UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2020-UNAT-1007

Pise

(Appellant)

v.

United Nations Joint Staff Pension Board
(Respondent)

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Martha Halfeld Judge Dimitrios Raikos
Case No.:	2019-1322
Date:	27 March 2020
Registrar:	Weicheng Lin

Counsel for Mrs. Pise:	Héloïse Bajer-Pellet
Counsel for UNJSPB:	Janice Dunn Lee

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Mrs. Sanjeewani Pise, the Appellant, appeals the decision of the Standing Committee of the United Nations Joint Staff Pension Board (Standing Committee, and UNJSPB or Pension Board, respectively) to uphold the decision of the Chief Executive Officer (CEO) of the United Nations Joint Staff Pension Fund (UNJSPF or Fund) which denied her a widow's benefit following the death of her husband, Mr. Turkuram Pise, a former staff member and participant in the Fund. The Appellant's request for a widow's benefit was denied on the basis that her husband had elected a reduced deferred retirement benefit with a lump sum, under which the Fund's Regulations in effect at the time of his separation from service had precluded payment of a survivor's benefit and thus no benefit was payable. On appeal, we uphold the decision of the Standing Committee.

Facts and Procedure

2. Mr. Pise participated in the Fund from 3 December 1968 to 31 December 1979 as a staff member of the United Nations Educational, Scientific and Cultural Organization. Mr. Pise separated from the Organization on 31 December 1979. By payment instructions, dated 9 February 1981, Mr. Pise elected a reduced deferred retirement benefit with a lump sum and without a survivor's benefit under Article 31 read with Article 35 of the Fund's Regulations, which were in effect at that time (the Fund's former Regulations).[1]

3. Article 31 of the Fund's former Regulations dealt with deferred retirement benefits. In relevant part it read:

> (a) A deferred retirement benefit shall be payable to a participant whose age on separation is less than sixty and whose contributory service was five years or longer [...]
>
> ...
>
> (c) The benefit may be commuted by the participant into a lump sum:
>
> (i) if the rate of the benefit at age sixty is 300 dollars or more, equivalent to his own contributions, or
>
> (ii) if such rate is less than 300 dollars, equivalent to the full actuarial value of the benefit.

[1] Regulations and Rules of the United Nations Joint Staff Pension Fund, effective 1 January 1977, JSPB/G.4/Rev.9.

4. Article 35 of the Fund's former Regulations dealt with widow's benefits. In relevant part it read:[2]

> (a) A widow's benefit shall, subject to … (b) below, be payable to the surviving female spouse of a participant who was entitled to a…deferred retirement … benefit at the date of his death … if she was married to him at the date of separation and remained married to him until his death.
>
> (b) A benefit shall nevertheless not be payable if the participant had commuted his widow's prospective benefit under article 29 or 30, or had commuted a deferred retirement benefit under article 31(c).

5. The payment instruction form completed by Mr. Pise in 1981 allowed him three options as follows: 1) full deferred pension, with a survivor's benefit, payable from age 60; 2) a lump sum equal to your own contributions with interest, plus a life pension deferred to age 55, without any survivor's benefit, or 3) full commutation, allowable only if full deferred pension is less than USD 300 a year. It is undisputed that Mr. Pise elected option 2 by ticking the box opposite that option in the payment instruction form.

6. On 16 April 1981, in accordance with his election of option 2, Mr. Pise received a lump sum payment of his own contributions plus interest in the amount of USD 24,772.68. The Fund commenced payment of his deferred retirement benefit on 3 March 1989 when Mr. Pise was 57 years old. Mr. Pise continued to receive this benefit until his death in 2018.

7. On 26 March 1982 Mr. Pise wrote to the Fund explaining that exceptional circumstances had led him to commute a portion of his deferred retirement benefit to a lump sum. He, however, had concern about his pension and asked whether he could return his contributions to the Fund without re-joining another UNJSPF member organization. He also inquired "whether [a] widow's benefit still continues". The Fund replied in a letter dated 21 April 1982 advising him that the only way in which he could restore his entitlement to different benefits was in terms of Article 24 of the former UNJSPF Regulations, governing restoration, which in effect would require him to again become a staff member of a member organization. In respect of Mr. Pise's inquiry regarding a prospective widow's benefit, the Fund advised Mr. Pise that since he had commuted a portion of his deferred retirement

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[2] Articles 29 and 30 of the former Fund's Regulations permitted a participant receiving retirement or early retirement benefits to commute their benefit as well as the prospective benefit payable to his spouse into a lump sum.

benefit under Article 31(c) of the Fund's former Regulations, his widow would not be entitled to any benefit unless he re-joined the Fund. Mr. Pise did not appeal this determination.

