case.³

28. The Fund asks that the Appeals Tribunal dismiss Mr. Teklu's appeal in its entirety and uphold the decision of the Standing Committee affirming the CEO's decision to deny payment of a lump sum following the death of Ms. Assebe in the absence of a payment instructions form signed by her for a benefit under Article 29 of the Fund Regulations, and finding that the only benefit payable by the Fund to Mr. Teklu was a deferred retirement benefit pursuant to Articles 30(a) and 32(b) of the Fund Regulations, and a widower's benefit under Article 35 of the Fund Regulations.

Considerations

29. As a preliminary matter, we note that the Fund Regulations, JSPB/G.4/Rev.18, in effect as of 1 January 2013, were the legal framework applicable at the time of Ms. Assebe's death in December 2013. The Fund subsequently introduced amended Fund Regulations, JSPB/G.4/Rev.19, with effect as of 1 January 2014 and applied the new Fund Regulations to its

³ *Pio v. United Nations Joint Staff Pension Board*, Judgment No. 2013-UNAT-344, para. 48; *Larghi v. United Nations Joint Staff Pension Board*, Judgment No. 2013-UNAT-343, para. 38.

consideration of Mr. Teklu's request of 28 January 2014. As the text of the key provisions in question is nonetheless essentially the same, we refer hereafter to the 2014 Fund Regulations.

30. The starting point for the purposes of the present consideration is Article 27 of the Fund Regulations, entitled "ENTITLEMENT TO BENEFITS". It provides:

(a) A participant who is not eligible for a retirement benefit under article 28 or a disability benefit under article 33 may elect on separation to receive an early retirement benefit or a deferred retirement benefit or a withdrawal settlement if he or she satisfies the conditions of article 29, 30 or 31 respectively.

(b) Retirement, early retirement and deferred retirement benefits shall be payable at periodic intervals for life.

31. It is thus clear that upon separation, a participant who is not eligible for a retirement benefit or a disability benefit must elect one of the three options referred to in Article 27 of the Fund Regulations.

32. The three options outlined in Article 27(a) are individually provided for in Articles 29, 30 and 31 of the Fund Regulations, as follows:

Article 29

EARLY RETIREMENT BENEFIT

Participation in the Fund has commenced or recommenced prior to 1 January 2014:

(a) An early retirement benefit shall be payable to a participant whose age on separation is at least 55 but less than the normal retirement age and whose contributory service was five years or longer.

(b) The benefit shall be payable at the standard annual rate for a retirement benefit, reduced for each year or part thereof by which the age of the participant on separation was less than the normal retirement age (60 or 62), at the rate of 6 per cent a year, except that:

- (i) If the contributory service of the participant was 25 years or longer but less than 30 years, the standard annual rate would be reduced by 2 per cent a year in respect of the period of contributory service performed before 1 January 1985, and 3 per cent a year in respect of the period of such service performed as from 1 January 1985; or
- (ii) If the contributory service of the participant was 30 years or longer, the standard annual rate would be reduced by 1 per cent a year;

provided however that the rate in (i) or (ii) above shall apply to no more than five years.

[...]

(e) The benefit may be commuted by the participant into a lump sum to the extent specified in article 28(g) for a retirement benefit.^[4]

Article 30

DEFERRED RETIREMENT BENEFIT

(a) A deferred retirement benefit shall be payable to a participant whose age on separation is less than the normal retirement age and whose contributory service was five years or longer.

(b) The benefit shall be payable at the standard annual rate for a retirement benefit and shall commence at the normal retirement age, or, if the participant so elects, at any time once the participant becomes eligible to receive an early retirement benefit from the Fund, provided that in such event it shall be reduced in the same manner and under the same conditions as specified in article 29.

(c) The benefit may only be commuted by the participant into a lump sum if the rate of the benefit at the normal retirement age is less than 1000 dollars. Such commutation shall be equivalent to the full actuarial value of the benefit.

