



**Before:** Judge Francis Belle

**Registry:** Geneva

**Registrar:** René M. Vargas M.

KOROTAEVA

v.

SECRETARY-GENERAL  
OF THE WORLD METEOROLOGICAL  
ORGANIZATION

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**JUDGMENT**

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**Counsel for Applicant:**

Anca Apetria  
Edward Patrick Flaherty

**Counsel for Respondent:**

Daniel Trup, WMO

## **Introduction**

1. The Applicant, a former staff member with the World Meteorological Organization (“WMO”) in Geneva, contests the decision not “to pay [her] termination indemnities upon separation from service at WMO due to abolition of post.”

## **Facts and procedural background**

2. The Applicant was born on 7 June 1957.

3. On 1 July 1999, the Applicant was appointed to WMO as a G-6 Human Resources Assistant.

4. On 15 May 2007, the Applicant was awarded a permanent appointment.

5. By Memorandum of 27 March 2019 to the Assistant Secretary-General of WMO, the Human Resources Division (“HRD”), WMO, confirmed that the Applicant’s permanent appointment was due to expire on 30 June 2019 and requested a decision concerning the extension of her appointment while indicating that the Applicant “would like to continue working up to the new maximum age limit of 65 years”. Taking into account a 2018 modification of the WMO Staff Regulations and Rules increasing the normal retirement age to 65, the Applicant’s appointment was extended until 30 June 2022.

6. By Memorandum of 4 May 2020, the Chief, HRD, WMO, notified the Applicant that her permanent appointment would be terminated following a reorganisation within WMO and that she would be separated from service on 31 August 2020.

7. On 18 May 2020, following a request for clarification from the Applicant, she was informed that, pursuant to WMO staff rule 193.3(c), she was ineligible to receive payment of a termination indemnity because she would receive a full pension from the United Nations Joint Staff Pension Fund (“UNJSPF”).

8. On 26 May 2020, the Applicant wrote to the Secretary-General of WMO to request reconsideration of the decision not to pay her the termination indemnity arguing *inter alia* that, as a staff member subject to termination, she was automatically entitled to such payment.
9. By letter dated 2 June 2020, the Administration responded reiterating the Applicant's ineligibility for the payment of termination indemnity.
10. On 22 June 2020, the Applicant requested management evaluation of the contested decision identified in para. 1 above.
11. By Management Evaluation Report dated 27 July 2020, the Internal Oversight Office ("IOO") of the WMO decided to uphold the contested decision.
12. On 31 August 2020, the Applicant was separated from service at the age of 63.
13. On 22 October 2020, the Applicant filed the application mentioned in para. 1 above.
14. On 2 November 2020, the Respondent filed his reply.
15. On 19 November 2020, the Applicant filed a motion for leave to file a rejoinder to the Respondent's reply.
16. By Order No. 120 (GVA/2020) of 23 November 2020, the Tribunal granted the motion and instructed the Applicant to file her rejoinder by 14 December 2020, which she did on 11 December 2020.
17. On 25 September 2021, the present case was assigned to the undersigned Judge.
18. By Order No. 173 (GVA/2020) of 18 November 2021, the Tribunal instructed the Respondent to file the WMO Staff Regulations and Rules that were applicable at the time the contested decision was taken, and ordered the parties to file their respective closing submission by 29 November 2021.

19. On 19 November 2021, pursuant to Order No. 173 (GVA/2020), the Respondent filed the 2019 WMO Staff Regulations and Rules.

20. On 22 November 2021, following further review, the Respondent filed an amended reply to Order No. 173 (GVA/2020) attaching the 2020 WMO Staff Regulations and Rules.

21. On 29 November 2021, the parties filed their respective closing submission.

### **Parties' submissions**

22. The Applicant's principal contentions are:

- a. The impugned decision violated the WMO applicable law:
  - i. The Applicant was entitled to a termination indemnity in line with WMO staff rule 193.2 because her permanent appointment was unilaterally terminated on 31 August 2020 by WMO due to the necessities of the Organization, i.e., the abolition of the post she encumbered following a restructuring at WMO;
  - ii. The Applicant's separation from service does not amount to an automatic separation due to retirement, which could only have occurred on 30 June 2022, as she had intended to work until the mandatory retirement age of 65;
  - iii. No WMO rule provides that the payment of the termination indemnity is excluded when a staff member reaches the "normal retirement age" according to the UNJSPF Regulations;
  - iv. The alleged automatic application of the UNJSPF Regulations in conjunction with the WMO Staff Rules is in contradiction with the arguments put forward by IOO in its response to the request for management evaluation; and
  - v. The Applicant can defer her entitlement to a retirement benefit and thus avoid the provision of WMO Staff Rule 193.3(c).

b. The IOO's response to her request for management evaluation sought to justify the impugned decision on the erroneous premise that the Applicant retired from WMO on 31 August 2020; and

c. Her request for termination indemnities according to WMO rules is grounded in the decision taken by WMO to separate her from service due to its restructuring and the abolition of the post she encumbered, and not because of her separation from WMO due to retirement.

