



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1515

Jay William Pozenel
(Appellant)

v.

United Nations Joint Staff Pension Board
(Respondent)

JUDGMENT

Before:	Judge Katharine Mary Savage, Presiding Judge Kanwaldeep Sandhu Judge Gao Xiaoli
Case No.:	2024-1930
Date of Decision:	21 March 2025
Date of Publication:	10 April 2025
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Rosemarie McClean

JUDGE KATHARINE MARY SAVAGE, PRESIDING.

1. Mr. Jay William Pozenel, a beneficiary of the United Nations Joint Staff Pension Fund (UNJSPF or Fund), sought review of the calculation of the cost-of-living adjustment (COLA) to his retirement benefit.
2. The Standing Committee of the United Nations Joint Staff Pension Board (Standing Committee and the Pension Board, respectively) upheld the calculation (impugned Decision).
3. Mr. Pozenel lodged an appeal of the impugned Decision with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Decision.

Facts and Procedure¹

5. Mr. Pozenel separated from service on 31 August 2022 and has since been in receipt of a normal retirement benefit under Article 28 of the Regulations, Rules and Pension Adjustment System of the United Nations Joint Staff Pension Fund (Regulations).² His retirement benefit was calculated and paid on the United States dollar track.
6. On 18 December 1984, the General Assembly adopted resolution 39/246 concerning the actuarial situation of the Fund.³ The resolution sought to reduce or eliminate the actuarial imbalance of the Fund and thereby to secure an adequate level of benefits for beneficiaries.

¹ Summarized from the impugned Decision as relevant to the appeal.

² Impugned Decision, p. 1.

³ It reads as follows:

Recalling that in resolution 38/233 it indicated that a co-operative effort by member organizations, participants and beneficiaries is required if the actuarial imbalance is to be reduced or eliminated, thereby securing an adequate level of benefits under the United Nations Joint Staff Pension Fund,

Noting the proposals made by the United Nations Joint Staff Pension Board in response to the request addressed to it in section II of General Assembly resolution 38/233,

1. Approves the following measures which will result in an improvement of the actuarial balance of the United Nations Joint Staff Pension Fund:

...

(c) On the first occasion after 1 January 1985 when a benefit in payment is to be adjusted for a change in the cost of living, the adjustment shall be reduced by 1.5 percentage points, except as specified in paragraph 4 of the present section;

7. The Fund's Pension Adjustment System (PAS), appended to its Regulations, provides the method for calculating the first COLA payable. Paragraphs 17–21 of the PAS set out the manner of adjustment of the amount of retirement benefit based on changes in the applicable consumer price index (CPI):

17. As stated in paragraph 3 above, each beneficiary's record contains a United States dollar amount and, if applicable, an amount in the currency of his or her country of residence. These amounts, having first been determined in accordance with sections C, D and E above, are subsequently adjusted on an annual basis, on 1 April in accordance with the following procedure:

(a) The dollar amount is adjusted by the ratio of the United States CPI applicable on the date of the adjustment to the United States CPI last utilized;

(b) The local currency amount is adjusted in the same manner, but using the CPI for the country of residence.

18. No adjustment is made in either the dollar amount or the local currency amount if the applicable CPI has moved by less than 2 per cent since the date of the last adjustment. The ratio of the CPI at one time to the CPI at another time is rounded to three decimal places.

19. If the applicable CPI has moved by 10 per cent or more from the CPI used for the adjustment made on 1 April as stated in paragraph 17 above, an additional adjustment of the dollar amount or the local currency amount, as the case may be, shall be made on 1 October of the same calendar year.

20. The initial adjustments due after separation (or death, as the case may be), to both the dollar and the local currency amounts, shall be reduced by 1.5 percentage points except in the case of the benefits under section E above and the minimum benefits under the Regulations. Effective 1 April 2005, the reduction in the initial adjustments due after separation shall be by 1 percentage point; with respect to benefits to which the 1.5 percentage points reduction was applied before 1 April 2005, there shall be a 0.5 percentage point increase in the first adjustment due on or after 1 April 2005. Effective 1 April 2007, the reduction in the initial adjustments due after separation shall be by 0.5 percentage point; with respect to benefits to which the 1.0 percentage point reduction was applied before 1 April 2007, there shall be a 0.5 percentage point increase in the first adjustment due on or after 1 April 2007.

...