Article 31

WITHDRAWAL SETTLEMENT

(a) A withdrawal settlement shall be payable to a participant whose age on separation is less than the normal retirement age, or if the participant is the normal retirement age or more on separation but is not entitled to a retirement benefit.

(b) The settlement shall consist of:

- (i) The participant's own contributions, if the contributory service of the participant was less than five years; or
- (ii) The participant's own contributions increased by 10 per cent for each year in excess of five up to a maximum of 100 per cent, if the contributory service of the participant was more than five years.

33. For the sake of completeness, we also set out Article 32, which provides:

Article 32

DEFERMENT OF PAYMENT OR CHOICE OF BENEFIT

⁴ Formerly Article 29(c) of the 2013 Fund Regulations.

(a) The payment to a participant of a withdrawal settlement, or the exercise by a participant of a choice among available benefits, or between a form of benefit involving payment in a lump sum and another form, may be deferred at the participant's request for a period of 36 months.

(b) A participant who deferred a choice under (a) above shall, if the choice is not made within the period by submitting applicable payment instructions, be deemed to have chosen a deferred retirement benefit if his or her age on separation was less than the normal retirement age.

34. Ms. Assebe had requested voluntary termination on 17 October 2013, which was agreed to by the Secretary-General on 29 November 2013, with the termination effective as of 30 November 2013. By the time of her receipt of the decision to terminate her service, Ms. Assebe's medical condition had deteriorated considerably, as a result of which she passed away on 2 December 2013. She never completed a form selecting her preferred benefit.

35. On 23 December 2013, some three weeks after her death, her erstwhile employer made contact with the Fund advising them that Mr. Teklu wished to discuss the position in respect of Ms. Assebe's pension. On the same date, the Fund advised that it required Ms. Assebe's payment instructions form Pens.E/7⁵ "with her original signature and a date on the form, if available, else if the late Mrs. Assebe did not complete payment instructions before passing, we will have to request the Fund's Legal Office for guidance on what benefit is payable in this case and to whom".

36. It is common cause that on 26 February 2014, Mr. Teklu completed and signed a payment instructions form and elected for an early retirement benefit with a one-third lump sum by way of commutation, as provided for by Article 29(e) of the Fund Regulations. This payment instruction was rejected by the CEO of the Fund since the Pens.E/7 form had to be signed by Ms. Assebe personally as required by Administrative Rule J.2 of the Fund Rules. In the circumstances, Ms. Assebe's case would have to be considered as a deferred retirement claim under Article 30 of the Fund Regulations.

⁵ The Pens.E/7 form allows participants to either elect for one of the benefits outlined at Articles 28 to 31, or, as per Article 32(a), to defer election for up to 36 months.

37. Following Mr. Teklu's request for review, the Standing Committee upheld the CEO's decision to deny Mr. Teklu's request for a benefit under Article 29(e) of the Fund Regulations, noting that the Fund Regulations did not provide for a third-party election of benefit on behalf of a former participant posthumously. The Standing Committee also confirmed that a deferred retirement benefit and a widower's benefit under Article 35 of the Fund Regulations were payable.

38. In the first instance, having regard to the reasons underpinning the Standing Committee's decision, the issue for determination is whether the Standing Committee was correct in law in requiring that for the requisite benefit election to have been made pursuant to the Fund Regulations and Rules, the election had to be made in writing by the Fund participant and not by a third party, and in holding that Ms. Assebe had not signed the requisite payment instructions form or otherwise informed the Fund of any benefit election. Additionally, the issue is whether the only benefit Ms. Assebe was eligible to receive at the time of her death was a deferred retirement benefit pursuant to Article 30(a) of the Fund Regulations.

39. The Standing Committee correctly determined that the applicable Fund Rules provide that the pension participant is required to inform the Fund in writing of the benefit election made and of any commutation elected. Administrative Rule J.2(a) of the Fund Rules provides:

The participant shall specify in writing, on a form provided for the purpose by the secretary of the committee, the benefit and any commutation thereof elected in accordance with the Regulations, instructions with respect to the method, currency and the banking or other institution, if such be the case, to which payment should be made on account of the participant. Subsequent changes in the election of benefits by the participant shall not be accepted unless no payment has yet been made by the Fund.

40. As such, there is no provision for third party advisement under the Rules. Thus, the Standing Committee's interpretation of the Rules in this regard is correct.

41. Next, the Fund, in its 27 May 2014 letter to Mr. Teklu, and the Standing Committee in its 25 July 2014 letter, respectively, determined that Ms. Assebe, who had not elected any of the retirement benefits provided for pursuant to Article 27 of the Fund Regulations, was to receive a deferred retirement benefit upon her separation from service pursuant to Article 30 of the Fund Regulations.

42. The question which now arises for determination is how the Fund arrived at its determination that the retirement benefit which became payable to Ms. Assebe upon her separation from service was a deferred retirement benefit, in circumstances where Ms. Assebe's unfortunate demise precluded the Fund from ascertaining from her which retirement benefit she had elected.

43. Following upon Mr. Teklu's attempt to put what is said to be Ms. Assebe's stated wishes to the Fund posthumously, the CEO advised Mr. Teklu that the Fund "was only in a position to consider [the matter] as a deferred retirement benefit under Article 30, as no choice had been made by Mrs. Assebe".

44. At the review hearing, the Standing Committee also relied on Article 30(b) in order to deny the request for a benefit under Article 29(e) and to find that the applicable benefit was a deferred retirement benefit, stating: "Article 30(b) of the Fund's Regulations requires that a participant makes the election him/herself for an early retirement benefit."

45. In our view, the Standing Committee's reliance on Article 30(b) of the Fund Regulations as a rationale for its finding that a deferred retirement benefit became payable to Ms. Assebe upon her separation from service is flawed for the following reasons.

46. In the first place, Ms. Assebe did not elect for a deferred retirement benefit under Article 30 any more than she had elected for an early retirement benefit under Article 29 or a withdrawal settlement under Article 31 of the Fund Regulations. Indeed, the crux of the problem is that prior to having passed away Ms. Assebe never completed the requisite Pens.E/7 form by which she could have elected any one of the benefits outlined at Articles 28 to 31 of the Fund Regulations, or, as per Article 32(a), deferred her election for up to 36 months.

47. Secondly, the election referred to in Article 30(b) is a secondary election to be made by a participant who had already previously elected to receive a deferred retirement benefit upon separation, pursuant to Article 27 of the Fund Regulations, and through having completed the requisite Pens.E/7 form; the secondary election in Article 30(b) relates to *when* the deferred retirement benefit is to commence, namely at normal retirement age or once the participant becomes eligible to receive an early retirement benefit from the Fund, and is to be elected by completing form PF.23/A. Thus, the election provided for by Article 30(b) has no logical or causative connection to the primary election to receive a benefit under

Article 29. Accordingly, the Standing Committee erred in relying on the provisions of Article 30 when it affirmed the decision of the Fund's CEO to deny Mr. Teklu's request relating to Article 29 of the Fund Regulations.

48. In its answer to the present appeal, the Fund also relies on the provisions of Article 32(b) of the Fund Regulations, above, in support of its contention that Ms. Assebe's entitlement, upon separation from service, was to a deferred retirement benefit. With regard to this argument however, the Standing Committee did not seek to justify its decision by reference to Article 32(b). This provision, therefore, cannot be the basis of the Standing Committee's decision and the Fund cannot retroactively seek to justify the contested decision on this basis.⁶

49. Contrary to the Fund's submissions, the situation which presented to the Standing Committee was one for which neither the Fund Regulations nor Rules provided, namely a pension participant who, within two days of being separated from service and who was not of normal retirement age, sadly passed away without having had the opportunity, by reason of her illness, to exercise her right of election pursuant to Article 27 of the Fund Regulations.