23. The Respondent's principal contentions are:

a. The decision not to pay the termination indemnity was predicated on WMO staff rule 193.3(c), which prohibits such an award to staff members who upon separation will receive a pension benefit under the UNJSPF Regulations;

b. The Applicant, aged 63 at the time of separation, received a pension benefit and as a result is ineligible for the payment of the termination indemnity pursuant to the above referenced WMO staff rule 193.3(c); and, thus,

c. The Administration acted lawfully, pursuant to its Staff Regulations and Rules, in refusing to grant the payment of the termination indemnity.

## **Consideration**

### *Scope of judicial review*

24. The Tribunal notes that throughout her submissions, the Applicant takes issue with several sections of the IOO's response to her request for management evaluation. In her rejoinder, the Applicant even identified the IOO's Management Evaluation Report as "the final impugned decision".

25. The Tribunal finds that the Applicant misconstrued the nature of the outcome of the management evaluation. The Tribunal recalls that the Administration's response to a request for management evaluation is not a reviewable decision (see

*Nwuke* 2016-UNAT-697, para. 20). Indeed, the Tribunal found in *Staedtler* 2014/UNDT/46, para. 29, that:

When an application is filed in the Tribunal, the contested decision which may be reviewed is not the decision of the [Management Evaluation Unit (“MEU”)] but the administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment (footnote omitted). The outcome of a review of the administrative decision by MEU is not of itself an administrative decision as defined in article 2 and the Tribunal is not competent to hear and pass judgment on it.

26. Therefore, the Tribunal entertains applications against administrative decisions *de novo* and without regard to the outcome of the MEU review (see *Staedtler*, para. 30).

27. Accordingly, the Tribunal will not adjudicate the Applicant’s arguments in relation to the IOO’s responses to her request for management evaluation.

*Whether the contested decision is lawful*

28. The present dispute concerns the decision not to pay the Applicant a termination indemnity upon separation from service at WMO due to abolition of her post.

Whether the Applicant is eligible to receive a termination indemnity

29. Having reviewed the parties’ submissions, the Tribunal notes that the provisions governing WMO staff members’ eligibility for termination indemnity are codified in the WMO Staff Regulations and Rules. The record shows that the contested decision was made by WMO on 18 May 2020. Pursuant to the 2020 WMO staff rule 1123.4 (Effective date of the Staff Rules), WMO “Staff Rules 112.1 to 1123.4 inclusive are effective as from 20 January 2020, as revised”, and thus were applicable at the time the contested decision was taken.

30. The Tribunal notes that WMO staff members’ entitlements to termination indemnity stem from WMO staff regulation 9.3, which provides that:

If the Secretary-General terminates an appointment under Regulation 9.2 the staff member shall be given notice and indemnity payment in accordance with the terms of his appointment.

31. The terms of a staff member's appointment are set forth in "the provisions of the Staff Regulations and of the Staff Rules applicable to the category of appointment in question, and to changes which may be duly made in such Regulations and Rules from time to time" pursuant to WMO staff rule 141.1(b)(i).

32. WMO staff rule 193.2, entitled "Termination indemnity", states in its relevant part that:

Staff members whose appointments are terminated under Regulation 9.2 shall be paid an indemnity in accordance with the following provisions:

...

(d) No indemnity payments shall be made to:

...

(v) A staff member who is retired under the Regulations of the United Nations Joint Staff Pension Fund.

33. WMO staff rule 193.3, entitled "Computation of termination indemnity", provides in its relevant part that:

(c) Termination indemnity shall not be paid to any staff member who, upon separation from service, will receive a retirement benefit under Article 28 of the Regulations of the United Nations Joint Staff Pension Fund or compensation for permanent total disability under Rule 162.4[.]

34. Art. 28 of the UNJSPF Regulations provides in its relevant part that:

(a) A retirement benefit shall be payable to a participant whose age on separation is the normal retirement age or more and whose contributory service was five years or longer.

35. It follows that a WMO staff member is not eligible to the payment of a termination indemnity if his or her age at the time of separation from service is the normal retirement age or more and the contributory service is five years or longer.

36. The term “normal retirement age” is defined in art. 1 of the UNJSPF Regulations as “age 62 for a participant whose participation commences or recommences on or after 1 January 1990 but before 1 January 2014, and age 65 for a participant whose participation commences or recommences on or after 1 January 2014.”

37. In the present case, the Applicant joined WMO on 1 July 1999. Her normal retirement age is thus 62 pursuant to art. 1 of the UNJSPF Regulations. When she separated from the Organization, the Applicant was 63 years old and, consequently, had exceeded the normal retirement age and contributed to the UNJSPF for more than five years. This entitles the Applicant to a retirement benefit under art. 28 of the UNJSPF Regulations.

38. Accordingly, the Tribunal finds that the Applicant is ineligible to the payment of a termination indemnity pursuant to WMO staff rule 193.3 (c).

The Applicant’s submission that she is entitled to a termination indemnity under WMO staff rule 193.2

39. The Applicant submits that she is entitled to a termination indemnity under WMO staff rule 193.2 because she was separated from service due to a unilateral termination rather than retirement. To support her submission, the Applicant specifically argues that the only exception that could apply but is in fact not applicable to her case is provided for in WMO staff rule 193.2 (d)(v), according to which the termination indemnity is not paid to a staff member who is retired under the UNJSPF Regulations.

40. In this respect, the Tribunal first notes that the determining elements of a retirement benefit under the UNJSPF Regulations are age and contributory service at the time of separation. The entitlement is not linked to the reasons behind a separation from service (e.g., abolition of a post, resignation, dismissal). In this regard, the Tribunal wishes to highlight that it is irrelevant whether the Applicant intended to work until age 65.

41. Second, the Tribunal takes note of the fact that regardless of the applicability of WMO staff rule 193.2 (d)(v), WMO staff rule 193.3(c) sets forth an independent



and unambiguous condition governing staff members' entitlement to benefits, namely, that the termination indemnity will only be paid when the staff member concerned will not receive a retirement benefit under art. 28 of the UNJSPF Regulations (see also *Mirella et al.* 2018-UNAT-842, para. 43, where the Appeals Tribunal interpreted staff rule 9.8(c), which contains the same text as WMO staff rule 193.3 (c)).

42. Considering that at the time of her separation from service, the Applicant had exceeded the normal retirement age, and contributed to the UNJSPF for more than five years, as well as the fact that she had not secured further employment with another entity member of the UNJSPF that could have allowed her to continue her participation into the UNJSPF, she was then entitled to a retirement benefit and her case falls squarely within the scope of WMO staff rule 193.2 (d)(v).

43. Accordingly, the Tribunal finds that there is no merit in the Applicant's submission that she is entitled to a termination indemnity under WMO staff rule 193.2.

The Applicant's submission in relation to deferment of the retirement benefit

44. The Applicant further submits that she can defer her entitlement to a retirement benefit, thus avoiding the provision of WMO staff rule 193.3(c).

45. The Tribunal notes that art. 32 of the UNJSPF Regulations, entitled "Deferment of payment or choice of benefit", provides in its relevant part that:

(a) The payment to a participant of a withdrawal settlement, or the exercise by a participant of a choice among available benefits, or between a form of benefit involving payment in a lump sum and another form, may be deferred at the participant's request for a period of 36 months.

46. Therefore, while a staff member may elect to defer the *exercise* of his/her choice of benefit, or between a form of benefit involving payment in a lump sum and another form, for a maximum period of 36 months, such deferment does not affect the entitlement date as of which the Applicant's benefit is to be calculated and paid pursuant to art. 28 of the UNJSPF Regulations. This is confirmed by

sec. I.1 of the UNJSPF Administrative Rules, whereby “entitlement to a benefit shall ... vest in a participant ... on the day succeeding the last day of contributory service”.

47. It follows that the Applicant’s retirement benefit vested on 1 September 2020, the day following her separation from service; deferring the exercise of her retirement benefit does not affect the applicability of art. 28 of the UNJSPF Regulations, and, accordingly, the applicability of WMO staff rule 193.3(c).

48. Therefore, the Tribunal finds that WMO staff rule 193.3(c) remains applicable regardless of whether the Applicant requested payment of her benefit upon her separation from service or decided to defer such payment to a later date.

49. In light of the above, the Tribunal finds that the Applicant is ineligible to the payment of a termination indemnity and, therefore, the contested decision is not unlawful.

### **Conclusion**

50. In view of the foregoing, the Tribunal DECIDES to reject the application.

*(Signed)*

Judge Francis Belle

Dated this 22<sup>nd</sup> day of December 2021

Entered in the Register on this 22<sup>nd</sup> day of December 2021

*(Signed)*

René M. Vargas M., Registrar, Geneva