4. *Approves*, with effect from 1 January 1985 and without retroactive effect, the changes in the system of adjusting benefits in payment, set out in annex X to the report of the United Nations Joint Staff Pension Board, except that the one-time reduction of the cost-of-living adjustment by 1.5 percentage points shall not apply to the minimum benefits under the Regulations of the Fund and the benefits under sections E and F of the pension adjustment system[.]

21. No adjustment is made on the date immediately following separation (or death as the case may be) even if such date coincides with the annual adjustment date. Except as provided in paragraph 22 below, all new entitlements become eligible for a possible adjustment, if applicable, on the annual adjustment date next following their effective date, at which time any adjustment due is pro-rated according to the period since separation. For example, a cost-of-living increase assumed to apply on 1 April 2001, would increase benefits by:

- The entire percentage of increase for separations before April 2000;
- 11/12 of the increase for separations in the month of April 2000;
- 10/12 of the increase for separations in the month of May 2000;
- 9/12 of the increase for separations in the month of June 2000;
- 8/12 of the increase for separations in the month of July 2000;
- 7/12 of the increase for separations in the month of August 2000;
- 6/12 of the increase for separations in the month of September 2000;
- 5/12 of the increase for separations in the month of October 2000;
- 4/12 of the increase for separations in the month of November 2000;
- 3/12 of the increase for separations in the month of December 2000;
- 2/12 of the increase for separations in the month of January 2001;
- 1/12 of the increase for separations in the month of February 2001;
- 0 per cent for separations after February 2001.

8. UNJSPF Procedure General No. 33 dated 11 January 1989, which remains in force, *mutatis mutandis*, provided the method for application of the 1.5 per cent reduction to COLA:⁴

1 In order to avoid different results for pensioners according to their date of birth or date of separation, in cases where the first adjustment due is prorated in accordance with paragraph 21 of Section H of the PAS, the method for applying the 1.5 percentage point reduction in the first cost-of-living adjustment will be as follows:

(a) The 1.5 percentage point reduction will be applied to the percentage adjustment due after account has been taken of any proration required based on the date of separation.

(b) If the prorated percentage increase due is less than 1.5 percent, the balance of the 1.5 percentage point reduction will be deducted from the next cost-of-living increase which becomes due.

2 Under this amended method, the objective reported by the Pension Board to the General Assembly will be met, namely to “reduce all periodic benefits, over the life-time of all participants and their surviving spouses, by about 1.5 per cent”.

⁴ Emphasis omitted.

9. On 1 April 2023, the first COLA to Mr. Pozenel's retirement benefit became due in accordance with the PAS.⁵ On 1 March 2023, in accordance with paragraph 17 of the PAS, the Fund announced that "based on CPI (consumer price index) data from the Monthly Bulletin of Statistics (MBS) published by the UN Statistics Division, there will be a 6.4 percent [COLA] to the US dollar track of periodic benefits for this year, effective 1 April 2023".⁶

10. Mr. Pozenel's first COLA was subject to a reduction by 0.5 percentage points, being the economy measure imposed to improve the actuarial balance of the Fund.⁷ On 24 April 2023, the Fund informed him that his effective COLA after the reduction (RCOLA) was established at 3.2 per cent and accordingly detailed the amount of his retirement benefit effective 1 April 2023.⁸

11. Mr. Pozenel subsequently sought clarification as to the calculation of his RCOLA.⁹

12. In response to his request and with reference to the PAS, the Fund provided on 1 May 2023 the following explanation:¹⁰

[Y]ou are entitled to receive a cost of living adjustment at a rate prorated based on your separation period. Accordingly, the cost of living adjustment rate determined for April 2023, 6.4%, has been prorated as follows:

No. of months from August (inclusive) to February 2023- 7 months

Proration rate- $7/12 = 0.58$

Applicable COLA rate- $0.58 * 6.4\% = 3.7\%$

Reduction Rebate as per Par[agraph] 20- 0.5%

Application of Reduction rate- $3.7\% - 0.5\% = 3.2\%[.]$

13. On 7 June 2023, Mr. Pozenel requested that the calculation be reviewed.¹¹ On 11 July 2023, the Chief Executive of Pension Administration confirmed the correctness of the Fund's methodology.

⁵ Impugned Decision, p. 1.

⁶ Notice to beneficiaries dated 1 March 2023.

⁷ Impugned Decision, p. 1.

⁸ 24 April 2023 letter from Chief, Payments Section.

⁹ Fund's 1 May 2023 e-mail to Mr. Pozenel.

¹⁰ *Ibid.*

¹¹ Impugned Decision, p. 1; answer brief, para. 8.