50. Although the Fund, in its submissions to this Tribunal, argues that Ms. Assebe could have exercised the necessary election *prior* to being separated from service, Administrative Rule J.1 of the Fund Rules explicitly provides that the "member organization [...] shall, *upon separation*, inform the secretary of the pension committee of the participant's last day of service and [...] furnish such further information as the secretary may require for the purpose of computing the entitlements under the Regulations".⁷ That is true. However, it is equally the case that pursuant to Administrative Rule J.1 and, more particularly, to Article 27 of the Fund Regulations, an election post-separation remains an option for any pension participant. Thus, we hold that the Standing Committee's submission on this issue cannot be dispositive of the appeal.

51. While the Standing Committee in our view properly proceeded on the basis that Ms. Assebe should not be denied a right of election, given the unique circumstances of the case, it nevertheless considered itself compelled to treat the matter as falling under Article 30(b) of the Fund Regulations, an approach which we hold to be erroneous for the reasons we set out in paragraphs 46 and 47 of this Judgment. That being the case, the decision of the

⁶ See *Das v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-421.

⁷ Emphasis added.

Standing Committee, relying as it does on the provisions of Article 30(b) to deny the request for an early retirement benefit, cannot be regarded as having been arrived at on a rational or sound basis. The absence of a specific rule in the Fund Regulations addressing the set of circumstances which presented before the Standing Committee does not entitle the Standing Committee to arbitrarily pluck a provision from the Fund Regulations as a substitute for the lacunae in the Fund Regulations. It follows that the matter must be remanded to the Standing Committee for de novo consideration as to how it should proceed in all the circumstances of the case.

Due process issues raised by Mr. Teklu

52. Mr. Teklu submits that his due process rights before the Standing Committee were not respected. He argues that he was not allowed to express his view or give oral testimony to the Standing Committee and that it is his belief that the review which was carried out was perfunctory. He also argues that the absence of a clear record of what transpired at the Standing Committee is problematic.

53. The allegations Mr. Teklu raises in his appeal are similar to those raised in the appeal by Mr. Pio, also considered this session,⁸ and in Mr. Larghi's appeal, which the Appeals Tribunal previously rejected.⁹ In *Larghi*, we affirmed our decision in *Ansa-Emmim*, stating:¹⁰

... [...] "[A]ll proceedings which culminate in appealable decisions must be conducted in a reviewable manner, by observing the principles of natural justice. The affected party must get a proper hearing, and the order detailing a decision must contain sound reasons which can be judicially scrutinized upon appeal." This is the standard we have set for appeals before the Standing Committee.

54. In the present case, we are not persuaded that Mr. Teklu's due process rights were violated by reason of his not being present before the Standing Committee. There is no suggestion from the correspondence he furnished to this Tribunal that he sought to be heard by the Standing Committee in person. While Mr. Teklu has raised the concern that his appeal is submitted to the Standing Committee by the very person whose decision he is appealing, we are satisfied that this concern is alleviated both by the fact that his case is presented in written form to the Standing Committee and by the composition of that body, which includes

⁸ *Pio v. United Nations Joint Staff Pension Board*, Judgment No. 2015-UNAT-569.

⁹ *Larghi v. United Nations Joint Staff Pension Board*, Judgment No. 2013-UNAT-343.

¹⁰ *Ibid*, para. 40, citing *Ansa-Emmim v. United Nations Joint Staff Pension Board*, Judgment No. 2011-UNAT-155.

representatives of the Federation of Associations of Former International Civil Servants, pursuant to Administrative Rule B.9 of Annex II to the Fund's Rules of Procedure.

Judgment

55. The appeal is granted in part. The decision of the Standing Committee is set aside and the case is remanded to the Standing Committee for due consideration of the matter of Ms. Assebe's retirement benefits.

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 26th day of January 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar