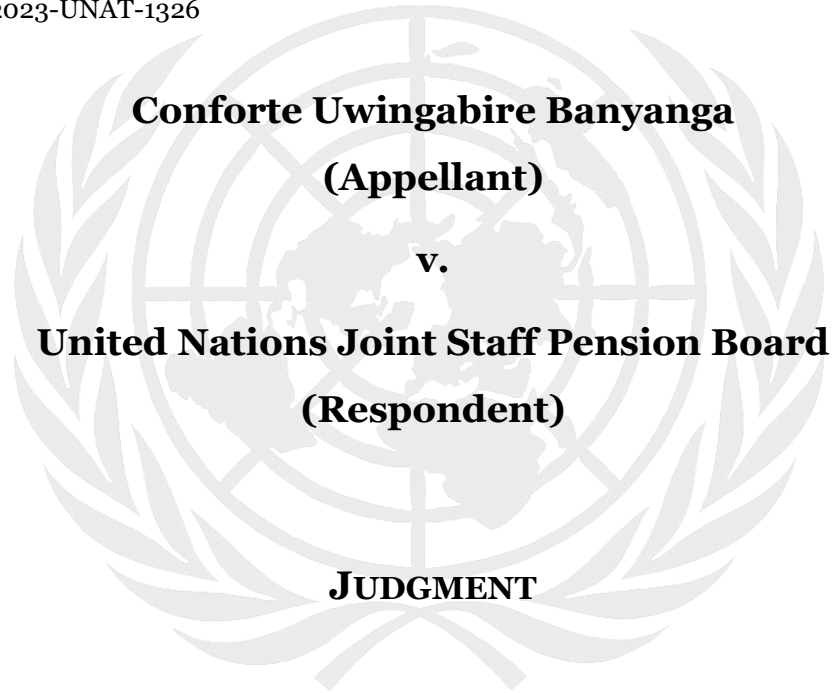




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2023-UNAT-1326



**Conforte Uwingabire Banyanga
(Appellant)**

v.

**United Nations Joint Staff Pension Board
(Respondent)**

JUDGMENT

| | |
|----------------------|--|
| Before: | Judge John Raymond Murphy, Presiding Judge Kanwaldeep Sandhu Judge Graeme Colgan |
| Case No.: | 2022-1698 |
| Date of Decision: | 24 March 2023 |
| Date of Publication: | 18 April 2023 |
| Registrar: | Juliet Johnson |

Counsel for Appellant: Self-represented

Counsel for Respondent: Rosemarie McClean

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Ms. Conforte Uwingabire Banyanga appeals the 3 March 2022 decision of the Standing Committee of the United Nations Joint Staff Pension Board (UNJSPB) to deny her request for a widow's benefit under Article 34 of the United Nations Joint Staff Pension Fund (UNJSPF) Regulations following the death in service of Mr. Theoneste Bigaruka Mbirange, whom she claimed was her spouse, on 8 September 2014.

2. For the reasons set forth herein, we dismiss the appeal and affirm the decision of the Standing Committee of the UNJSPB (Standing Committee).

Facts and Procedure

3. Article 34(a) of the UNJSPF Regulations, provides in relevant part as follows:

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.

4. The Standing Committee denied Ms. Banyanga's request for a widow's benefit because the personal information provided by Ms. Banyanga, including her date of birth and the date of her alleged marriage to Mr. Mbirange, differed from the information Mr. Mbirange reported to the United Nations regarding his spouse.

5. Mr. Mbirange was born on 1 July 1962. He was a national of the Democratic Republic of the Congo (DRC). On 15 February 2006, he joined the United Nations as a staff member of the- then United Nations Mission in the Democratic Republic of the Congo (MONUC), and subsequently of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). He became a participant in the UNJSPF on 1 June 2006 and died in service on 8 September 2014.

6. Under Section B of the UNJSPF's Administrative Rules, all participants are obliged to report the names and dates of birth of their dependants to their employing organization, which in turn relays this information to the UNJSPF. On 15 January 2008, Mr. Mbirange provided the following relevant documents to MONUC:

- i) A marriage attestation, issued by a DRC government official on 13 February 2006, confirming that Mr. Mbirange concluded a monogamous marriage with “Uwingabire Conforte” on 11 July 1986. The names of the bride’s parents were recorded as “Munyakabera” and “Nyirandabona”. The name “Banyanga” does not appear anywhere on the marriage certificate.¹
- ii) A copy of Ms. Uwingabire’s birth attestation, issued on 14 February 2006, stating that her date of birth was 10 July 1964 and that her full name was “Uwingabire Conforte”. The names of her parents were listed as “Munyakabera” and “Nyirandabona”, consistent with the marriage certificate. Again, the name “Banyanga”, does not appear anywhere on the birth attestation.
- iii) A medical insurance plan (MIP) enrolment form, signed by Mr. Mbirange, in which he recorded that his spouse’s name was “Conforte Uwingabire”, that her date of birth was 10 July 1964, and that their date of marriage was 11 July 1986. Mr. Mbirange did not include Appellant’s last name, “Banyanga”, anywhere on the MIP form. The MIP form also lists eight children born between 1985 and 2005.
- iv) Birth attestations for his children, all of which reflect the name of the mother to be “Uwingabire” or “Uwingabire Conforte”. The name “Banyanga”, does not appear on any of the children’s birth attestations.

7. In line with the information and documents submitted by Mr. Mbirange to MONUC, the United Nations reported to the UNJSPF that Mr. Mbirange’s spouse was named Ms. Conforte Uwingabire and that her date of birth was 10 July 1964.

8. Following Mr. Mbirange’s death, two individuals requested a widow’s benefit from the UNJSPF. The first, Ms. Clotilde Mukankusi, submitted a copy of a marriage certificate purporting to establish that she had married Mr. Mbirange in Rwanda on 24 July 1987. The UNJSPF rejected this claim because the marriage was never reported to the UNJSPF as required by Section B of the UNJSPF’s Administrative Rules, and the supporting

¹ On 1 June 2008, Mr. Mbirange furnished a replacement marriage attestation, in all respects identical to the first, but which reported his date of marriage as 11 July 1984 instead of 11 July 1986.

documentation indicated that Ms. Mukankusi's marriage to Mr. Mbirange had taken place in Rwanda on 24 July 1987, at a time when Mr. Mbirange was already married, under monogamous law, to Ms. Uwingabire in the DRC. The UNJSPF refused to recognize the marriage between Mr. Mbirange and Ms. Mukankusi because of Mr. Mbirange's prior subsisting marriage.

9. In support of her claim, Ms. Mukankusi submitted birth attestations issued in Rwanda relating to Mr. Mbirange's four eldest children – Mariel Simba, Marie Con fiance Uwiteguye, Maurice Bwema and Willy Irumva – born between 1985 and 1993. Mr. Mbirange had submitted birth attestations for the same four children, but they were issued in the DRC and they listed Ms. Uwingabire as their mother.

10. The second claim for a widow's benefit was that made by Ms. Banyanga, which is the subject of this appeal. Ms. Banyanga submitted various documents in support of her claim. The first documents were copies of her national electoral cards from the DRC, issued on 3 May 2011 and 17 December 2016 in the name of "Conforte Uwingabire Banyanga" (similar to Mr. Mbirange's reported spouse but with the addition of the name "Banyanga"). However, the date of birth of 20 August 1980 recorded on the electoral card was different from the date of birth of Mr. Mbirange's reported spouse, which was sixteen years earlier, being 10 July 1964. The names of Ms. Banyanga's parents are listed on the electoral cards as "Munyakabera" and "N'Ndbona", which are similar to those of the parents of Mr. Mbirange's reported spouse on the marriage certificate that he submitted to MONUC.

11. Ms. Banyanga also furnished a copy of a marriage certificate issued in the DRC recording that Mr. Mbirange and "Uwingabire Banyanga Conforte" were married on 14 January 1997. This marriage certificate of 1997 was never provided by Mr. Mbirange to MONUC, despite the fact that he entered service in 2006. The marriage certificate of 1997 reflects that the bride was 17 years old at the time of the marriage, which is consistent with a date of birth between 15 January 1979 and 14 January 1980, and therefore inconsistent with the reported date of birth of Mr. Mbirange's spouse, which was 10 July 1964 and also the date of birth on Ms. Banyanga's electoral card. The marriage certificate records the bride's parents to be "Munyakabera" and "Ndabona" which are the same names as the parents of Mr. Mbirange's reported spouse.

12. Thirdly, Ms. Banyanga relied on a judgment issued by the Tribunal de la Première Chambre Commune de Karisimbi, Goma, DRC (Tribunal de la Première Chambre judgment), on 16 January 2008 - the day after Mr. Mbirange submitted the majority of his documents to MONUC, including his spouse's birth attestation. The latter judgment was issued in an unopposed application brought by Ms. Banyanga's father, Mr. Munyakabera, seeking authorization to belatedly register his daughter's birth, and to obtain a birth certificate for her showing a date of birth of 20 August 1980. Throughout this judgment, Ms. Banyanga is referred to as "Banyanga Conforte". The name "Uwingabire" does not appear anywhere in the judgment. The Tribunal de la Première Chambre ordered that a birth certificate be issued in accordance with the unopposed application. Ms. Banyanga also provided a copy of a birth certificate dated 23 March 2008 issued on the basis of the Tribunal's judgment. The birth certificate is in the name "Banyanga Conforte" and records her date of birth as 20 August 1980. The name "Uwingabire" does not appear anywhere on the birth certificate. The parents' names are listed as "Munyakabera" and "N'Yirandabona".

13. In addition, Ms. Banyanga provided a judgment issued by the Tribunal de Paix de Goma, DRC (Tribunal de Paix judgment), on 15 December 2016 (approximately two years after Mr. Mbirange's death) in relation to an unopposed application brought by Ms. Banyanga seeking correction of Ms. Conforte Uwingabire's birth attestation (submitted to MONUC by Mr. Mbirange in 2008), which had been issued on 14 February 2006, recording her date of birth as 10 July 1964 and her full name as "Uwingabire Conforte". Ms. Banyanga's petition to the Tribunal de Paix sought an amendment to the birth certificate submitted to the UNJSPF so as to add the name "Banyanga". The Tribunal de Paix judgment contains no information or explanation as to how the alleged errors might have arisen. Nevertheless, the unopposed application was granted and, on 29 December 2016, an amended birth certificate was issued with the addition of the name "Banyanga" and a date of birth of 20 August 1980.

14. In short, in 2008 Mr. Mbirange reported to the United Nations that he married Conforte Uwingabire in 1986 who was born in 1964. She would have been aged 43 when Mr. Mbirange reported her as his spouse. Ms. Banyanga maintains she married Mr. Mbirange when she was 16 in 1997 and would have been 27 when Mr. Mbirange submitted his documents to MONUC.

15. The Chief Executive of Pension Administration of the UNJSPF rejected Ms. Banyanga's request for a widow's benefit and informed her accordingly by letter dated 9 August 2021. She concluded that Ms. Banyanga was not the same person as Ms. Uwingabire, who had been reported as Mr. Mbirange's spouse. In reaching this conclusion, the Chief Executive took into account the following. The name "Banyanga" did not appear on any of the documents submitted by Mr. Mbirange relating to his spouse, whose name was consistently identified only as "Conforte Uwingabire". Ms. Banyanga's date of birth, 20 August 1980, did not appear on any of the documents submitted by Mr. Mbirange when reporting his spouse to the United Nations, which instead consistently reported a date of birth of 10 July 1964. The Tribunal de Paix judgment which ordered the amendment of the birth certificate that Mr. Mbirange had submitted to MONUC in respect of Ms. Uwingabire was granted on an unopposed basis and provided no explanation accounting for the alleged errors in the birth certificate. The latter judgment was issued two years after Mr. Mbirange's death and was probably obtained for the furtherance of Ms. Banyanga's claim for a widow's benefit.

16. Moreover, the Chief Executive was mindful that Mr. Mbirange reported to the United Nations that he had married his spouse in July 1984 or July 1986 (he submitted two marriage attestations with different dates). He could not have married Ms. Banyanga on those dates. She was born in August 1980 and would have been aged 3 or 5 on those dates.

17. If the marriage certificate submitted by Ms. Banyanga (which showed a marriage date of 14 January 1997) were genuine, there is no explanation as to why Mr. Mbirange, who submitted his personal status documents to MONUC in 2008, would not have included it among those documents. Instead, as noted above, Mr. Mbirange submitted marriage attestations stating that he married his spouse in July 1984 or in July 1986.

18. All of the birth certificates that Mr. Mbirange submitted to MONUC in respect of his children listed their mother's name as "Uwingabire" or as "Conforte Uwingabire", and never included the Appellant's last name "Banyanga".

19. Although it denied Ms. Banyanga's claim for a widow's benefit, having regard to the fact that benefits were payable to Mr. Mbirange's youngest children, and in the absence of any other individual who could receive those benefits on their behalf, the UNJSPF recognized Ms. Banyanga as their mother for the sole purpose of remitting child benefits

20. On 20 August 2021, Ms. Banyanga filed a request for review of the denial of the widow's benefit to the Standing Committee. The Standing Committee considered her request at its meeting held on 2 March 2022 and upheld the decision of the Chief Executive of Pension Administration. The Standing Committee's decision was conveyed to Ms. Banyanga by letter dated 3 March 2022 from the Secretary of the UNJSPB.

21. Ms. Banyanga filed an appeal of the Standing Committee's decision to the United Nations Appeals Tribunal (Appeals Tribunal) on 22 June 2022. The UNJSPB responded with its answer on 4 August 2022.

Submissions

Ms. Banyanga's Appeal

22. Ms. Banyanga submits that the UNSJPB erred in failing to recognize her marriage to Mr. Mbirange concluded in 1997 and thus that she is entitled to a widow's benefit.

23. She maintains that Mr. Mbirange provided erroneous information to the Organization in 2008 and that these errors have been corrected by proper judicial processes in the DRC.

24. Ms. Banyanga accordingly requests this Tribunal to set aside the decision of the UNJSPB and to grant her a widow's benefit.

The UNJSPB's Answer

25. The UNJSPB submits that Ms. Banyanga's claim for a widow's benefit cannot be accepted for three reasons. Firstly, her personal information is substantially different from that of Mr. Mbirange's reported spouse; secondly, she has not adequately explained the differences between her own personal information and that of Mr. Mbirange's reported spouse; and thirdly, there is insufficient evidence to conclude that her alleged marriage with Mr. Mbirange in 1997 is valid.

26. Accordingly, the UNJSPB submits that Ms. Banyanga has not proven her entitlement to a widow's benefit and requests this Tribunal to dismiss the appeal and to affirm the decision of the Standing Committee notified on 3 March 2022.

Considerations

27. Article 34(a) of the UNJSPF Regulations, cited earlier, provides in relevant part that a widow's benefit is payable to the surviving spouse of a participant who died in service, if she was married to him at the date of his death in service.

28. Section C.4(a) of the Financial Rules of the UNJSPF provides that the Chief Executive of Pension Administration is responsible for establishing procedures for ensuring that all payments and disbursements are properly payable on the basis of supporting documents for payments in terms of the relevant instruments. Therefore, as a matter of practice and principle, the surviving spouse asserting entitlement to a widow's benefit normally bears the burden to prove the condition precedent to entitlement, namely that she was married to a participant who died in service at the date of his death. She who makes a positive assertion must prove the facts she asserts. It is common cause that Mr. Mbirange died in service. The only question for determination in this appeal is whether Ms. Banyanga has discharged the onus of showing on a balance of probabilities that she was indeed married to Mr. Mbirange at the time of his death.

29. In so far as we are faced with two irreconcilable versions in relation to the truth of the alleged marriage, regard must be had to issues of credibility, reliability and the inherent probabilities. These must be assessed in the light of any latent bias (self-interest of the claimant), any internal and external contradictions in the documentary evidence and the inherent probabilities and improbabilities of the two versions. Where the probabilities are equipoised then the burden of proof not being discharged will operate to determine that the entitlement or claim has not been sufficiently established.

30. The purpose of Section B.3(a) of the Administrative Rules of the UNJSPF is to provide a mechanism to ease the burden of proof by requiring participants to furnish the requisite proof of marriage at the commencement of their participation in the UNJSPF. This provision states that the participant shall be responsible for providing the requisite information (set out in Section B.2) regarding the participant's marital status, the names and dates of birth of the participant's spouse and dependants, and for notifying the organization of any changes. The participant may also be required to submit documentary or other proof of such information. In practice, the UNJSPF requires the submission of a marriage certificate and a copy of a government-issued identification document of the reported spouse to be transmitted by the

participant to the UNJSPF at the time of his or her separation or, as in this case, by the employing organization at the time of the participant's separation or death in service if the documentation is already on file with the member organization.