The impugned Decision

14. The Standing Committee considered Mr. Pozenel's request at its 210th meeting held on 6 March 2024 and issued the impugned Decision dated 8 March 2023.¹²

15. The Standing Committee noted that the Fund had calculated Mr. Pozenel's adjustment as follows:¹³

(a) First, the Fund determined the rate of the overall adjustment due to US dollar track benefits in accordance with the movement in the CPI since the date of the last adjustment at 6.4 per cent.

(b) Second, the Fund prorated the overall adjustment rate in proportion to the length of time Mr. Pozenel's benefit had been in payment and determined that the inflationary adjustment due was 7/12 of 6.4 per cent, equal to 3.7 per cent.

(c) Third, the Fund reduced the inflationary adjustment of 3.7 per cent due to Mr. Pozenel by 0.5 percentage points, in implementation of the economy measure contained in paragraph 20 of the PAS, which reduced his first COLA from 3.7 per cent to 3.2 per cent.

16. The Standing Committee noted that if the reduction of 0.5 percentage points were to be prorated as Mr. Pozenel had requested, it would have resulted in only about one-half of the overall cost savings intended by the Pension Board and the General Assembly.¹⁴ In addition, prorating the economy measure would result in an unequal application of the reduction to beneficiaries, depending on their separation dates. The Standing Committee rejected Mr. Pozenel's contention that the Fund should have first reduced the full inflationary adjustment (6.4 per cent) by 0.5 percentage points, to 5.9 per cent, and then prorated the resulting reduced inflationary adjustment by 7/12, i.e., from 5.9 per cent to 3.44 per cent, in order that the 0.5 percentage point reduction be prorated in the same manner as the inflationary adjustment, whereas the Fund applied the 0.5 percentage point reduction as a flat reduction to the overall adjustment due to Mr. Pozenel.

17. The Standing Committee considered the history and purpose of the 0.5 percentage point reduction to the first COLA that is set out in paragraph 20 of the PAS, which was introduced on 1 January 1985 as one of several economy measures aimed at correcting the Fund's actuarial

¹² Impugned Decision, p. 3.

¹³ *Ibid.*, pp. 1-2.

¹⁴ *Ibid.*, p. 2.

imbalance.¹⁵ The Standing Committee observed that at the time of the introduction of this economy measure, the Pension Board had expressly stated that the reduction would “reduce all periodic benefits, over the life-time of all participants and their surviving spouses, by about 1.5 per cent”.¹⁶ The Standing Committee noted that the only way in which this objective could be achieved was through the calculation method applied by the Fund and that if the 0.5 percentage point reduction were to be prorated, it would have resulted in only about one-half of the overall cost savings intended by the Pension Board and the General Assembly.

18. The Standing Committee agreed with the Chief Executive of Pension Administration that the purpose of the inflationary adjustment was to compensate for inflation over the time that has elapsed since separation and there was, therefore, a rational basis for it to be prorated: the less time a benefit has been in payment, the less its value will have been eroded by inflation.¹⁷ The Standing Committee, considered that on the other hand, prorating the economy measure would result in an unequal application of the reduction to beneficiaries, depending on their separation dates; for example, beneficiaries separating in February would only see their first cost-of-living adjustment reduced by 1/12 of 0.5 percentage points (0.04 percentage points), whereas beneficiaries separating in April would see their cost-of-living adjustment reduced by 11/12 of 0.5 percentage points (0.46 percentage points).

19. The Standing Committee therefore determined that the Fund had correctly applied the provisions of the PAS and upheld the decision of the Chief Executive of Pension Administration.

Procedure before the Appeals Tribunal

20. On 3 June 2024, Mr. Pozenel filed an appeal of the impugned Decision with the Appeals Tribunal, to which the Pension Board filed an answer on 9 July 2024.

Submissions

Mr. Pozenel’s Appeal

21. Mr. Pozenel requests the Appeals Tribunal to order the Fund to correct the impugned Decision and (i) pay, as from April 2023 through March 2024, the difference between the Fund’s

¹⁵ *Ibid.*

¹⁶ Report of the United Nations Joint Staff Pension Board to the General Assembly, Supplement No. 9 (A/39/9), para. 48.

¹⁷ Impugned Decision, p. 2.

calculation and the calculation in the amount specified in Section IV of the appeal form plus interest from the required date until execution; (ii) apply from April 2024 the COLA of 3.4 per cent to his benefits and pay any arrears and interest; and (iii) apply the correct methodology to any reduction to the first COLA due after to all beneficiaries of the Fund from 1 April 2024.

22. Mr. Pozenel argues that Fund's calculation of his first COLA after separation was not made in accordance with the provisions of the PAS as approved by the General Assembly. The Fund's method disregards the express wording of the Pension Board's recommendation and General Assembly resolutions and legislative history. Since the reduction was understood by both the Pension Board and the General Assembly to be applicable to the first adjustments due after separation, logic requires that the process for applying the reduction factors, ranging from 1.5 percent to 0.5 percent of the CPI had to be done before prorating the amount of adjustment due.¹⁸

23. Mr. Pozenel contends that the Fund's methodology of prorating a rate is illogical, invented by the Fund and inconsistent with the plain meaning of the term and of the text of the PAS. Moreover, the Fund's method for determining the first COLA of benefits results in unequal treatment of the Fund's beneficiaries depending on the month in which the beneficiary retired.

24. In conclusion, Mr. Pozenel submits that the Fund erred in law. The legal framework required that the CPI of 6.4 per cent first be subject to the reduction of 0.5 percentage points and the resulting 5.9 per cent COLA then be prorated by 7/12.

The Pension Board's Answer

25. The Pension Board requests the Appeals Tribunal to dismiss the appeal and uphold the impugned Decision.

26. The Pension Board argues that the Fund's calculation method is consistent with the text of the PAS, paragraph 20, the intention of the Pension Board and the General Assembly, and the Fund's Procedure General No. 33. The only way to achieve the actuarial savings intended by the Pension Board and the General Assembly is to apply the economy measure as a flat reduction to the COLA, regardless of the beneficiary's separation date. The economy measure has no rational connection to inflation and the passage of time. The partial reversal of the economy measure in

¹⁸ Mr. Pozenel submits that the problem with the Fund's approach arises, e.g., when someone retires in January or February, because the prorated CPI rate might not yield enough to fully deduct 1.5 percentage points.

2004 and 2006 to provide a 0.5 percentage point uplift to all benefits that had been subject to the reduction reflects the intention that the reduction had applied equally and had not been prorated. Finally, the situation where the reduction needs to be partially carried over to the next adjustment can occur only if the reduction is not prorated.

27. The Pension Board submits that Mr. Pozenel's method of calculation would change benefits and generate actuarial costs, circumventing the roles of the Pension Board and the General Assembly. If adopted, it would effectively cut in half the savings from the economy measure.

28. The Pension Board contends that Mr. Pozenel's method of calculation would result in the unequal treatment of beneficiaries based solely on their separation date. It would arbitrarily impose a greater reduction on beneficiaries who separate in March and smaller reductions on beneficiaries who separate in subsequent months, with beneficiaries separating in February seeing virtually no reduction at all.

29. Citing Article 44 of the Regulations, the Pension Board notes that Mr. Pozenel's request for interest should be denied. Mr. Pozenel does not represent other beneficiaries, and the Appeals Tribunal does not have the power to hear class actions or to order remedies in respect of individuals who are not party to the proceedings.

Considerations

30. This Tribunal, in terms of Article 2(9) of its Statute, is "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". The Fund has no discretion to vary benefits but must act in accordance with the rules and regulations applicable to it.¹⁹

31. In *Ergüden*, we made it clear that when judging the financial decisions of the UNJSPF, it is not for this Tribunal to determine the financial wisdom of a decision of the UNJSPF, or substitute its personal assessment of the economic advantages of one decision over another.²⁰ Judges are not to set the levels of benefits in the UNJSPF on the basis of their financial acumen or their own perceptions of equity, which are matters of policy for the UNJSPF, best left to its specialists with

¹⁹ *Pise v. United Nations Joint Staff Pension Board*, Judgment No. 2020-UNAT-1007, para. 29.

²⁰ *Mehmet Selman Ergüden v. United Nations Joint Staff Pension Board*, Judgment No. 2022-UNAT-1198, para. 38.

appropriate expertise. As a result, we noted that it is the lowest tier of judicial review that therefore applies in such instances.²¹

32. The reduction to the first COLA was introduced by the General Assembly in 1985 as one of several economy measures aimed at correcting the Fund's actuarial imbalance. Given that Mr. Pozenel was paid by the Fund on the US dollar track, in terms of paragraph 17 of the PAS, the dollar amount will be "adjusted by the ratio of the United States [consumer price index, or] CPI applicable on the date of adjustment to the United States CPI last utilized".

33. Pursuant to paragraph 20 of the PAS, the initial adjustments after separation or death are to be reduced by 0.5 percentage points.²² Paragraph 21 provides that any adjustment due is prorated according to the period since separation. It states that, except as provided in paragraph 22, "all new entitlements become eligible for a possible adjustment, if applicable, on the annual adjustment date next following their effective date, at which time any adjustment due is prorated according to the period since separation". Importantly, the Fund's 1989 Procedure General No. 33 detailed that, to avoid different results due to date of birth or date of separation, the first adjustment was to be prorated by applying the 1.5 percentage (now 0.5 percentage) reduction to the percentage reduction due after account has been taken of any proration required based on the date of separation.

34. In its calculation of the reduction of Mr. Pozenel's benefit, the Fund determined the rate of the overall adjustment due to US dollar track benefits in accordance with the movement in the US consumer price index (CPI) since the date of the last adjustment to be 6.4 per cent. The Fund then prorated the overall adjustment rate in proportion to the length of time Mr. Pozenel's benefit had been in payment, in accordance with paragraph 21 of the PAS, and determined that the inflationary adjustment due was 7/12 of 6.4 per cent, equal to 3.7 per cent. It then reduced the inflationary adjustment of 3.7 per cent due to Mr. Pozenel by 0.5 percentage points, in implementation of the economy measure contained in paragraph 20 of the PAS, which reduced his first COLA from 3.7 per cent to 3.2 per cent.

²¹ *Ibid.*

²² *See* paras. 6-7 and 11.

35. Mr. Pozenel contends that the Fund should first have reduced the full inflationary adjustment (6.4 per cent) by 0.5 percentage points before it prorated the resulting reduced inflationary adjustment by 7/12 based on his retirement date.

36. The process of interpretation involves attributing meaning to the words used in a document, having regard to the context provided, reading the particular provision or provisions in light of the document as a whole, having regard to the language used, the context in which the provision appears, the apparent purpose of the provision and the circumstances attendant upon its coming into existence. The first step is to consider the literal meaning of the provision in question, with a sensible meaning of the provision to be preferred to one that does not accord with the apparent purpose of the document.²³

37. It was recognized by the former United Nations Administrative Tribunal in *Gretz et al.* that when the Fund makes changes in the pension adjustment system, it has an obligation to respect certain fundamental principles, and modifications must not be arbitrary, but reasonable, and must be adapted to the aim of the system: adjustment of pensions to cost-of-living changes in the various countries of residence of the retired staff members.²⁴ In that matter it was found that the 1.5 percentage point reduction made in the first adjustment payable after 1 January 1985 was a reasonable economy measure justified to prevent an increasingly serious diminution of the Fund's assets, making it impossible to assure adequate benefits for beneficiaries.

38. The method for application of the percentage point reduction expressly provides that the reduction will be applied to the percentage adjustment due *after* account has been taken of any proration required based on the date of separation, with the stated purpose of this being to avoid different results for pensioners according to their date of birth or date of separation in cases where the first adjustment due is prorated in accordance with paragraph 21 of the PAS.

39. Having regard to General Assembly resolution 39/246, the relevant paragraphs of the PAS and the stated method for calculating the reduction of 0.5 percentage points, it is clear that the purpose of the proration is to avoid different results based on the date of separation. If the reduction were to be prorated in the manner proposed by Mr. Pozenel, it would not only result in a significant reduction in the overall cost savings intended by the Pension Board and the General Assembly but would lead to different results for beneficiaries of the retirement benefit

²³ See *Scott v. Secretary-General of the United Nations* Judgment No. 2012-UNAT-225, para. 28.

²⁴ Former Administrative Tribunal Judgment No. 403, *Gretz et al.* (1987) (internal citation omitted).

according to their date of separation. There is consequently no evidence to support the contention that the application of the economy measure has resulted in different treatment or discrimination.²⁵

40. We are therefore satisfied for these reasons that the Standing Committee cannot be faulted in finding that the Fund had correctly applied the provisions of the PAS and in upholding the decision of the Chief Executive of Pension Administration.

²⁵ See *Tabari v. Commissioner-General of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East*, Judgment no. 2011-UNAT-177, para 26.

Judgment

41. Mr. Pozenel's appeal is dismissed, and the decision of the Standing Committee of the United Nations Joint Staff Pension Board, dated 8 March 2024, is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 21st day of March 2025 in Nairobi, Kenya.

(Signed)

Judge Savage, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Gao

Judgment published and entered into the Register on this 10th day of April 2025 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar