



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2017-1086

Faye
(Appellant)

v.

United Nations Joint Staff Pension Board
(Respondent)

Order No. 284 (2017)

1. Mr. Ibrahima Faye is a staff member of the United Nations Joint Staff Pension Fund (Fund). In March/April 2017, an election was held to fill the vacant positions of Participant Representatives and Alternate Participant Representatives on the United Nations Staff Pension Committee (UNSPC). Mr. Faye, among others, was elected as an Alternate Participant Representative of the UNSPC.

2. The Fund is administered by the United Nations Joint Staff Pension Board (UNJSPB) and the Staff Pension Committees of the Fund's member organizations. The UNJSPB appoints a Standing Committee to act on its behalf when it is not in session. The UNJSPB has also delegated certain of its powers to the Staff Pension Committees of the Fund's member organizations. The Fund is led by the Chief Executive Officer (CEO), who performs his functions under the authority of the UNJSPB and serves as the Secretary to the UNJSPB. The secretariat of the UNJSPB also serves as the secretariat of the UNSPC.

3. In a letter dated 13 June 2017, the Chairman of the Standing Committee of the UNJSPB advised Mr. Faye of the decision taken by the Standing Committee on 8 June 2017 that, in spite of his election to the UNSPC, Mr. Faye "cannot be given access to Pension Board documents, nor can [he] participate in any formal preparations for Pension Board sessions" while he remains a staff member of the Fund, because being a staff member of the Fund and a Participant Representative of the UNSPC at the same

time “would constitute a conflict of interest”. The letter continued that “[e]qually, [Mr. Faye] cannot participate in meetings of the Pension Board and of its constituent groups, committees and working groups until such time as the conflict of interest has been resolved”.

4. On 16 June 2017, Mr. Faye filed an appeal with the Appeals Tribunal against the decision of the Standing Committee to deny him access to the UNJSPB documents and bar him from the UNJSPB meetings. He also filed a motion for interim measures pending proceedings on the same day, together with his appeal.

5. In his motion for interim measures, Mr. Faye maintains that the 8 June 2017 decision taken by the Standing Committee was procedurally unlawful and violated his due process rights. In his view, the decision, if allowed to stand, would cause irreparable harm to his rights and entitlement “as a duly elected UN Staff Pension Committee Member and Pension Board Member”. In view of the upcoming UNJSPB meeting in Vienna from 23 to 28 July 2017 that he is due to attend, Mr. Faye requests that the Appeals Tribunal grant his urgent request to suspend the implementation of the 8 June 2017 decision “under art. 10.2 of the [Appeals] Tribunal’s statute”.

6. On 22 June 2017, the CEO of the Fund filed comments on Mr. Faye’s motion, urging the Appeals Tribunal to reject it. In his view, the case is not receivable, as it does not arise out of Mr. Faye’s eligibility as a participant in the Fund, or from the rights to which he is entitled by virtue of his participation in the Fund. He maintains that the matter falls under the jurisdiction of the UNJSPB since the issue concerns the governance of the Fund and a conflict of interest on Mr. Faye’s part as a staff member of the Fund and his election to the UNSPC and UNJSPB. The 8 June 2017 decision taken by the Standing Committee does not fall under the Fund’s review and appeals procedure set forth in Section K of its Administrative Rules, Article 48 of the Fund’s Regulations, or Article 2(9) of the Statute of the Appeals Tribunal (Statute).

7. I have reviewed Mr. Faye’s motion for interim measures and the UNJSPB’s comments thereon. Initially, I wish to point out that it was an error for Mr. Faye to cite Article 10(2) of the Statute in support of his motion. Article 10(2) of the Statute concerns an entirely different matter unrelated to suspension of the implementation of a contested decision.

8. The relevant provision that Mr. Faye should have cited is Article 9(4) of the Statute. It reads: “At any time during the proceedings, the Appeals Tribunal may order an interim measure to provide temporary relief to either party to prevent irreparable harm and to maintain consistency with the judgement of the Dispute Tribunal”.

9. I note that Article 9(4) of the Statute requires a moving party to show that i) the contested decision, if left undisturbed, would cause irreparable harm to his or her rights as a staff member, and ii) the interim measure requested would be consistent with the impugned judgment of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal).¹ In my view, Article 9(4) of the Statute applies to motions for temporary relief filed by a party to a judgment issued by the Dispute Tribunal; it is not applicable to the proceedings launched by a staff member of the Fund under Article 2(9) of the Statute or an agency, organization or entity under Article 2(10) of the Statute.

10. As Mr. Faye fails to cite the correct statutory provision as the basis for his motion, and the remedy under Article 9(4) of the Statute is not available to him as a staff member of the Fund, the Appeals Tribunal, being a court of a limited jurisdiction, has no competence to entertain his motion for interim measures.

IT IS HEREBY ORDERED that Mr. Faye’s motion for interim measures pending proceedings is rejected.

Original and Authoritative Version: English

Dated 6th day of July 2017 in Vienna, Austria.

(Signed)
Deborah Thomas-Felix
President

Entered in the Register on this 6th day of
July 2017 in Vienna, Austria.

(Signed)
Weicheng Lin, Registrar

¹ *Koumoin v. Secretary-General of the United Nations*, Order No. 3 (2010), paras. 9-11.