8. However, some fifteen years later, on 18 November 1997, Mr. Pise wrote to the Fund and again sought confirmation as to whether a widow's benefit would be payable. The Fund replied on 7 May 1998 and confirmed that a widow's benefit was not payable. The Fund furnished Mr. Pise with a copy of the applicable Fund's Regulations and specifically referred him to Articles 30 and 34 (which substituted Articles 31 and 35 of the Fund's former Regulations). Mr. Pise did not appeal this decision either.

9. In 2001, the Fund's Regulations were amended and the option of commuting a portion of a deferred retirement benefit into a lump sum was removed. The effect of the amendment to Article 34 of the current Fund's Regulations was that after 1 January 2001 participants who were entitled to a deferred retirement benefit could opt for: i) a deferred periodic pension with a survivor's benefit; or ii) if the value of the pension was less than USD 1,000 per year, a commuted lump sum under Article 30(c), with no periodic benefit and no survivor's benefit. The amendments made no express provision for a benefit consisting of the commutation of a portion of the benefit into a lump sum with a reduced periodic pension, such as that elected by Mr. Pise in 1981.

10. Mr. Pise died on 30 December 2018.

11. During early 2019 Mr. Pise's son and his wife engaged in correspondence with the Fund and requested payment of a widow's benefit. They were informed by the CEO of the Fund that a widow's benefit was not payable. On 9 May 2019, Mrs. Pise sought review of the CEO's decision before the Standing Committee.

12. On 18 July 2019, the Standing Committee considered and upheld the CEO's decision to deny Mrs. Pise's request for widow's benefits on the basis that Article 31 read together with Article 35 of the Fund's former Regulations provided that, if a participant elected to commute a portion or all of a deferred retirement benefit to a lump sum, there would be no survivor's benefit payable. As this was Mr. Pise's election, there was no widow's benefit payable to Mrs. Pise. The Standing Committee held that the benefit provisions had been made clear to Mr. Pise as the payment instructions stated clearly that no survivor's benefit would be payable. The Standing Committee also noted that the Fund had advised Mr. Pise on

two occasions subsequent to his retirement that no widow's benefit was payable, and that he had taken no timeous action in response to those decisions. The Standing Committee was also of the opinion that the amendments in 2001, which removed the option to commute a portion of a deferred retirement benefit to a lump sum, had no impact on Mrs. Pise's eligibility. Article 50 of the Fund's Regulations provides that amendments thereto do not apply retroactively unless specifically stated by the General Assembly.

13. On 18 October 2019, Mrs. Pise filed an appeal to the United Nations Appeals Tribunal (Appeals Tribunal) and on 13 December 2019, the Fund filed its answer.

Submissions

Mrs. Pise's Appeal

14. Mrs. Pise requests this Tribunal to rescind the impugned decision and grant her a survivor's benefit, or in the alternative, grant her the equivalent of the monthly survivor's benefit as material damages. She also requests USD 7,500 in moral damages and USD 5,000 in legal costs.

15. Mrs. Pise argues that the applicable regulations are those that were in effect at the time of Mr. Pise's death and not those that were in effect at the time of his separation. She, therefore, requests the application of the Fund's current Regulations.

16. Mrs. Pise also argues that the regulations in effect at the time of Mr. Pise's separation did not provide that if a participant elected to commute a *portion* of a deferred benefit to a lump sum there should be no survivor's benefit payable. The then applicable Article 35 was silent on the situation where the participant commuted only a portion of his deferred retirement benefit into a lump sum as is the present case. Mrs. Pise also placed some reliance on Article 38 of the Fund's Regulations, which provides for the payment of a residual settlement in certain specified circumstances.

17. Mrs. Pise further claims that the Fund had provided her husband with confusing and inconsistent information that led her to believe the current regulations were applicable to her situation. In addition, the Fund had sent her a certificate of entitlement which indicated the deferred retirement benefit was payable under Article 30 (not the former provision of Article 31) which led her to believe once more that the current Fund's Regulations applied.

The Fund had made representations to her that induced her to believe she would receive the widow's benefit and she had relied upon such representations.

18. Lastly, Mrs. Pise argues that the Fund acted in bad faith as it had requested her to return the pension paid on 31 January 2019 after the death of Mr. Pise. The Fund had been informed of Mr. Pise's death on 10 January 2019, yet made the deposit on 31 January 2019.

The Fund's Answer

19. The Fund requests the Appeals Tribunal to dismiss the appeal. It contends that Mrs. Pise is not entitled to widow's benefits under the Fund's former Regulations which were in effect at the time of Mr. Pise's separation. Article 49(b)of the Fund's Regulations provides that amended regulations enter into force from the date specified by the United Nations General Assembly. Article 50 further provides that no provision shall be construed as applying retroactively prior to the date of its entry into force, unless expressly stated therein or specified by the United Nations General Assembly. The relevant amendments expressly stated they took effect 1 April 2001 and thus did not apply retroactively.

20. Article 31 of the former Fund's Regulations gave participants the option to commute a deferred retirement benefit into a lump sum equivalent to the participant's own contributions and former Article 35(b) precluded the payment of a survivor's benefit in such cases.

21. Regarding the claim for a residual settlement, Article 38 provides that a residual settlement may be payable upon the death of a participant to his survivors if the total amount of the benefits paid to him and on his account is less than his own contributions. Mr. Pise's contributions to the Fund were USD 21, 825.07 while the benefits payable to him subsequent to his separation amounted to more than USD 300, 000. Mr. Pise received a lump sum equivalent to his own contributions. No residual settlement was payable at his death as he had already received his contributions as a lump sum.

22. The Fund notes that it fully discharged its duty to inform Mr. Pise of the implications of his choice at the time of his separation as such implication had been plainly stated on the payment instructions. If not clear to him at the outset, the Fund made this clear to him several times thereafter in 1982 and 1998 when it responded to his inquiries. The inclusion of the words "Benefits Art. 30 Deferred Retirement" on the recent Certificates of Entitlement sent to Mr. Pise could not have reasonably induced Mrs. Pise to believe that she was entitled

to widow's benefits, as, to the contrary, the Fund had clearly and consistently clarified that she was not entitled to widow's benefits.

23. The Fund did not act in bad faith when it requested the return of an overpayment in the amount of USD 1,492.39 as this had been issued despite Mr. Pise's death the previous month. In line with standard procedures in cases where a benefit has been put into payment prior to a beneficiary's death the Fund attempted to recall the payment from Mr. Pise's bank account. The Fund was unable to recall the payment from the bank. So, in accordance with its protocol, the Fund issued a letter on 15 March 2019 to the Appellant requesting her to return this overpayment, which she has not done. The request for the return is in line with Rule J.9(a) of the Administrative Rules of the Fund.

24. The Fund submits that Mrs. Pise is not entitled to this benefit and as such no compensation is owed to her. Her claim for USD 7,500 as moral damages and other compensation should be rejected as there is no provision in the Fund's Regulations or past jurisprudence to support such payments. Moreover, Article 9(1) of the Appeals Tribunal's Statute requires claims for moral damages to be supported by evidence. Mrs. Pise has failed to establish a nexus between her alleged health concerns and the Fund's actions. Mrs. Pise's request for USD 5,000 in costs should also be rejected as the decision was taken by the Fund in good faith and there has been no manifest abuse of process.

Considerations

25. Article 31 of the Fund's former Regulations allowed for a deferred retirement benefit to be commuted by the participant into a lump sum if the rate of the benefit at age 60 was USD 300 dollars or more, equivalent to his own contributions, or if such rate was less than USD 300 dollars, equivalent to the full actuarial value of the benefit. It was thus possible to obtain a commutation of a portion of the benefit or of the full benefit, depending on its value. Since the amendments of 2001 this is no longer possible. It is now only possible to obtain a commutation of the full benefit.

26. Article 35 of the Fund's former Regulations (now Article 34) provided that a widow's benefit shall be payable to the surviving female spouse of a participant who was entitled to a deferred retirement benefit at the date of her husband's death if she was married to him at the date of separation and remained married to him until his death. However, most

relevantly, Article 35(b) provided that a widow's benefit would not be payable if the participant had commuted a deferred retirement benefit under Article 31(c). It is true that Article 35 of the former Fund's Regulations did not distinguish specifically between a commutation of a portion of the deferred retirement benefit or of its full value. But there is nothing in the context that permits restricting the general provision that a widow's benefit would not be payable where there has been commutation only if it was of the full value of the benefit. The receipt of a commuted amount justified an adjustment of future periodic payments and a purposive interpretation of the express terms of Article 35(b) of the Fund's former Regulations leads to the conclusion that the exception enacted by Article 35(b) should not be restrictively interpreted to exclude a widow's pension only where there had been commutation of the full value of the benefit.

27. This interpretation accords with the practice of the Fund as reflected in the specific options set out in the payment instruction form signed by Mr. Pise in 1981 which made clear that a widow's pension would be payable only if there was no commutation of either a portion or the full value of the benefit. Mr. Pise could have been under no illusion when he signed the payment instruction forms that he had opted to receive, in addition to a deferred pension, his own contributions plus interest as an immediate withdrawal benefit rather than a prospective survivor's benefit. He was informed of that interpretation twice subsequent to his separation and did not challenge those determinations.

28. The argument that Mrs. Pise should benefit from the 2001 amendments cannot be sustained. Mr. Pise's entitlement vested when he exercised his option in 1981 and this vesting of his rights was not altered by the amendments. Article 49(b) of the Fund's Regulations provides that amended Regulations enter into force from the date specified by the United Nations General Assembly. Article 50 further provides that no provision shall be construed as applying retroactively prior to the date of its entry into force, unless expressly stated therein or specified by the United Nations General Assembly. The relevant amendments expressly indicated that they took effect in 2001 and thus expressly did not apply retroactively before that date. Although the amendments did away with commutation of a portion of a deferred retirement benefit, they continue to provide in Article 34(e) that if a participant elects to commute a deferred benefit (now restricted to the full value), no survivor's benefit will be payable.

29. Thus, there is no doubt that Mr. Pise received the benefits payable to him in terms of the Fund's Regulations and there is no basis thereunder to afford Mrs. Pise a survivor's benefit. The Fund has no discretion to vary benefits on a discretionary basis. As we said in *Fox*,[3] discretionary, *ad hoc* adjustments to benefits will constitute an arbitrary variance of the formula established by the Fund's Regulations, which will not be in the interests of the Fund and its members because it would inconsistently alter the carefully formulated design of a defined benefit pension fund, with possible unforeseen actuarial complications and unpredictability in funding requirements.

30. Article 38 of the Fund's Regulations has no application in this case. It provides that a residual settlement may be payable upon the death of a participant to his survivors if the total amount of the benefits paid to him and on his account is less than his own contributions. As the Fund has pointed out in its written submissions, Mr. Pise received way more than his own contributions.

31. Likewise, the Fund discharged its duty to inform Mr. Pise of the implications of his choice at the time of his separation in its use of plain language in the payment instruction form, which unambiguously elucidated the available options.

32. The reference to Article 30 in the certificates of entitlement cannot be construed to confer any entitlement to widow's benefits. Furthermore, the request for the re-payment of a benefit paid that was not due does not amount to bad faith. Indeed, the Fund would be in breach of its fiduciary duty to protect the interests of its members if it did not seek reimbursement.

33. In light of our findings, there is no basis for Mrs. Pise's claim for moral damages or costs.

34. The appeal must accordingly be dismissed.

[3] *Fox v. United Nations Joint Staff Pension Board*, Judgment No. 2018-UNAT-834, para. 42.

Judgment

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

Original and Authoritative Version: English

Dated this 27th day of March 2020.

(Signed)	*(Signed)*	*(Signed)*
Judge Murphy, Presiding Cape Town, South Africa	Judge Halfeld Bournemouth, United Kingdom	Judge Raikos Athens, Greece

Entered in the Register on this 19th day of June 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar