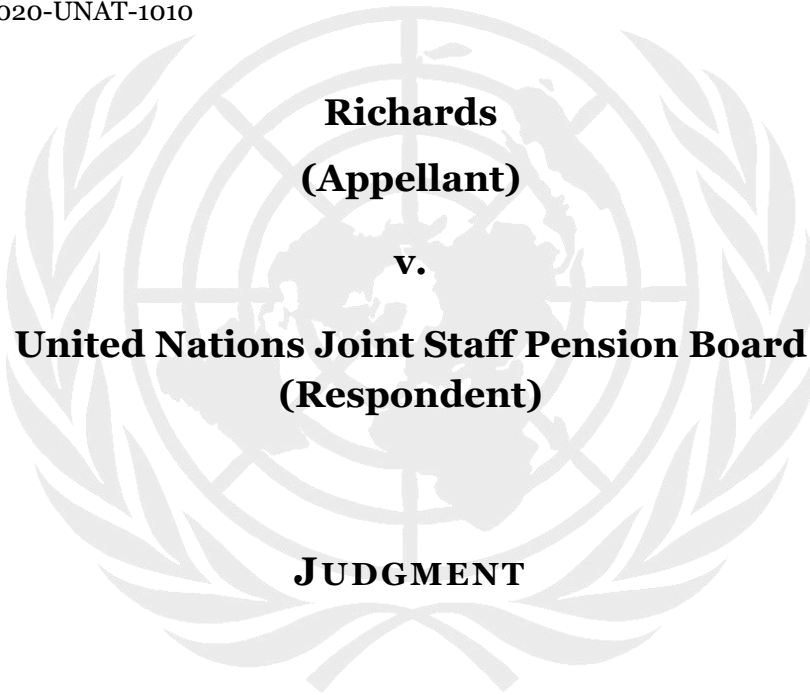




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2020-UNAT-1010



Before: Judge Martha Halfeld, Presiding
Judge John Raymond Murphy
Judge Dimitrios Raikos

Case No.: 2019-1327

Date: 27 March 2020

Registrar: Weicheng Lin

Counsel for Mr. Richards: Mohamed Abdou, OSLA

Counsel for UNJSPB: Janice Dunn Lee

JUDGE MARTHA HALFELD, PRESIDING.

1. Mr. Ian Richards, serving as a staff member at the United Nations Conference on Trade and Development (UNCTAD) in Geneva and as an elected member to the United Nations Joint Staff Pension Board (UNJSPB or Pension Board), was suspended by the Pension Board at its 66th Session in July 2019 for allegedly violating confidentiality requirements contained within the Pension Board's code of conduct. Mr. Richards appeals this suspension to the United Nations Appeals Tribunal (Appeals Tribunal). We dismiss Mr. Richards' appeal as not receivable for the reasons set forth below.

Facts and Procedure

2. Mr. Richards serves as an Economic Affairs Officer at the P-3 level at UNCTAD in Geneva. In April 2016, he was elected to the Pension Board for a four-year term. As a member of the Pension Board, he participates in the administration of the United Nations Joint Staff Pension Fund (UNJSPF or Fund).

3. Per the Pension Board's Report (A/74/331) on 25 July 2019, Mr. Richards participated in the Pension Board's 66th Session in Nairobi. At this meeting, a representative from the World Intellectual Property Organization (WIPO) requested the floor to inform the Pension Board that Mr. Richards had divulged confidential information provided to the Pension Board by the General Secretary of the Federation of International Civil Servants' Association (FISCA) via WhatsApp, an electronic messaging application for mobile telephones, to numerous staff representatives in Geneva.

4. On the same day, the Pension Board suspended Mr. Richards from the proceedings for the remainder of its 66th Session in July 2019. Following the session, the Pension Board's Chair, Ambassador Philip Richard Owade, sent letters to UNCTAD and to the United Nations Ethics Office requesting appropriate actions be taken against Mr. Richards under the United Nations Staff Regulations and Rules.

5. On 23 September 2019, Mr. Richards filed a request for review and consideration asking the Pension Board to withdraw its decision. The Pension Board indicated that it would consider Mr. Richard's request at the next session (67th) in 2020.

6. On 23 October 2019, Mr. Richards filed an appeal before the United Nations Appeals Tribunal (Appeals Tribunal) and on 24 December 2019 the Fund filed its answer.

Submissions

Mr. Richards' Appeal

7. Mr. Richards requests the Appeals Tribunal to rescind the contested decision. Mr. Richards argues that the decision was *ultra vires* and the Pension Board lacks authority to suspend his membership to the Pension Board. His election to the Pension Board was made in accordance with Article 5(a) of the Fund's Regulations and Rules. By suspending him, the Pension Board unilaterally amended its membership. The suspension prevented him from a meaningful participation during the afternoon session on 25 July 2019. The immediate effect of the suspension precluded the ability of an alternate member to participate.

8. Mr. Richards cites to the Appeals Tribunal's jurisprudence in *Rockcliffe*¹ and *Faye*² which supports that duly elected members have the same rights and privileges which are bestowed on other United Nations Staff Pension Committee members. Mr. Richards further argues that the Appeals Tribunal has repeatedly censured the UNJSPF's interference with elected members' participation and the decision to suspend his participation should not be viewed in isolation.

9. Mr. Richards also argues that the decision was taken in violation of his due process rights. The report merely echoed detrimental and unverified allegations without a proper investigation and without providing him with an opportunity to respond to the allegations. Regarding the allegations, the FISCA's position was not confidential. Had there been an investigation it would have been found that FISCA had publicly expressed its view on the matter and thus he correctly denies that any disclosure of confidential information occurred. He had intended to share the message using WhatsApp with his constituency for consultation purposes. The Pension Board's decision to immediately suspend him failed to establish any facts, was procedurally flawed, and was disproportionate.

¹ *Rockcliffe v. United Nations Joint Staff Pension Board*, Judgment No. 2017-UNAT-807.

² *Faye v. United Nations Joint Staff Pension Board*, Judgment No. 2017-UNAT-801.

The Fund's Answer

10. The Pension Fund requests the Appeals Tribunal to dismiss the appeal on grounds that it is not receivable as the Pension Board's decision was taken in accordance with its Rules of Procedure and not under Section K of the Fund's Administrative Rules. Pursuant to Article 48 of the Regulations of the Fund and Article 2(9) of the Appeals Tribunal's Statute, the Appeals Tribunal has jurisdiction over decisions of the Standing Committee acting as a review body under Section K of the Administrative Rules of the Fund. The decision that is subject to appeal concerned Mr. Richard's conduct as a Pension Board member and not his rights as a participant of the Fund. He has failed to identify any specific rights under the Fund's Regulations that have been breached. Per Article 2(9) of its Statute, the Appeals Tribunal may only consider appeals of decisions taken by the Standing Committee acting on behalf of the Pension Board. This is also in accordance with Article 48 of the Fund's Regulations and Section K of the Administrative Rules of the Fund. The decision in this case was made by the Pension Board and not by the Standing Committee, thus there is no basis for the Appeals Tribunal to receive this appeal. Furthermore, Mr. Richards has already requested a review and consideration by the Pension Board, which will be addressed at its next session, which is not an inordinate delay.

11. The impugned decision was within the Pension Board's authority for the administration and governance of the Fund under Article 4 of the Fund's Regulations and was properly made by the Pension Board as a result of Mr. Richard's conduct. Proceedings of the Pension Board are governed by Section A of the Fund's Rules and Procedure. The Pension Board sets down its own rules of procedure and it is within the authority of the Pension Board to regulate and decide matters of conduct of its members. The Pension Board adopted the declaration of Conflict of Interest and Confidentiality, addressing the code of conduct for Pension Board members. As a subsidiary organ of the General Assembly, it is the General Assembly that has authority over the governance of the Fund. The Pension Board has already reported the incident to the General Assembly. Mr. Richards argues that, by suspending him, the Pension Board had altered its membership with only three out of the four representatives for the United Nations present. This is incorrect as there had been actually five representatives who had attended the session (four members and one alternate), resulting in four members present at all times, even after Mr. Richards' suspension.

12. The decision was lawful and proper. Mr. Richards had signed the declaration for the 66th Session and had agreed to be bound by the code of conduct. He breached the code of conduct with regard to keeping confidential all matters under discussion by the Pension Board. Per Section A.11 of the Fund's Rules of Procedure and the declaration he had signed, Pension Board members agreed that the meeting should be held in private. Mr. Richards' message about the deliberations breached this provision.

13. In the alternative to dismissing the appeal, the Pension Board requests that the Appeals Tribunal refer the matter to the Pension Board to be addressed at its next session in 2020 or remand the appeal to the Standing Committee in accordance with Article 2(9) of the Appeals Tribunal's Statute.

14. The Pension Board also requests the Appeals Tribunal to find Mr. Richards' appeal is frivolous and a waste of time and resources as he has not yet received a decision from the Standing Committee of the Pension Board on his request for review and reconsideration. Further, Mr. Richards has not provided any urgency as to why his appeal should be considered before his request for review and reconsideration of the decision. He has not been prevented from participating in meetings of the United Nations Staff Pension Committee and there are no matters under consideration by the Pension Board until next session in 2020. In addition, there are three other Pension Board members and two alternate Participants' Representatives available to represent the United Nations participants. Thus, there is no urgency for consideration of Mr. Richards' request by the Pension Board or the Standing Committee.

Considerations

15. The jurisdiction of the Appeals Tribunal to determine appeals against the Standing Committee acting on behalf of the Pension Board is governed by Article 2(9) of the Appeals Tribunal's Statute. The relevant part 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 non-observance of the regulations of the United Nations Joint Staff Pension Fund [...].

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

16. This article read together with Annex I of the Fund's Regulations pertaining to the Administrative Rules of the Fund, especially Section K.1 and subsequent sections, establishes the procedure for appealing against a decision made by the Pension Fund. In general terms, when a challengeable decision is issued, the person who is entitled to submit an application against such a decision, shall, as a first preliminary step, request review of this decision to the Staff Pension Committee. This review is similar to the request for management evaluation, that is to say that this is a mandatory first step in the appeal process.³ The Appeals Tribunal has noted many times that this requirement assures that there is an opportunity to resolve quickly a person's complaint or dispute without the need for judicial intervention.⁴

17. The request for review, however, is not the only mandatory requirement to formally contest an administrative decision by the Pension Fund. When the outcome of this review does not satisfy the person's interests, he or she can ordinarily appeal against the Staff Pension Committee's decision to the Standing Committee acting on behalf of the Pension Board, which will then play a role similar to that of the UNDT, as first instance to the case. Finally, the decision of the Standing Committee is the only one against which an appeal to the Appeals Tribunal can be filed.

18. Specifically, Section K.4, in relevant parts, states that an appeal shall be admissible to the Standing Committee, acting on behalf of the Pension Board, from the decision of a Staff Pension Committee taken upon review, and to the Appeals Tribunal, in accordance with article 48 of the Regulations, from the decision of the Standing Committee.

19. Section K.5 establishes the procedure for review, according to which it shall be initiated by delivery to the Secretary of the Staff Pension Committee, or to the Secretary of the Pension Board if the review is by the Standing Committee. Most relevant to the matter at hand, however, is the provision of Section K.8, for which a plain wording reads as follows:

³ *Faye v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-654, para. 31; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-293, para. 27.

⁴ *Vukasović v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-699, para. 13, citing *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521, para. 17, in turn citing *Servas v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-349, para. 22 and citations therein.

Procedure for appeal

(a) An appeal to the Standing Committee, acting on behalf of the [Pension] Board, from the decision of a Staff Pension Committee taken upon review shall be initiated by delivery to the Secretary of the [Pension] Board, within sixty days of notification of the decision appealed against, of a notice in writing stating the points of fact or of law contained in the decision which are disputed, and the grounds upon which the appeal is founded; the Standing Committee may nevertheless, upon good cause shown, agree to consider an appeal notice of which was delivered after the expiry of the period prescribed above.

(b) An appeal to the United Nations Appeals Tribunal from the decision of the Standing Committee, acting on behalf of the [Pension] Board, shall be in accordance with the Statute and Rules of the Tribunal.

20. Mr. Richards has failed to follow all the requirements before coming to the Appeals Tribunal. He contests a decision from the Pension Board, which has not been subject to review or appeal, neither by the Staff Pension Committee nor by the Standing Committee, acting on behalf of the Pension Board. The Appeals Tribunal is not ordinarily allowed to intervene in matters that have not previously been subject to internal reassessment by the Pension Fund.

Judgment

21. The appeal is dismissed as not receivable.

Original and Authoritative Version: English

Dated this 27th day of March 2020.

(Signed)

Judge Halfeld, Presiding
Bournemouth, United Kingdom

(Signed)

Judge Murphy
Cape Town, South Africa

(Signed)

Judge Raikos
Athens, Greece

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

(Signed)

Weicheng Lin, Registrar