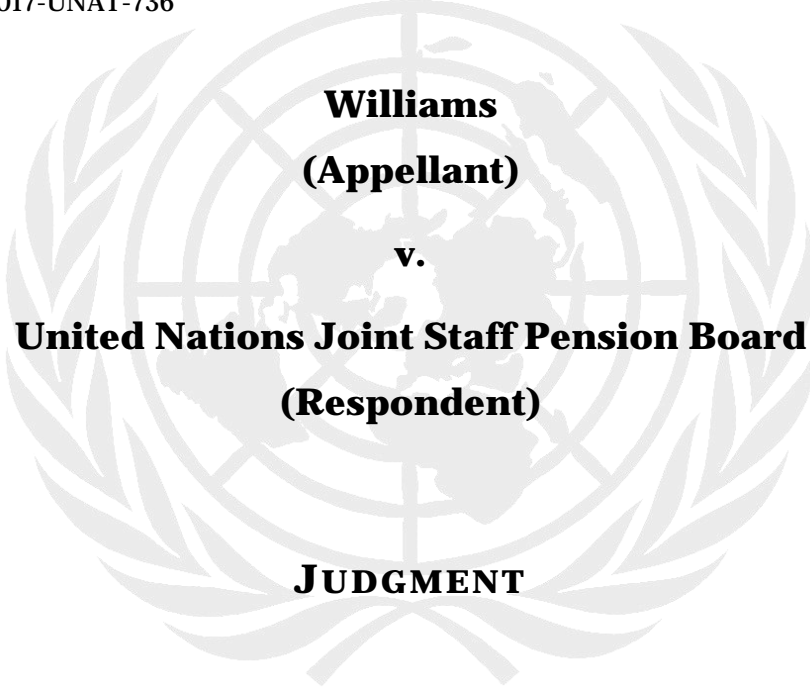




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2017-UNAT-736



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

JUDGMENT

Before: Judge Dimitrios Raikos, Presiding
Judge Richard Lussick
Judge John Murphy

Case No.: 2016-979

Date: 31 March 2017

Registrar: Weicheng Lin

Counsel for Appellant: Michelle Rockcliffe

Counsel for Respondent: Sergio B. Arvizú

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mrs. Cynthia Brenda Williams against a decision of the Standing Committee of the United Nations Joint Staff Pension Board (Standing Committee and UNJSPB, respectively) made on 20 July 2016. Mrs. Williams filed her appeal on 27 October 2016, and the United Nations Joint Staff Pension Fund (UNJSPF or the Fund) filed its answer on 6 December 2016.

Facts and Procedure

2. Mrs. Williams is a widow to Mr. Raphael Williams. Mr. Williams worked for the Organization for approximately 25 years before he separated on retirement in October 2008. At the time of his retirement, Mr. Williams was reported as divorced. After he retired, Mr. Williams elected to be paid a reduced retirement benefit with one-third lump sum in commutation. He married Mrs. Williams on 9 March 2009. On 18 April 2015, Mr. Williams passed away. At issue is whether Mrs. Williams is entitled to a widow's benefit.

3. After Mr. and Mrs. Williams were married, on 17 March 2009, Mr. Williams filed with the Fund, *inter alia*, a new form titled "Designation of recipient of a residual settlement under Article 38 of the Regulations" (PENS. A/2 – Rev. 5 (06-06)-E). In that form, Mr. Williams designated Mrs. Williams and his two sons from the previous marriage as the recipients in equal share (33 1/3 per cent) of the residual settlement.

4. On 4 July 2010, Mr. Williams reentered the service of the Organization as a Finance Officer with the United Nations Assistance Mission in Afghanistan (UNAMA). Also on that day, he reentered the UNJSPF and the Fund was informed of his remarriage. Upon his separation from service on 30 June 2012, Mr. Williams elected to be paid a withdrawal settlement for his contributions for the period from 4 July 2010 to 30 June 2012.

5. Following the death of Mr. Williams, Mrs. Williams submitted documents seeking a widow's benefit from the Fund.

6. In a letter dated 19 June 2015, the Chief, Pension Entitlements Section, UNJSPF, advised Mrs. Williams that there was no widow's benefit payable to her under Article 34 of the Regulations, Rules and Pension Adjustment System of the United Nations Joint Staff Pension

Fund (UNJSPF Regulations) since her marriage to Mr. Williams took place after Mr. Williams' separation from service. She also advised Mrs. Williams that there was no annuity payable to Mrs. Williams under Article 35 *ter* of the UNJSPF Regulations, because Mr. Williams had not elected to purchase an annuity within one year of his remarriage. The Chief provided the following reasons for the above decision:

a) ... A widow's benefit is payable to a spouse who was married to a former participant at the date of his/her separation from service and remained married to the former participant until the date of death. Therefore, the marriage would have to have occurred prior to the participant's separation from service to fulfill the first requirement. Mr. Williams separated from the service of the United Nations on 12 October 2008. He was reported as divorced in the final separation documentation sent by the UN to the Fund for purposes of processing his retirement benefits. Your marriage occurred on 9 March 2009, which date was after he separated from service. Accordingly, you were not married to him at the date of his separation from service and are not eligible to receive a widow's benefit under Article 34 of the Regulations.

While Mr. Williams did again become a participant in the Fund from 4 July 2010 until 30 June 2012, he elected to be paid a withdrawal settlement for his contributions for that period, therefore no benefits are payable in respect of that participation.

b) You have also submitted a copy of the Pens. A/2 form signed by Mr. Williams on 17 March 2009. That form is relevant for purposes of determining who should receive any amount that may be due as a residual settlement under Article 38 of the Regulations in the event of the death of a former participant before all of the contributions paid in by him/her have been paid as a benefit. The form is not a means of reporting a change in a participant or former participant's civil status or dependents – marriage, remarriage, divorce, birth or adoption of a child, for purposes of UNJSPF benefits. In the case of Mr. Williams, he never reported your marriage to the Fund nor provided a copy of the marriage certificate.

c) Under its Regulations, the Fund does provide for spouses married after a former participant's separation from service by allowing a former participant to elect to purchase an annuity for a spouse married after separation from service. Such election must be made within one year after the date of the marriage. This is similar to purchase of an annuity from an insurance company. Had Mr. Williams reported your marriage and provided a copy of the marriage certificate within one year of the date of your marriage, he would have had the option to elect to purchase an annuity for you under Article 35 *ter* of the Regulations. Since Mr. Williams did not exercise this option, Article 35 *ter* is not applicable either in your case.

The annuity is paid for by deducting the premiums for the annuity from the monthly benefit payable to a retiree and thus reducing the monthly benefit paid. Therefore, the benefit payable under Article 35 *ter* is one that is purchased by a retiree unlike a widow's benefit under Article 34 that flows from the retiree's participation in the Fund. We note

that a retiree may choose instead to make provision for survivors through other means rather than incur the cost of a reduction in his/her monthly benefits from the Fund to provide for his/her spouse in the future. Mr. Williams received his full monthly periodic benefits from the Fund until his death, therefore there is no basis upon which the Fund can provide an annuity to you under its Regulations.

7. On 18 August 2015, Mrs. Williams wrote to the Chief Executive Officer (CEO) of the Fund requesting a review of the 19 June 2015 decision. She maintained that, after her late husband submitted the PENS. A/2 form on 17 March 2009, the Fund failed to inform him that his information was incomplete, that he was required to provide further documents for the proof of his remarriage, and that he would need to purchase an annuity. On 28 October 2015, Mrs. Williams appealed to the Standing Committee for review of the decision to deny her request for a widow's benefit.

8. In a letter dated 29 July 2016, the Deputy CEO, UNJSPF, advised Mrs. Williams of the decision taken by the Standing Committee on 20 July 2016 to uphold the decision not to pay her a widow's benefit or the benefit under Article 35 *ter* "since you married your late husband after his separation from service of the United Nations and he did not elect to purchase an annuity pursuant to Article 35 *ter* of the Fund's Regulations". The letter provided an explanation for the Standing Committee's decision as follows:

[U]nlike a survivor's benefit under Article 34 of the Regulations, which stems from an individual's participation in the Fund provided all the conditions have been met, the survivor's benefit under Article 35 *ter* is the result of a voluntary decision on the part of a retiree, who has married after separation from service, to purchase an annuity for his/her new spouse. The premiums for the benefit are paid for out of a retiree's monthly periodic benefit. In your case, your late husband continued to receive his benefits in full, and did not make provision to purchase an annuity under the Fund's Regulations. The purchase of annuity under Article 35 *ter* is voluntary and only an option like an insurance policy, and your late husband could have made alternative arrangements to provide for you apart from the Fund.

9. This decision is the subject of the instant appeal.

Submissions

Mrs. Williams' Appeal

10. The Fund denied Mr. Williams due process and erred by failing to advise him of the need to purchase an annuity in order that Mrs. Williams receive a survivor's benefit under Article 35 *ter* of the UNJSPF Regulations. Mr. Williams provided the information regarding his new wife on the revised PENS. A/2 form in accordance with Administrative Rule B.2, intending to include his wife for the purpose of her receiving a benefit. He reasonably and legitimately believed that the information he submitted would be reviewed in the same manner as his other documents had been, when the Fund requested him to provide the corrected payment instructions and a new PENS. A/2 form. In the absence of any contrary instructions from the Fund's Secretariat or the Staff Pension Committee (SPC), Mr. Williams again reasonably believed that his record was complete and in order.

11. The Standing Committee erred in its decision by failing to consider the UNJSPF's role and responsibility as the local secretariat of the SPC and by failing to hold the UNJSPF accountable for its responsibility towards Mr. Williams. Consequently, it failed to accord Mrs. Williams a proper hearing and erred in law and process.

12. The Standing Committee denied Mrs. Williams her due process rights when it reviewed her case some 266 days after its receipt of her appeal, in violation of Article 4(c) of the UNJSPF Regulations, whose spirit and intent is to ensure that the participants and beneficiaries receive immediate action and expedited review between meetings.

13. Mrs. Williams requests that the Appeals Tribunal rescind the decision of the Standing Committee, order the Fund to pay her a widow's benefit under Article 35 *ter* of the UNJSPF Regulations and pay unspecified damages as it deems appropriate "for emotional distress, anxiety and suffering caused by the Fund's negligence and its unjustifiable, unreasonable tardiness in considering [her] appeal".

The Fund's Answer

14. Mrs. Williams has no entitlement to a benefit under Article 34(a) of the UNJSPF Regulations. Mr. Williams married Mrs. Williams on 12 March 2009. As that marriage took place after Mr. Williams's separation from service, Mrs. Williams does not fulfill the first

requirement of Article 34 of the UNJSPF Regulations, and is therefore not eligible for a widow's benefit under that provision. Although he again became a participant in the Fund from 4 July 2010 to 30 June 2012, Mr. Williams elected to be paid a withdrawal settlement for his contributions for that period pursuant to Article 40(c) of the UNJSPF Regulations. Consequently, no benefits, including the survivor's benefits, are payable in respect of that participation.

15. Mrs. Williams has no entitlement to a benefit under Article 35 *ter* of the UNJSPF Regulations. Mr. Williams neither informed the Fund of his marriage to Mrs. Williams nor requested information on the possibility of purchasing an annuity for his new spouse. There was no basis for the Fund to inform him of the option to do so. The assertions by Mrs. Williams that her late husband would have purchased an annuity under Article 35 *ter* are speculative and are made without any proof of such intention. Without the purchase of the annuity under Article 35 *ter*, Mr. Williams continued to receive his monthly pension payments in full from the Fund.

16. Mrs. Williams' argument about the Fund's negligence to follow up with Mr. Williams after he had submitted the PENS. A/2 form is misguided. The Fund serves more than 72,000 beneficiaries and 120,000 participants. Unless those individuals provide information to the Fund in the prescribed manner or contact the Fund for guidance, the Fund cannot be expected to draw inferences about an individual's intent. The PENS. A/2 form does not constitute a means of reporting a marriage. Mr. Williams did not report his marriage to the Fund within one year of his marriage or make any inquiry with the Fund about a surviving spouse's benefit for Mrs. Williams. His new PENS. A/2 form was submitted for the purpose of designating beneficiaries for a possible residual settlement. Accordingly, there was no basis for the Fund to infer that Mr. Williams was reporting his marriage after separation from service and that he may have wished to purchase an annuity for the benefit of Mrs. Williams.

17. UNJSPF's Administrative Rule B.3 makes it a participant's responsibility to report changes in personal status and/or beneficiaries. While it applies to active participants, the underlying principle applies *a fortiori* to retirees. The Appeals Tribunal's consistent jurisprudence that staff members are presumed to know the regulations and rules applicable to them applies also to the Fund's participants, retirees and beneficiaries.

18. Mrs. Williams' claim of violation of her due process rights is not supported by the jurisprudence of the Appeals Tribunal, which held that it did not constitute an inordinate delay for the Standing Committee to hear an appeal 11 months after it had been filed. Mrs. Williams' appeal was considered by the Standing Committee at its next meeting in July 2016 in accordance with the Standing Committee's normal meeting schedule. Moreover, she has failed to present any evidence capable of sustaining an award for moral damages.

19. The Fund requests that the Appeals Tribunal dismiss Mrs. Williams' appeal in its entirety, including her request for moral damages.

Considerations

Applicable legal framework

20. The conditions for payment of a widow's benefit are set out in Article 34 of the UNJSPF Regulations (January 2007) 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.

21. The conditions for payment of a periodic benefit for life to a spouse married after separation are envisaged in Article 35 *ter* of the UNJSPF Regulations, as follows:¹

¹ In the 1 July 2010 edition of the UNJSPF's Regulations, Article 35 *ter* (a) reads:

"A former participant receiving a periodic benefit may elect to provide a periodic benefit for life in a specified amount (subject to paragraph (b) below) to a spouse who was not married to him or her at the date of separation. Such election shall be made within *one year* of the date of marriage or of the entry into force of this provision, if later, and shall become effective *18 months* after the date of marriage. The benefit shall be payable as of the first day of the month following the death of the former participant. When the election becomes effective, the benefit payable to the former participant shall be reduced in accordance with actuarial factors to be determined by the Fund's Consulting Actuary. An election under this subsection may not be revoked after it becomes effective, except by an explicit request in writing by the former UNJSPF retiree who has divorced the new spouse or by the death of the spouse, in which case it will be considered terminated as from that date. The UNJSPF retiree may rescind his or her decision to provide a periodic benefit for life to a spouse married after separation by providing the Fund with a final divorce decree issued by a competent national court. Payments made for the annuity before such a cancellation will not be refunded to a UNJSPF retiree, neither do such payments convey to the divorced spouse a benefit entitlement from the Fund." (Emphases added to show the differences between the 2007 and 2010 editions relevant to the present case.)

SPOUSES MARRIED AFTER SEPARATION

(a) A former participant receiving a periodic benefit may elect to provide a periodic benefit for life in a specified amount (subject to paragraph **(b)** below) to a spouse who was not married to him or her at the date of separation. Such election shall be made within 180 days of the date of marriage ... and shall become effective one year after the date of marriage. ... The benefit shall be payable as of the first day of the month following the death of the former participant. When the election becomes effective, the benefit payable to the former participant shall be reduced in accordance with actuarial factors to be determined by the Fund's Consulting Actuary. An election under this subsection may not be revoked after it becomes effective, except by the death of the spouse, in which case it will be considered terminated as from that date.

(b) Any election made under paragraph **(a)** shall be subject to the following:

- (i) The amount of the periodic benefit payable to the former participant, after reduction owing to elections made pursuant to paragraph **(a)** above, shall be at least one half of the benefit that would have been payable without any such elections; and
- (ii) The amount of the benefit payable to the spouse shall not be larger than the amount of the benefit payable to the retired participant after reduction for the elections.

22. Moreover, Article 38 of the UNJSPF Regulations provides for the residual settlement, as follows:

RESIDUAL SETTLEMENT

(a) A residual settlement shall be payable if, upon the death of a participant and the exhaustion, as the case may be, of any entitlements due under these Regulations to his or her survivors, the total amount of the benefits paid to and on account of the participant is less than the participant's own contributions.

(b) The settlement shall be payable to a beneficiary designated by the participant and alive when the payment is due; failing such beneficiary, the settlement shall be paid to the estate of the participant.

(c) The settlement shall consist of the participant's own contributions at the date of his or her separation or death in service, reduced by the total amount of the benefits paid to and on account of the participant.

23. Article 31 of the UNJSPF Regulations provides for the withdrawal settlement:

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.

24. Finally, Article 40 of the same Regulations, under the title "Effect of re-entry into participation", stipulates:

(a) If a former participant who is entitled to a retirement, early retirement or deferred retirement benefit under these Regulations again becomes a participant, entitlement to such benefit or to a benefit derived therefrom shall be suspended and no benefit shall be payable until the participant dies or is again separated.

(b) Such a participant who again becomes a participant and is again separated after at least five years of additional contributory service shall also be entitled, at the time of such subsequent separation, in respect of such service and subject to paragraph **(d)** below, to a retirement, early retirement or deferred retirement benefit, or a withdrawal settlement under article 28, 29, 30 or 31, as the case may be.

(c) Such a participant, who again becomes a participant and is again separated after less than five years of additional contributory service, shall, in respect of such service, become entitled to:

- (i)** A withdrawal settlement under article 31; or
- (ii)** Subject to **(d)** below, a retirement, early retirement or deferred retirement benefit, as the case may be, under article 28, 29 or 30, based on the length of such additional contributory service; provided, however, that such benefit may not be commuted into a lump sum, in whole or in part, and shall not be subject to any minimum provisions.

(d) Payment of benefits under **(b)** or **(c)**(ii) above shall commence on the date of the resumption or commencement, as the case may be, of payment of benefits suspended under **(a)** above. In no event shall the total benefits payable to or on account of a former participant in respect of separate periods of contributory service

exceed the benefits which would have been payable had the participation in the Fund been continuous.

25. The Appellant, Mrs. Williams, is the surviving spouse of Mr. Williams, who was a Fund participant. The Williams were married on 9 March 2009, approximately five months after Mr. Williams' separation from service on 12 October 2008 and remained married until he died on 18 April 2015. She, therefore, submits that she is entitled to a widow's benefit under Article 34 of the UNJSPF Regulations, and that the Respondent erred in failing to advise Mr. Williams of the necessity to purchase an annuity in order that she, as his surviving wife, receive a periodic benefit for life per Article 35 *ter* of the UNJSPF Regulations.

26. The Fund does not dispute the existence of the marriage of the Williams but submits that, since the marriage took place after the date of separation from service, Mr. Williams was required, but failed, to elect to purchase an annuity for his spouse within the time limit set forth in Article 35 *ter* of the UNJSPF Regulations.

27. The Fund further submits that the Administrative Rules require a Fund participant, under Administrative Rules B.2 and B.3, to provide information concerning, *inter alia*, 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 dependents.

28. 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.

29. Under the applicable legislative framework as set out in Article 34 of the UNJSPF Regulations, the surviving female spouse of a participant, who was entitled to a retirement, early retirement or deferred retirement, is entitled to a widow's benefit, provided that at the date of his death in service they were married 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.

Mrs. Williams' claims for a widow's benefit and a survivor's benefit

30. In the case at hand, these conditions are not met, since Mr. Williams was separated from service on 12 October 2008 and the Appellant married him on 9 March 2009, to wit, after Mr. Williams' separation from service. Accordingly, she is not entitled to a widow's benefit, as the Respondent correctly argues. Moreover, the fact that Mr. Williams became a participant in the Fund again from 4 July 2010 until 30 June 2012 does not assist the Appellant's claim, because Mr. Williams elected to be paid a withdrawal settlement, which under the UNJSPF Regulations extinguished all rights, including survivor's benefits, in respect of that period of participation.

31. Further, with regard to the survivor's benefit, a reading of Article 35 *ter* of the UNJSPF Regulations, in conjunction with Article 34 of the same Regulations, satisfies us that, unlike a widow's benefit under the latter Article, which stems from an individual's participation in the Fund provided that all the conditions are met, the periodic benefit under Article 35 *ter* has to be purchased by a retiree who marries after separation from service. Specifically, Article 35 *ter* of the UNJSPF Regulations provides retirees, who enter into a marriage after separation from service and whose spouse would thus be ineligible for a widow's benefit under Article 34 of the Regulations, with the option to purchase an annuity for their new spouse within the prescribed one-year deadline after the date of the marriage. If a retiree makes such a choice, the annuity is paid for by deducting the premiums for the annuity from the monthly benefit payable to the retiree and thus reducing the retiree's monthly periodic benefit.

32. In its answer to this appeal, the Respondent argues that the option to purchase an annuity under Article 35 *ter* is similar to purchasing an annuity from an insurance company. The retiree receives an estimate of the cost once he or she has indicated his or her wish to purchase the annuity and, on that basis, can make the decision as to whether or not to enter

into the arrangement with the Fund. In the current case, Mr. Williams neither informed the Fund of his marriage to the Appellant for this purpose nor requested information on the possibility of purchasing an annuity for his new spouse. There was no obligation for the Fund to inform him of the option to do so.

33. In the present case, as is evident from the record before this Tribunal, Mr. Williams did not elect to purchase an annuity pursuant to Article 35 *ter* of the UNJSPF Regulations. On the contrary, he continued to receive his full monthly pension payments from the Fund, which would have been reduced had he informed the Fund of his marriage and opted to purchase an annuity.

34. In the course of her appeal submissions to this Tribunal, the Appellant contends that: a) although Mr. Williams reported his marriage to her on the PENS. A/2 form, submitted along with his payment instructions, proof of divorce and identification, the Fund failed to take into account the information on the PENS. A/2 form, which the Fund had advised him to submit; b) when Mr. Williams was requested to resubmit his separation and additional documents, he believed that he had submitted all required documents as he was not advised to the contrary by the Fund; and c) in its dual role as the central Fund secretariat, the UNJSPF has a responsibility, *inter alia*, in ensuring the accuracy and completeness of all participants' records, and, here again, the Fund neglected its duty when it did not duly request Mr. Williams to furnish proof of the marriage so as to verify whether the wife shown on the PENS. A/2 form was indeed a prospective survivor possibly subject to Article 35 *ter* of the UNJSPF Regulations.

35. Further, the Appellant submits that there is no special form or suggested procedure provided by the Fund to report changes in marital status after separation, or any special form for the purchase of an annuity. Mr. Williams therefore provided the information regarding his new wife on the PENS. A/2 form in accordance with Administrative Rule B.2, with the reasonable and legitimate expectation that the information he submitted would be reviewed in the same manner as his other documents had been, when the Fund requested him to provide the corrected payment instructions and a new PENS. A/2 form. So, implicit in Mr. Williams' submission of the PENS. A/2 form was the intent to include his wife for the purposes of receiving a benefit. However, the Fund neglected to follow up upon receiving this information or to follow its process for the purchase of annuity, "ascribing form over substance".

36. The Respondent refutes these arguments by submitting that the Fund serves more than 72,000 beneficiaries and 120,000 participants. Unless those individuals provide information to the Fund in the prescribed manner or contact the Fund to request guidance, the Fund cannot be expected to draw inferences about an individual's intent. There was no basis, in this case, for the Fund to infer that Mr. Williams was reporting his marriage after separation from service and that he may have wished to purchase an annuity for the benefit of the Appellant, because Mr. Williams did not report his marriage to the Appellant to the Fund within one year of his marriage; he did not make any inquiry with the Fund about a surviving spouse's benefit for the Appellant; and the PENS. A/2 form that he submitted was for the purpose of designating beneficiaries for a possible residual settlement.

37. Here again, we see no merit in the Appellant's assertions, which are speculative and unsupported by evidence. The Appeals Tribunal notes that the option to purchase an annuity for a new spouse following marriage after separation from service under Article 35 *ter* of the UNJSPF Regulations has to be made by the retiree. Therefore, it was Mr. Williams' responsibility to contact the Fund if he had wished to purchase an annuity for the Appellant. Moreover, in the present case, it is evident from the record before us that Mr. Williams did not even inquire about the option to purchase an annuity for the Appellant. In this regard, the Standing Committee correctly determined that the survivor's benefit under Article 35 *ter* of the UNJSPF Regulations was the result of a voluntary decision on the part of Mr. Williams, which did not take place.

38. It is true that Mr. Williams submitted on 17 March 2009 to the Fund the PENS. A/2 form titled "Designation of recipient of a residual settlement under Article 38 of the Regulations", in which he listed the Appellant and his two sons from his previous marriage as potential recipients for the purposes of a residual settlement pursuant to Article 38 of the UNJSPF Regulations, and noted under the section on "recipient's relationship to you" that the Appellant was his wife.

39. Nevertheless, the submission of the PENS. A/2 form does not convey a clear and unambiguous choice on the part of Mr. Williams to purchase an annuity under Article 35 *ter* of the UNJSPF Regulations, since that form is relevant only for the purposes of designating the potential recipient(s) for a residual settlement under Article 38 of the UNJSPF Regulations, payable in the event of the death of a participant or retiree under the proviso that there is no survivor's benefit payable and the total amount of the benefits paid to

and on account of the late participant or retiree - including any survivor's benefit - is less than the late participant's or retiree's own contributions to the Fund. Therefore, it was impossible for the Administration of the Fund to infer from the form's content that Mr. Williams had intended to purchase an annuity for the Appellant.

40. Consequently, there is no merit in the Appellant's claim that she is entitled to a periodic benefit under Article 35 *ter* of the UNJSPF Regulations, on the ground that Mr. Williams, by submitting the said PENS. A/2 form, impliedly purported to include his wife for the purposes of receiving such a benefit. According to the aforementioned applicable UNJSPF Administrative Rules, Mr. Williams was required to inform the Fund in writing of the benefit election made. And this is exactly what he did. Contrary to the Appellant's submissions, Mr. Williams, on 17 March 2009, exercised his right of election by designating his wife and his two sons as potential recipients for the purposes of a residual settlement pursuant to Article 38 of the UNJSPF Regulations.

41. We now turn to the contentions raised by the Appellant that, as the central Fund secretariat, the UNJSPF has a responsibility, *inter alia*, in ensuring the accuracy and completeness of all participants' records, and here again the Fund neglected its duty when it did not duly request proof of Mr. Williams' marriage so as to verify whether the wife shown on the PENS. A/2 form was indeed a prospective survivor possibly subject to Article 35 *ter* of the UNJSPF Regulations.

42. As already quoted elsewhere in this Judgment, the retiree, who wishes to purchase an annuity for his new spouse per Article 35 *ter* of the UNJSPF Regulations, bears the onus of submitting the relevant application to the Fund making this choice. No specific provision can be found in the pertinent legislative framework expressly establishing the obligation on the Fund to make the retirees aware of such an option. In any case, regardless of whether or not there is a "general obligation" on the Fund to advise staff members in respect of any pension matters, as argued by the Appellant, in the case at hand, Mr. Williams clearly made his choice, by submitting on 17 March 2009 to the Fund the PENS. A/2 form, in which he listed the Appellant and his two sons from his previous marriage as potential recipients for the purposes of a residual settlement pursuant to Article 38 of the Fund Regulations. He was not misguided or misinformed by the Fund in terms of his choice or the use of the PENS. A/2 form, which is not a means of reporting a change in a participant's or retiree's personal status

or dependents, such as marriage, divorce, birth and/or adoption, for the purpose of eligibility for the UNJSPF benefits.

43. Furthermore, the standardized title (Designation of recipient of a residual settlement under Article 38 of the Regulations) and the content of the said PENS. A/2 form submitted by Mr. Williams are clear with respect to the benefit election being made. We are satisfied that Mr. Williams understood, particularly as there is nothing in the record before us to suggest otherwise, that he was designating potential recipients for the purposes of a residual settlement pursuant to Article 38 of the UNJSPF Regulations, as well as the meaning and the consequences of the specific choice he was making.

44. Moreover, as rightly stated by the Fund, the option to purchase an annuity for a new spouse following marriage after separation from service under Article 35 *ter* of the UNJSPF Regulations is clearly detailed and explained in the Fund's booklet on survivor's benefits. Following an amendment, the booklet was included in the CEO's 2009 annual letter, which was sent to all retirees. The UNJSPF Regulations, the booklet and the annual letter are all publicly available on the Fund's website and contain a guide to help the participants in filling out the relevant forms.

45. Specifically, the booklet entitled "Separation", made available on the UNJSPF's website (April 2008), was issued as a guide to facilitate the staff members' understanding and assist them in their assessment and selection of benefit upon separation. It includes not only the specific provisions of Articles 34, 35 *ter* and 38 of the UNJSPF Regulations, but also an answer to the pertinent question "If I marry/remarry after retirement, would my new spouse be entitled to a benefit?" as follows:²

No, your spouse would not be eligible for a survivor's benefit in the event of your death. However, you may purchase a benefit for a spouse married after separation from service through a reduction in your own monthly benefit by submitting an application to the [UNJSPF] within 180 days of the date of marriage/remarriage. For more information please consult the website and the specific booklet on survivor's benefits.

² 180 days in the 2008 edition was revised to one year in the 2010 edition of the booklet. See footnote 1 for details.

46. In light of the foregoing, and considering that, due to the contributory nature of the benefits, *ad hoc* and *post factum* additions of the beneficiaries would appear to be prejudicial to the interests of other participants, including both active and retired staff members and their families, we do not agree with the Appellant that, by not following up, upon receiving Mr. Williams' submission of the PENS. A/2 form, or following its process for the purchase of annuity, the Fund created a reasonable expectation and belief on the part of Mr. Williams that his wife (the Appellant) would be in receipt of a widow's benefit after his death. Apart from being speculative in nature and not supported by the evidence on record, the Appellant's understanding of her husband's belief that she would be the beneficiary of the pension after his death is merely based upon her own interpretation of the facts. The Appellant's argument that she had a legitimate expectancy cannot stand.

Due process issues raised by the Appellant

47. The Appellant submits that her due process rights before the Standing Committee were not respected. Specifically, she argues that the Standing Committee "denied [her] her due process rights when it reviewed her case some 266 days after receipt of her request". The Appellant requests compensation for "emotional distress, anxiety and suffering".

48. In view of all of the circumstances, we do not consider that the Appellant experienced any inordinate delay in the hearing of her appeal by the Standing Committee on 20 July 2016, the appeal having been filed on 28 October 2015.

Judgment

49. The appeal is dismissed and the decision of the Standing Committee is hereby affirmed.

Original and Authoritative Version: English

Dated this 31st day of March 2017 in Nairobi, Kenya.

(Signed)

Judge Raikos, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Murphy

Entered in the Register on this 26th day of May 2017 in New York, United states.

(Signed)

Weicheng Lin, Registrar