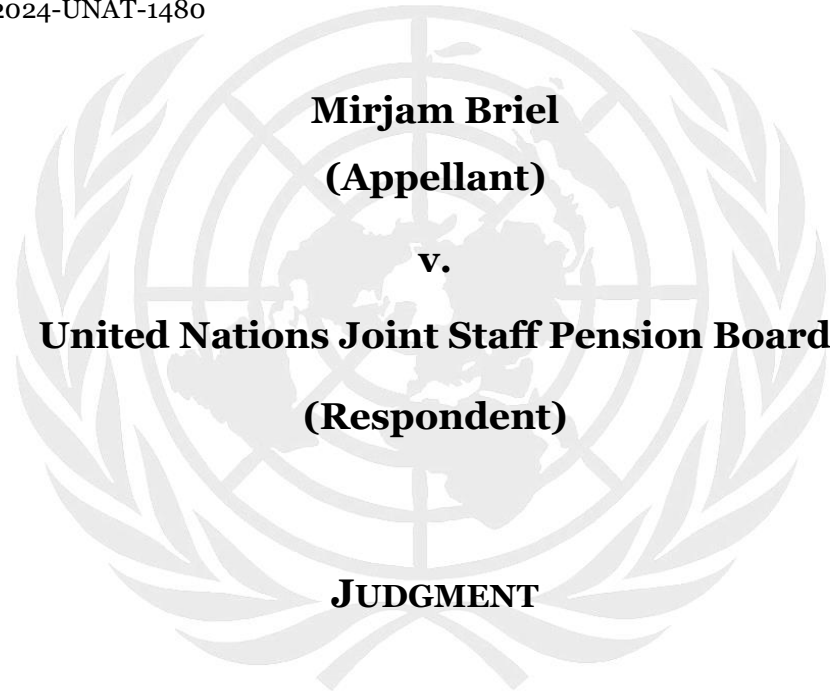




UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1480



Mirjam Briel
(Appellant)

v.

United Nations Joint Staff Pension Board
(Respondent)

JUDGMENT

Before:	Judge Katharine Mary Savage, Presiding Judge Gao Xiaoli Judge Kanwaldeep Sandhu
Case No.:	2023-1863
Date of Decision:	25 October 2024
Date of Publication:	15 November 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant: Self-represented

Counsel for Respondent: Rosemarie McClean

JUDGE KATHARINE MARY SAVAGE, PRESIDING.

1. Ms. Mirjam Briel (Ms. Briel) has filed an appeal of a Decision dated 7 July 2023 (impugned Decision) rendered by the Standing Committee of the United Nations Joint Staff Pension Board (the Board).¹
2. In the impugned Decision, the Standing Committee of the Board dismissed Ms. Briel’s application challenging a decision (the contested decision) of the United Nations Joint Staff Pension Fund (the Fund), in which Ms. Briel was found ineligible to receive a widow’s benefit under Article 34 of the Regulations, Rules, and Pension Adjustment System of the Fund (the Fund’s Regulations) following the death of Mr. Steven Charles Rudolf Potgieter (Mr. Potgieter). The dismissal was based on the grounds that Ms. Briel’s “life partnership” with Mr. Potgieter was not equivalent to marriage as required by Article 34 of the Fund’s Regulations at the time of Mr. Potgieter’s death, and Mr. Potgieter had never officially reported Ms. Briel as his spouse to the Fund.
3. Ms. Briel appeals the impugned Decision to the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons set out herein, the Appeals Tribunal dismisses the appeal and affirms the impugned Decision.

Facts and Procedure

5. Mr. Potgieter participated in the Fund from 3 March 2013 until his death in service on 13 January 2021, as a staff member of the United Nations Interim Security Force for Abyei.
6. Throughout his participation in the Fund, Mr. Potgieter reported his marital status as “divorced” and never listed Ms. Briel as his spouse, nor did he ever change his marital status to “married”.
7. Because Mr. Potgieter’s sole designated beneficiary on his Pens.A/2 form—his mother—predeceased him, there were no eligible beneficiaries listed on the form at the time of his death on 13 January 2021. Consequently, the Fund made a full payment of Mr. Potgieter’s

¹ UNJSPF Case No. UID 000336006.

residual settlement, amounting to USD 80,077.81, to his estate in accordance with Article 38 of the Fund's Regulations.

8. In February 2021, the executor of Mr. Potgieter's estate contacted the Fund and provided a copy of Mr. Potgieter's Last Will and Testament (Will) and a copy of the Designation, Change, or Revocation of Beneficiary (Beneficiary Designation), in which Mr. Potgieter allocated 10 percent of his estate to his "life partner", Ms. Briel.

9. On 31 August 2022, Ms. Briel wrote to the Fund, providing an Order from the High Court of South Africa dated 7 June 2022, which declared that she and Mr. Potgieter "were, at the time of [his] death, partners in a permanent life partnership, with the same or similar characteristics as marriage". She then requested a widow's benefit under Article 34 of the Fund's Regulations.

10. On 11 January 2023, the Fund formally notified Ms. Briel of her ineligibility for a widow's benefit on the following grounds:

(1) Mr. Potgieter had not reported her as his spouse, contrary to the requirements of Section B.3 of the Fund's Administrative Rules (Fund's Rules);

(2) Based on the Fund's review of South African law, Ms. Briel's life partnership with Mr. Potgieter had not been considered equivalent to marriage at the time of his death on 13 January 2021;²

(3) The Fund had already disbursed a residual settlement under Article 38 of the Fund's Regulations, which would not have been payable if a widow's benefit had been due to Ms. Briel.

11. On 11 April 2023, Ms. Briel submitted a request for review to the Standing Committee of the Board.

² The Fund particularly noted that it was only through recent case law (*Bwanya v. Master of the High Court, Cape Town and Others* [2021] ZACC 51 (31 December 2021)) that the Constitutional Court of South Africa determined that the benefits available to married couples should be equally extended to heterosexual life partners under the *Intestate Succession Act* and the *Maintenance of Surviving Spouses Act*. However, the Constitutional Court suspended its order for 18 months to allow Parliament to amend the relevant laws.

Impugned Decision

12. Ms. Briel submitted before the Standing Committee of the Board that she was Mr. Potgieter’s common-law wife, supported by an Order issued by the High Court of South Africa affirming this status. She explained that Mr. Potgieter had not reported his personal status to the Fund due to “his emotional avoidance and struggles with online technology caused by trauma” stemming from several events: his lymphoma diagnosis in 2017 and 2020, his “Chemo brain” after chemotherapy, his mother’s death, and a traumatic helicopter crash. She further contended that Mr. Potgieter had not received adequate counseling or Human Resources assistance to help him “revise his necessary documentary requirements”, including those under the Fund’s Rules.

13. As for Mr. Potgieter’s estate, Ms. Briel argued that his estate was still in process and therefore the amount of USD 80,077.81 was available for refund. Ms. Briel requested that the Standing Committee of the Board review the contested decision and recognize her as Mr. Potgieter’s widow, taking into account his Will and his Beneficiary Designation.

14. On 7 July 2023, the Standing Committee of the Board affirmed the contested decision for the same three reasons: Mr. Potgieter had not reported his relationship as a “marriage”; the “permanent life partnership” was not equivalent to marriage; and the residual settlement had already been paid.

Procedure before the Appeals Tribunal

15. On 5 October 2023, Ms. Briel purportedly filed an appeal against the impugned Decision with the Appeals Tribunal via e-mail, attaching documents she described as those that “had been prepared for submission to the Standing Committee [of the Board]”.

16. On the same day, the UNAT Registry informed Ms. Briel that the Appeals Tribunal could not accept appeals by e-mail and provided her with detailed instructions on how to file the case properly and that she was required to include an appeal form and brief.

17. On 15 October 2023, Ms. Briel re-filed the case in the Court Case Management System (CCMS) but only resubmitted the same documents she had sent by e-mail without including the required appeal form and appeal brief.

18. On 11 December 2023, the Fund submitted a response to Ms. Briel’s appeal.

Submissions

Ms. Briel’s Appeal

19. Ms. Briel has filed neither an appeal form nor an appeal brief with the Appeals Tribunal. Instead, she resubmitted the documents she had previously prepared for the Standing Committee of the Board. In those documents, she requested that the Standing Committee of the Board “review [the contested] decision and recognize [her] as Mr. Potgieter’s widow and to accept the hard copy Beneficiary Document or acknowledge the Last Will and Testament of Mr. Potgieter as his Beneficiary distribution wishes”.

20. In the documents submitted, Ms. Briel argued that she was Mr. Potgieter’s common-law wife and that at the time of his death, a permanent life partnership “with the intention to marry” existed between them. She further relied on the 2016 Guidelines to Determine Eligibility for Spousal Benefits under Articles 34 and 35 of the Fund’s Regulations (2016 Guidelines) which provides that the Fund will recognize “union/registered partnerships lawfully entered into and legally recognized by the competent authority of the location where the status was established as long as the union confers similar legal effects as marriage, specifically including pension rights”.³ She explained that Mr. Potgieter had not updated his Pens.A/2 Form to include her as a beneficiary due to his ill health and certain emotional issues. In addition, she contended that Mr. Potgieter had not obtained adequate counseling or Human Resources assistance to help him revise the necessary documents, including those under the Fund’s Rules.

21. In support of her contentions, Ms. Briel submitted an order of the High Court of South Africa dated 7 June 2022 in which it was declared that in her *ex parte* application brought to that Court, it was declared that she and Mr. Potgieter were at the time of his death partners in a permanent life partnership, with the same or similar characteristics as a marriage.

22. Since his estate had not yet been wound up, Ms. Briel contended that the amount of USD 80,077.81 remained available for refund. Ms. Briel therefore sought that the impugned

³ 2016 Guidelines, para. 4.

Decision be reversed and that she be recognized as Mr. Potgieter's widow, taking into account that Mr. Potgieter had made provision for her as a beneficiary in his Will.

The Fund's Answer

23. The Fund seeks that the Appeals Tribunal dismiss Ms. Briel's appeal and uphold the impugned Decision of the Board, which, in turn, affirmed the contested decision of the Fund that found Ms. Briel ineligible for a widow's benefit. The Fund did not take issue with Ms. Briel's failure to file her purported appeal on the standard appeal form or file a brief in support thereof. The Fund submits instead that Ms. Briel did not identify any legal or factual errors in the conclusions reached by the Standing Committee of the Board, and therefore, the appeal should be dismissed in its entirety.

24. The Fund highlights the arguments presented before the Standing Committee of the Board. These included that at the time of Mr. Potgieter's death, the permanent life partnership between him and Ms. Briel was not recognized by the Fund for the purposes of Articles 34 of the Fund's Regulations and the 2016 Guidelines. Mr. Potgieter never reported Ms. Briel as his spouse, contrary to the requirements of Section B of the Fund's Rules and his reported legal status remained recorded as "divorced". Additionally, there was no failure by the Fund to inform Mr. Potgieter of his benefit entitlements or the applicable legal framework. In February 2021, the executor of Mr. Potgieter's estate furnished the Fund with a copy of his Will dated 26 October 2020 in which Mr. Potgieter allocated 30 percent of his estate to his brother, 30 percent to each his two daughters and 10 percent to Ms. Briel. In a separate document also signed on 26 October 2020 he recorded that he "designate[d] the person or persons named below as my beneficiary or beneficiaries. This applies to the Capital Sum standing to my credit at the time of [death] including the benefit accruing from the issuance of coverage affected on my life by the United Nations". The beneficiaries and their proportionate entitlements set out in the document were the same as those set out in his Will.

Considerations

25. Article 2(9) of the Appeals Tribunal Statute (Statute) provides that this 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.

26. Article 48(a) of the Fund's Regulations states that "(a)pplications alleging non-observance of these Regulations arising out of decisions of the Board may be submitted directly to the United Nations Appeals Tribunal", with any "dispute as to whether the Tribunal has competence" in terms of Article 48(b) to "be settled by a decision of the Tribunal".

27. Article 8 of the Appeals Tribunal Rules of Procedure (Rules) expressly provides that appeals "shall be submitted on a prescribed form" and accompanied by a brief that explains "in the case of an appeal against a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, a brief containing pleas and an explanatory statement", not exceeding 15 pages.⁴ It is for an appellant to satisfy this Tribunal that an appeal has been brought in compliance with the Rules. In addition, in an appeal against the impugned Decision of the Standing Committee of the Board, the appellant must set out the grounds on which it is alleged that there has not been observance with the Fund's Regulations.⁵

28. Despite Ms. Briel being alerted by the Registry of this Tribunal that she was required to file the appeal in the proper form, identify the alleged defects in the impugned Decision and detail her grounds of appeal, she failed to respond positively to the opportunity granted to her to comply with the terms of Article 8 of the Rules. Instead, Ms. Briel simply elected to resubmit to this Tribunal the documents previously prepared for the Standing Committee of the Board. In such documents she requested that the Standing Committee of the Board "review [the contested] decision and recognize [her] as Mr. Potgieter's widow and to accept the hard copy Beneficiary Document or acknowledge the Last Will and Testament of Mr. Potgieter as his Beneficiary distribution wishes".

29. Ms. Briel failed to comply with Article 8 of the Rules, nor did she comply with Article K.8 (b) of the Administrative Rules of the United Nations Joint Pension Fund which provides that "(a)n appeal to the United Nations Appeals Tribunal from the decision of the Standing

⁴ Article 8(1) and (2) of the Rules.

⁵ See *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

Committee, acting on behalf of the Board, shall be in accordance with the Statute and Rules of the Tribunal”.⁶

30. Despite the defective manner in which Ms. Briel has sought to pursue her appeal, the Fund has not objected to this or raised an issue relating to the receivability of the appeal in its answer filed. In *Shehadeh*,⁷ it was made clear that this Tribunal is not only competent but required to consider whether it holds the necessary competence or jurisdiction to determine a matter placed before it and it may raise such issue of its own accord. This ensures compliance with the terms of its Statute and Rules and prevents the Tribunal from assuming jurisdiction beyond the scope of its powers and the terms of the clear mandate granted to it by the General Assembly.

31. Despite Ms. Briel’s failure to file the appeal as required, we have taken into account the fact that she is unrepresented in this matter, that the Fund has not objected to the manner in which the appeal has been filed and that sufficient material has been placed before us to determine the merits of the matter. We therefore proceed to consider the merits of the appeal.

32. The issue for determination in the appeal is whether Ms. Briel has proved with sufficient evidence that she is entitled to receive a widow’s benefit pursuant to Article 34 of the Fund’s Regulations, read together with the 2016 Guidelines.

33. Article 34(a) provides that for an individual to be eligible to receive the widow’s benefit from a participant’s contributions to the Fund, the individual must have been married to the late participant at the time of his death in service. The 2016 Guidelines record that “union/registered partnerships lawfully entered into and legally recognized by the competent authority of the location where the status was established as long as the union confers similar legal effects as marriage, specifically including pension rights” may be recognized for purposes of determining eligibility to receive the spousal benefit under Article 34.

34. The 2016 Guidelines expressly record it to be the responsibility of the staff member to report any changes to their personal status, together with the required supporting evidence. In addition, the Fund will only recognize information provided in its records at the time of separation from service or death in service. The 2016 Guidelines note that exceptionally the

⁶ Annex I to the Fund’s Regulations, JSPB/G.4/Rev.28.

⁷ *Shehadeh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-689, para. 17.

Fund may accept a different personal status than the one reported to the employer, provided that status is consistent with the Regulations insofar as it is a recognized registered partnership or equivalent union and has been entered into before a competent authority under which the personal status has been established. Such requests, the 2016 Guidelines notes, are only accepted after the employer has refused to record and report the status change on the basis of its human resources policy. Paragraph 10 of the Guidelines continue that:

In any event (...) the participant must inform and provide the required documentation to the Fund regarding the union/partnership before his/her separation from service/death-in-service. In all cases the participant shall provide the Fund with a copy of his/her partner's passport or other official ID that bears the owner's photograph and original signature.

35. At the time of Mr. Potgieter's death on 13 January 2021, the permanent life partnership between him and Ms. Briel was not recognized by the Fund under Article 34 of its Regulations, which provides that a widow's benefit is payable to the surviving female spouse of a participant "if she was married to him at the date of his death in service". Nor had Mr. Potgieter reported to the Fund that Ms. Briel was his common-law spouse, as was required in terms of Section B of the Fund's Rules and the 2016 Guidelines. Instead, and notably, a little over two months before his death, he elected in his Will and its annexure to allocate 10 percent of his estate and the proceeds due to him from the Fund to Ms. Briel. While he referenced her in these documents as his "life partner", he elected to take no steps to record as much with the Fund. His intention not to report Ms. Briel as his life partner, but rather to ensure that she received a 10 percent share of the capital sum of his pension from the Fund, is evident from the explicit contents of the documents he signed, both of which were executed in the presence of his attorney.

36. No evidence was advanced to support the contention that both the Fund or the relevant Human Resources department failed to inform Mr. Potgieter of his benefit entitlements or the applicable legal framework. The facts instead support a conclusion that just over two months before his death, Mr. Potgieter was aware that he was entitled to provide for a portion of his estate to be transferred to Ms. Briel in his Will and similarly that she receive a share of his pension entitlement. Since he took no steps to report Ms. Briel as a designated beneficiary to the Fund, it was apparent from the facts that he did not intend to do so. There is no material before us to corroborate the allegation that Mr. Potgieter's psychological or physical condition accounted for this decision when he was able to conclude a Will in which he consciously allocated a portion of his estate and pension entitlement to Ms. Briel. The fact that Ms. Briel

produced an order of the High Court of South Africa, which was granted a year and a half after his death in an application which she did not serve on Mr. Potgieter's other beneficiaries or the executor of his estate, does not alter this conclusion.

37. It follows that the Standing Committee of the Board cannot be faulted for finding that, at the time of Mr. Potgieter's death, a permanent life partnership between him and Ms. Briel was not recognized by the Fund for the purposes of Article 34 of the Fund's Regulations or the 2016 Guidelines when Mr. Potgieter had not reported Ms. Briel as his spouse to the Fund, contrary to the requirements of Section B of the Fund's Rules.

38. It follows that, having regard to the material placed before us, Ms. Briel has not shown that the Standing Committee of the Board failed to observe its regulations or guidelines. For these reasons, the appeal cannot succeed and the impugned Decision must be affirmed, with the result that Ms. Briel is not entitled to payment of a widow's benefit by the Fund.

Judgment

39. Ms. Briel's appeal is dismissed, and the impugned Decision of the Standing Committee of the Board is affirmed.

Original and Authoritative Version: English

Decision dated this 25th day of October 2024 in New York, United States.

(Signed)

Judge Savage, Presiding

(Signed)

Judge Gao

(Signed)

Judge Sandhu

Judgment published and entered into the Register on this 15th day of November 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar