



UNITED NATIONS DISPUTE
TRIBUNAL

Case No.: UNDT/GVA/2016/111
Judgment No.: UNDT/2017/001
Date: 3 January 2017
Original: French

Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

FAYACHE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**SUMMARY JUDGMENT ON
RECEIVABILITY**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

N/A

Introduction

1. On 16 December 2016, the Applicant, a former staff member of the United Nations Conference on Trade and Development, filed an application (without annexes) contesting the decision of the United Nations Joint Staff Pension Fund (“UNJSPF”) to reject his request for his spouse to be named as beneficiary of the survivor benefits associated with his pension.

Facts

2. In an e-mail of 16 December 2016 acknowledging receipt of the aforementioned application, the Registrar of the United Nations Dispute Tribunal (“UNDT”) in Geneva (“the Registrar”) informed the Applicant that the decisions taken by UNJSPF did not fall within the jurisdiction of UNDT and invited him to take any corrective action he might consider necessary. The Registrar also indicated the procedure to be followed by the Applicant via the Tribunal’s electronic portal if, despite the information provided, he wished to pursue the matter before the Tribunal.

3. In an e-mail of 27 December 2016, sent in reply to an e-mail reminder from the Registrar that same day, the Applicant sent the Tribunal a copy of a letter dated 22 December 2016 in which he requested clarification of the content of the e-mail of 16 December 2016, stating that it failed to indicate the basis on which his application was inadmissible.

4. In another e-mail, also of 27 December 2017, the Registrar informed the Applicant that, in the light of the e-mail exchange, he had concluded that the Applicant wished to pursue the matter before the Tribunal. The Registrar therefore reiterated his request that the Applicant submit his application via the Tribunal’s electronic portal.

5. In an e-mail on 28 December 2016, the Registrar informed the Applicant that his application would be registered electronically and assigned to a judge who would issue instructions regarding the follow-up it was to be given.

Judgment

6. Article 9 of the Tribunal’s Rules of Procedure, on summary judgement, provides that:

A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law. The

Dispute Tribunal may determine, on its own initiative, that summary judgement is appropriate.

7. As a first step, UNDT must rule on the receivability of the application and then on the Tribunal's jurisdiction over the decisions of UNJSPF stemming from the Regulations, Rules and Pension Adjustment System of the Fund (JSPB/G.4/Rev.19 of 1 January 2014), such as those on the recognition of a surviving spouse set forth in article 34 (Widow's Benefit) of those Regulations.

8. The Tribunal's competence is clearly defined and limited by article 2.1 of its own Statute and is a matter of law which can be decided even if it has not been raised by the parties and without the application being served to the Respondent (see *Boutroue* UNDT/2014/048, *Christensen* 2013-UNAT-335, *Bofill* UNDT/2013/141, *Lee* UNDT/2013/147, and *Kostomarova* UNDT/2014/027). The Tribunal considers that, in the interests of the Applicant, it is appropriate to apply said article in this case.

9. As indicated above, the Applicant does not contest a decision of the Secretary-General but a decision of UNJSPF, which he claims was communicated to him by the Chief of the Office of the UNJSPF at Geneva. The Tribunal has in the past issued statements on its lack of jurisdiction over UNJSPF decisions (see *Boutroue* UNDT/2014/048 and *Lopez Chavarrio* UNDT/2015/065), noting the following:

10. UNJSPF is an entity established to provide retirement, death, disability and related benefits for the staff of its various member organizations. Article 4 of the UNJSPF Regulations states that the Fund is "administered by the United Nations Joint Staff Pension Board, a staff pension committee for each member organization, and a secretariat to the Board and to each such committee". The Secretary-General has no role in the administration of UNJSPF benefits.

11. The UNJSPF is also not one of the agencies, organizations or entities "where a special agreement has been concluded between the agency, organization or entity concerned and the Secretary-General of the United Nations to accept the terms of the jurisdiction of the Dispute Tribunal", as set forth in article 2.5 of the UNDT Statute.

12. Moreover, section K of the Administrative Rules of UNJSPF, on review and appeal, describes the procedure for requesting a review and filing an appeal against any decision taken by the Staff Pension Committee of each member organization, or by its secretary, "in the exercise of powers conferred by the Regulations or these Rules".

13. Finally, it follows from a reading of section K.8(b) of those same Rules and of article 2.9 of the Statute of the United Nations Appeals Tribunal that, in order to contest the decision mentioned in paragraph 1 above, the Applicant must pursue a different procedure from the present one, and before other bodies.

Decision

14. In view of the foregoing, the Tribunal DECIDES:

The application is rejected as irreceivable.

(Signed)

Judge Teresa Bravo

Dated this 3rd day of January 2017

Entered in the Register on this 3rd day of January 2017

(Signed)

René M. Vargas M., Registrar, Geneva