31. Ms. Banyanga does not in her appeal offer a clear explanation for the inconsistencies in the spousal information provided by Mr. Mbirange at the time he commenced employment with the Organisation. She merely states that the information was erroneous and that she had taken steps to correct it subsequent to his death. The UNJSPF accordingly persists to reject her claim for a widow's benefit on three grounds. Firstly, her personal information is substantially different from that of Mr. Mbirange's reported spouse; secondly, her arguments and the documentation she submitted do not adequately explain the differences between her own personal information and that of Mr. Mbirange's reported spouse, nor do they establish that she is Mr. Mbirange's reported spouse; and thirdly, there is insufficient evidence to conclude that her alleged marriage to Mr. Mbirange in 1997 is valid.

32. Ms. Banyanga states her full name to be "Conforte Uwingabire Banyanga", whereas the name of Mr. Mbirange's reported spouse is "Conforte Uwingabire". The name "Banyanga" does not appear in any of the documentation that Mr. Mbirange submitted to the United Nations. Moreover, her date of birth is 20 August 1980, whereas the date of birth of Mr. Mbirange's reported spouse is 10 July 1964. However, there are admittedly a number of similarities between Ms. Banyanga's personal information and the personal information of Mr. Mbirange's reported spouse: they share names and, notably, they have the same parents, Mr. Munyakabera and Ms. Nyirandabona. The UNJSPF speculates, not unreasonably, that it is possible that they are sisters.

33. Ms. Banyanga has not adequately explained the inconsistencies between her own personal information and that of Mr. Mbirange's reported spouse, nor has she established that she is Mr. Mbirange's reported spouse. She essentially requests the Appeals Tribunal to disregard the information and documentation submitted by Mr. Mbirange while he was in active service, claiming merely that Mr. Mbirange submitted it "hastily" and that it contained errors. However, Mr. Mbirange entered service in February 2006 and he submitted the documentation in question in January 2008, nearly two years later. There is no evidence that he ever informed the United Nations that he had submitted erroneous information or that he sought to correct it.

34. Moreover, the two DRC judgments do not permit an inference that Ms. Banyanga is, in fact, Mr. Mbirange's reported spouse, or that there were errors in the information submitted by Mr. Mbirange. The Tribunal de la Première Chambre judgment states that its purpose was to allow Mr. Banyanga's father to belatedly register the birth of his daughter, who was born in 1980. This judgment accordingly does not confirm that Ms. Banyanga is the same person as Mr. Mbirange's reported spouse. To the contrary, throughout the judgment, she is referred to as "Banyanga Conforte". The name of Mr. Mbirange's reported spouse, "Uwingabire", does not appear anywhere in the judgment. Furthermore, and crucially, at the time that judgment was issued, Mr. Mbirange was already in possession of a birth attestation for his reported spouse, which was issued by the DRC on 14 February 2006 and which Mr. Mbirange submitted to MONUC in January 2008. The fact that Ms. Banyanga's father petitioned the Tribunal de la Première Chambre to register her birth in January 2008, after the birth attestation for Mr. Mbirange's spouse had already been issued, supports a plausible inference that he was registering the birth of a different individual than Mr. Mbirange's spouse.

35. The Tribunal de Paix judgment, issued approximately two years after Mr. Mbirange's death, likewise does not support an inference, as the most probable inference, that Ms. Banyanga is Mr. Mbirange's reported spouse. The judgment in question ordered an amendment to the contents of the birth attestation dated 14 February 2006 that Mr. Mbirange had submitted to MONUC in respect of his spouse, Ms. Uwingabire. Before the Tribunal de Paix, Ms. Banyanga claimed that the name and date of birth on the birth certificate were incorrect, and she petitioned the Tribunal to amend it so as to reflect her own last name ("Banyanga") and her own date of birth (20 August 1980). However, the judgment contains no information or explanation as to how the alleged errors might have arisen. Most importantly, as the UNJSPF submits, the petition was unopposed and it is probable that the Tribunal de Paix did not conduct a factual inquiry to establish the truthfulness of her assertions. Taking into consideration the fact that this judgment was obtained after Mr. Mbirange's death and in furtherance of Ms. Banyanga's claim for a widow's benefit, it is of limited probative value.

36. Ms. Banyanga's claim to have married Mr. Mbirange on 14 January 1997 is inconsistent with Mr. Mbirange's submitted marriage certificates establishing that he married his spouse, Ms. Uwingabire, in 1984 or in 1986, and there is insufficient evidence to conclude that Ms. Banyanga's alleged marriage with Mr. Mbirange in 1997 is valid. The marriage certificate

attesting to her marriage to Mr. Mbirange on 14 January 1997 was first provided to the UNJSPF in May 2021. The UNJSPF submits that the marriage certificate lacks credibility and is unreliable and, in any event, does not sufficiently establish that Ms. Banyanga was married to Mr. Mbirange.

37. Mr. Mbirange, it will be recalled, entered service in February 2006, that is to say, some nine years after the alleged marriage to Ms. Banyanga in 1997. However, he never reported the alleged marriage, nor did he ever submit a copy of the marriage certificate in question. It is improbable that had Mr. Mbirange married Ms. Banyanga in 1997 and remained married to her that he would not have submitted the marriage certificate of 1997 in 2008. Rather, Mr. Mbirange submitted two marriage certificates, both issued on 13 February 2006, which related only to his marriage to Ms. Uwingabire. The first marriage certificate, which he submitted on 15 January 2008, reported his date of marriage as 11 July 1986. The second marriage certificate, which he submitted on 1 June 2008, reported his date of marriage as 11 July 1984. The fact that Mr. Mbirange submitted two marriage certificates at two separate times suggests that he explicitly applied his mind to the accuracy of the information before the United Nations relating to his marriage. It is reasonable to infer that he submitted the second marriage certificate to correct the date of his marriage to Ms. Uwingabire (which was probably incorrectly recorded as 11 July 1986) to 11 July 1984. His actions in correcting this information provide compelling and cogent proof that on 1 June 2008 (nine years after the alleged marriage to Ms. Banyanga in 1997) Mr. Mbirange regarded himself as married to Ms. Uwingabire who he had married in 1984. There is no evidence of any kind confirming that this earlier marriage had terminated either by divorce or the death of Ms. Uwingabire prior to 1997, which in any event is highly improbable in view of Mr. Mbirange having twice reported it as subsisting in 2008.

38. Thus, to confer the widow's benefit on Ms. Banyanga, the Appeals Tribunal would have to accept that Mr. Mbirange deliberately misrepresented his marriage date to the United Nations for a purpose that is not immediately obvious. Ms. Banyanga has not provided a cogent or credible explanation for why Mr. Mbirange would have twice submitted incorrect information that he married in 1984 if he had in fact married Ms. Banyanga in 1997.

39. Furthermore, even if Mr. Mbirange and Ms. Banyanga were married on 14 January 1997, the UNJSPF would not be able to recognize that marriage as entitling her to a widow's benefit because Mr. Mbirange had already married Ms. Uwingabire in 1984 and

possibly Ms. Mukankusi in Rwanda in 1987. Polygamy is illegal in the DRC and the UNJSPF would not be able to recognize Mr. Mbirange's purported marriage to Ms. Banyanga in the DRC on 14 January 1997 without evidence that Mr. Mbirange's prior marriages were validly dissolved.

40. The appeal must accordingly be dismissed.

Judgment

41. The appeal is dismissed and the decision of the Standing Committee of the UNJSPB of 3 March 2022 is affirmed.

Original and Authoritative Version: English

Decision dated this 24th day of March 2023 in New York, United States.

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Colgan

Judgment published and entered into the Register on this 18th day of April 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar

Judge Sandhu and Judge Colgan’s Concurring Opinion

1. We agree with our judgment dismissing the appeal on the basis that there was a significant number of insufficiently or unexplained discrepancies between the Appellant’s claims and the recording of the deceased staff member’s beneficiary instructions. We wish only to add this which is not a criticism of the decision of the UNJSPB appealed or its reasoning.

2. It should not be thought by the Appellant that those making these difficult decisions have adopted a very strict, literal and precise repetition-of-all-names approach. Names are given, taken and used in many different culturally-appropriate ways. Nor are what may appear to be minor spelling differences to disqualify alone and decisively someone from acknowledgment as the person she or he claims to be. Such changes occur in many instances across all cultures and are not necessarily indicative of a wholly different identity.

3. Rather, our approach has been (and should be by decision-makers in similar cases) to take all relevant evidentiary factors into account in weighing up whether we considered that the UNJSPB erred in its overall assessment of the probabilities of the Appellant’s entitlement.

Original and Authoritative Version: English

Decision dated this 24th day of March 2023 in New York, United States.

(Signed)

Judge Sandhu

(Signed)

Judge Colgan

Judgment published and entered into the Register on this 18th day of April 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar