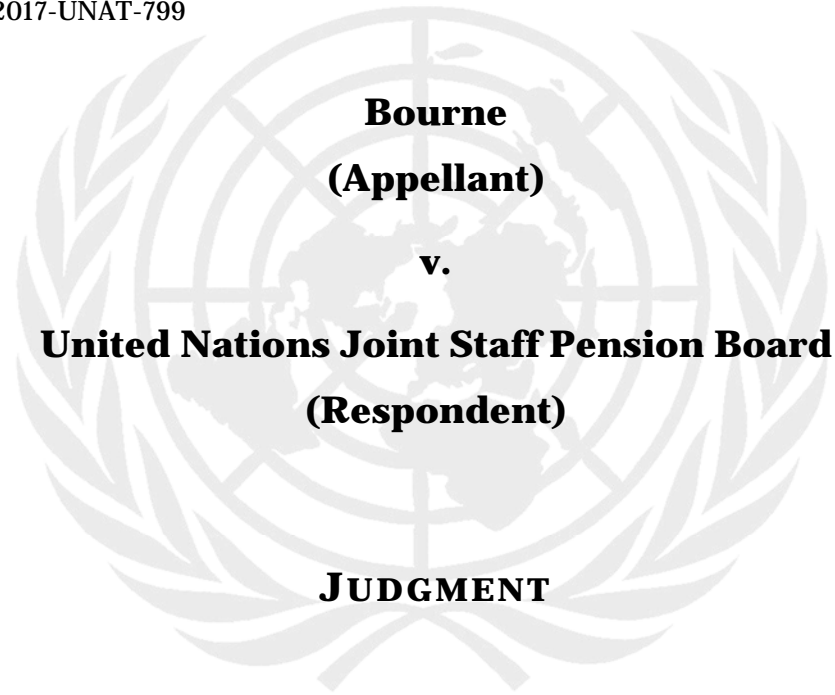




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2017-UNAT-799



Before:	Judge Deborah Thomas-Felix, Presiding Judge John Murphy Judge Martha Halfeld
Case No.:	2017-1084
Date:	27 October 2017
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Sergio B. Arvizú

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Lennox Emerald Bourne against the failure of the United Nations Joint Staff Pension Fund (Fund or UNJSPF) to “pay [his] pension benefit on the basis of [his] residence”. Mr. Bourne filed his appeal on 18 May 2017, and the Fund filed an answer on 3 August 2017.

Facts and Procedure

2. Mr. Bourne is a national of Trinidad and Tobago. He was a staff member of the United Nations Office at Geneva from 24 May 1967 to 31 December 1993, when he separated from service upon retirement. Effective 1 January 1994, he began to receive a reduced monthly retirement benefit, in addition to a lump sum, on a dual-track system (US dollar and local currency) for Switzerland.

3. In March 2008, Mr. Bourne informed the Fund that he was leaving Switzerland for Canada and planned to settle there part of the year and pass the other part of the year in Costa Rica. He requested that his pension benefit be paid solely on the US dollar track. However, the Fund did not consider that Mr. Bourne had provided acceptable proof of residence in Canada and decided to freeze his benefit at the rate of USD 4,737.63 per month payable in its US dollar equivalent effective 1 April 2008.¹ In a letter dated 7 November 2008, the Fund asked Mr. Bourne to submit the required documentation of relocation to Canada at his earliest convenience. Further exchanges ensued between Mr. Bourne and the Fund in 2008 and 2009.

4. There was no further communication on the matter of relocation to Canada after the Fund had sent a letter to Mr. Bourne on 19 June 2009 requesting a completed form PENS.E/11 together with the documentary proof of his new country of residence, until 28 November 2014, when Mr. Bourne asked the Fund to explain why his pension benefits had not been adjusted for cost of living while those of his wife, also a retiree from the United Nations system, had been adjusted. The Fund confirmed on 1 December 2014 that there had been no adjustment to his pension because it had been frozen after he had failed to provide proof of residence in Canada.

¹ Section M entitled “Determination of entitlements” of the Fund’s Pension Adjustment System reads: “Until satisfactory proof is submitted to show in which country the beneficiary is residing and other required formalities are completed, only the dollar amount of the pension (...) is paid.”

5. In the meantime, Mr. Bourne relocated to Panama in April 2011 and to France in May 2016. He filed the necessary form and proofs of new residence with the Fund. In respect of his move to Panama, Mr. Bourne filed with the Fund a PENS.E/10 form and a residence permit on 20 January 2014. By e-mail dated 5 March 2014, the Fund informed Mr. Bourne of its acceptance of his declaration of country residence in Panama with supporting documents and asked him to “[k]indly allow up to three months from the date of this email for this change to be implemented”. However, the change or adjustment to Mr. Bourne’s pension benefit in respect of Panama has not been effected. Regarding his relocation to France, Mr. Bourne states that he took up a permanent residence in France on 7 May 2016 and notified the Fund of the new relocation on 11 May 2016, but he has not received any revised pension corresponding to France. According to the Fund, it is “currently processing the changes to [Mr. Bourne’s] benefit based on the actual proof of residence received for Panama and France”.

6. On 18 May 2017, Mr. Bourne filed an appeal with the Appeals Tribunal against the “non-observance of the regulations of [the] United Nations Staff Pension Fund ... in breach of its obligation ... to pay [his] pension benefit on the basis of [his] residence”. The Fund filed an answer on 3 August 2017, contending that Mr. Bourne’s appeal is not receivable, because he has failed to first submit a request for review of the contested decision to the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board (Standing Committee and Pension Board or UNJSPB, respectively).

Submissions

Mr. Bourne’s Appeal

7. Mr. Bourne submits that the Fund’s failure to pay Mr. Bourne his pension benefit on the basis of his residence is “arbitrary, unfair and prejudicial” and a breach of contract and his rights under the rules of the Fund. In March 2014, Mr. Bourne received confirmation from the Fund that he had been placed on the dual-track system as from 1 April 2014 in respect of his relocation to Panama. While he was requested to wait for the completion of the process, this process has not been completed. His requests to be paid his pension benefit on the basis of US dollars for his relocation to Panama in 2014 elicited no reply. In addition, the Fund has not done anything in respect of his relocation to France in 2016.

8. Mr. Bourne requests payment of his pension benefit on the basis of his place of residence in accordance with the Regulations, Rules and Pension Adjustment System of the UNJSPF.

The Fund's Answer

9. Mr. Bourne's appeal is not receivable, as he did not submit to the Standing Committee a request for review of the Fund's decision to keep his pension benefit frozen for the period between 1 April 2008 and 31 March 2014, before he appealed directly to the Appeals Tribunal, in violation of Article 2(9) of the Statute of the Appeals Tribunal (Statute),² Article 48 of the Fund's Regulations and Section K.2 of the Administrative Rules of the Fund. The Appeals Tribunal is therefore not competent to consider the present appeal.

10. The Fund maintains that the circumstances of the present case are the same as those in *Zakharov*.³ The Appeals Tribunal is therefore requested to remand Mr. Bourne's case to the Standing Committee.

Considerations

11. The Appeals Tribunal is the competent appellate body to hear and pass judgment on appeals of decisions of the Standing Committee acting on behalf of the Pension Board when allegations of nonobservance of the Fund's Regulations are submitted by any staff member, serving or retired, of a member organization of the Fund, among other things. Mr. Bourne is a retired staff member of a member organization of the Fund, and therefore the Appeals Tribunal can hear and determine any appeal which he may have once the correct procedure is followed. Mr. Bourne has not submitted a request for review of the Fund's decision to the Standing Committee. We therefore agree with the Fund that his request for

² Article 2(9) of the Statute reads:

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 nonobservance 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.

In such cases, remands, if any, shall be to the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board. t

³ *Zakharov v. United Nations Joint Staff Pension Board*, Judgment No. 2015-UNAT-607.

review of the Fund's decision must be made to the Standing Committee before he files an appeal to the Appeals Tribunal. We note, however, that changes and/or adjustments to Mr. Bourne's pension benefits as they relate to his relocation to Panama and France have not been forthcoming, more than three and a half years and one and a half years, respectively, after he had submitted the required forms. In the circumstance, we remand this matter to the Standing Committee, treating Mr. Bourne's appeal as if correctly and timely filed as a request for decision review. We strongly urge the Standing Committee to review all of Mr. Bourne's claims with alacrity.

Judgment

12. The appeal is dismissed as not receivable. This matter is remanded for hearing before the Standing Committee acting on behalf of the Pension Board.

Original and Authoritative Version: English

Dated this 27th day of October 2017 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Murphy

(Signed)

Judge Halfeld

Entered in the Register on this 8th day of December 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar