

ADMINISTRATIVE
TRIBUNAL



Distr.
LIMITED

AT/DEC/373
29 October 1986

ORIGINAL: ENGLISH

UN LIBRARY
ADMINISTRATIVE TRIBUNAL

Judgement No. DEC 32 1986

Case No. 382: SADDLER

UN/SA COLLECTION
AGAINST: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Arnold Kean, Vice-President, presiding; Mr. Endre Ustor, Mr. Roger Pinto;

Whereas on 6 March 1986, George Floyd Saddler, a former staff member of the United Nations filed an application in which he requested the Tribunal to:

- "1. Rescind the decision of the Secretary-General rejecting the Applicant's request for reimbursement of a proportionate share (60/87) of the United States income taxes that will be levied on the lump sum withdrawal benefit to be received from the United Nations Joint Staff Pension Fund, that was conveyed to the Applicant by the Assistant Secretary-General for Personnel Services in his letter dated 30 October 1985.
2. Order the Secretary-General to reimburse the Applicant by payment of 60/87 of the income taxes actually paid on the lump sum withdrawal from the United Nations Joint Staff Pension Fund.
3. Order the Secretary-General to pay the Applicant's costs and interest on the amount to be reimbursed from the date the taxes were paid until the date the reimbursement was received."

Whereas the Respondent filed his answer on 2 May 1986;

Whereas the Applicant filed written observations on 24 June 1986, in which he amended his pleas in part to read as follows:

". . .

2. Order the Secretary-General to reimburse the Applicant the amount of \$39,021.00 or the final income taxes actually paid on the lump sum withdrawal received from the United Nations Joint Staff Pension Fund which will be supported by a true and correct copy of the Applicant's 1986 income tax return.

3. Order the Secretary-General to pay the Applicant's costs of \$42.00 and interest of \$1,058.00 calculated on the amount to be reimbursed from the date the taxes were paid during 1986 until the date the reimbursement was received."

Whereas the facts in the case are as follows:

The Applicant, a national of the United States of America, entered the service of the United Nations on 1 July 1968 as a Senior Budget Officer, at the P-5, Step III level. He was initially offered a two year probationary appointment and thereby became a participant in the United Nations Joint Staff Pension Fund, hereinafter referred to as UNJSPF. Effective 1 April 1974, the Applicant was seconded to the United Nations Development Programme as Deputy Director, Division of Finance until 15 July 1978 when the Applicant resigned from the Organization in order to return to the service of his Government.

At the time of the Applicant's resignation from the United Nations, he was fifty-two years of age. In accordance with the Regulations and Rules of the UNJSPF, he exercised the right to receive a deferred retirement benefit, at a reduced rate, when reaching age fifty-five. Indeed, on 28 September 1980, the day following the Applicant's fifty-fifth birthday, he became the recipient of a deferred retirement benefit at a reduced rate under Article 31 of the Regulations and Rules of the UNJSPF then in force.

On 14 July 1981, the Applicant entered the service of the United Nations Educational, Scientific and Cultural Organization, hereinafter referred to as UNESCO, a specialized agency of the United Nations, and a member organization of the UNJSPF. When he joined UNESCO, the Applicant exercised the right to restore his prior contributory service with the United Nations, (1 July 1968 - 15 July 1978) pursuant to Article 24 of the Regulations and Rules of the UNJSPF then in force. Accordingly, the Pension Fund discontinued to pay to the Applicant his deferred retirement benefit.

In a letter dated 20 August 1985, the Applicant informed the Assistant Secretary-General for Personnel Services that he would retire from UNESCO in January 1986, having completed fourteen years of service with the United Nations system, ten years with the United Nations and four years and six months with UNESCO. In addition he stated:

"In order for me to commence the necessary planning, I would like to receive confirmation in writing from the United Nations that, if I should decide to exercise my entitlement to a lump sum withdrawal settlement under the Pension Fund Regulations, the United Nations will reimburse me for the proportionate share (60/87) of any United States income taxes that would be levied on such lump sum withdrawal."

In a reply dated 30 October 1985, the Assistant Secretary-General for Personnel Services informed the Applicant that the United Nations would not reimburse him with the proportionate share of US taxes that would be levied on any lump sum payment that he might receive from the Pension Fund on his separation from the service of UNESCO. The rationale for this decision was that the Applicant could have "opted for a deferred retirement benefit on separating from the UN and received a corresponding lump sum payment at that time, on which the Organization would have reimbursed any taxes due." In addition, he informed the Applicant that he was "free to challenge the decision in the Tribunal".

On 20 November 1985, the Applicant requested the Secretary-General's formal agreement for direct submission of his appeal to the Tribunal. On 10 February 1986, the Secretary-General formally granted the Applicant's request.

On 15 January 1986, the Applicant separated from the service of UNESCO. He became entitled to a retirement benefit under Article 28 of the Regulations and Rules of the UNJSPF and elected to commute into a lump sum one-third of the actuarial value of his benefit. Accordingly, on 17 March 1986 the Applicant was paid by the Fund a lump sum benefit in U.S. dollars, upon which the Applicant will be assessed and will have to pay United States income taxes for 1986, estimated by the Applicant to be in the amount of US\$39,021.

Whereas on 6 March 1986, the Applicant filed the application referred to above;

Whereas the Applicant's principal contentions are:

1. The Respondent should respect the rights acquired by the Applicant to be exempt from the provisions of General Assembly Resolution 34/165, since he joined the United Nations Secretariat on 1 July 1968. To do otherwise would be to subject the Applicant to discriminatory and unfair treatment.

2. The Applicant had a legitimate expectation that the lump sum benefit due to him upon retirement, would be subject to reimbursement regarding income taxes levied by the authorities of the United States of America.

3. Had the Applicant been re-employed by the United Nations instead of by UNESCO, and had he restored his prior contributory service with the United Nations, the United Nations would be obliged to reimburse the Applicant for the total of the income taxes levied on the one-third lump sum benefit he elected to receive under Article 28 of the Regulations and Rules of the UNJSPF.

Whereas the Respondent's principal contentions are:

1. On separation from the service of the UN in 1978, the Applicant was not entitled to a lump sum commutation in excess of his own contributions. It follows that Applicant was not then entitled to tax reimbursement pursuant to a rule established by the United Nations in 1974 which entitled staff separating from the service of the UN to reimbursement of taxes imposed on such lump sum payments.

2. Restoration of the Applicant's pension contributory service in 1981, by virtue of joining the UNESCO, was pursuant to the Pension Fund Regulations and Rules; was solely for pension purposes and does not entitle the Applicant to benefits pursuant to the UN rules.

The Tribunal, having deliberated from 13 October 1986 to 29 October 1986, now pronounces the following judgement:

I. It is not in dispute between the parties that at the time of his separation from the service of the UN the Applicant did not have an entitlement to a one-third lump sum benefit under the Pension Fund Regulations and Rules and consequently the question of paying taxes and having them reimbursed did not arise.

II. The contested issue between the parties is whether at the time of the Applicant's retirement from UNESCO, when his entitlement to a one-third lump sum benefit arose, his right to a partial tax reimbursement did or did not arise also.

III. The Tribunal having considered the case in all its aspects decides the issue in favour of the Applicant for the following reasons.

IV. When the Applicant retired from UNESCO he had - on account of having restored his prior contributory service with the United Nations - a combined period of fourteen years and six months of participation in the United Nations Joint Staff Pension Fund, (1 July 1968 until 15 July 1978 and 14 July 1981 until 15 January 1986). His benefits under the Pension Fund Regulations and Rules were accordingly calculated as if his total period of participation in the Pension Fund had been continuous.

The benefit to which the Applicant is entitled upon his retirement, including the portion which can be commuted into a lump sum, has its ultimate source in the contributions of the Applicant and those made by the U.N. and UNESCO during the Applicant's periods of service with these organizations.

In respect of that portion of the lump sum benefit which has its source in the contributions made during the Applicant's period of service with the UN, the Applicant did have a legitimate expectation of reimbursement of taxes under the relevant Staff Regulations and Rules.

V. The Tribunal finds difficulty in following the contention of the Respondent who maintains - without quoting any staff regulation or rule to this effect - that this entitlement of the Applicant has been completely

extinguished by his separation from UN service. In this connection the Tribunal recalls that in a previous case it observed that the tax reimbursement has a specific feature: it is not due on the date of separation - as are other terminal benefits - but later, when the individual concerned pays the taxes which are subject to reimbursement (Judgement No. 320, VIII, Mills).

VI. Another observation which this Tribunal made in the last mentioned judgement is also relevant here. The Tribunal observed: "To deny the Applicant reimbursement of the national income taxes levied on that portion of the lump sum pension payment which is the fruit of his service to the United Nations would also run counter to the overriding principle of equality of treatment among the staff members of the United Nations". (Judgement No. 320, XII, Mills).

VII. For the foregoing reasons the Tribunal decides that the Applicant is entitled to reimbursement of taxes levied on the one-third lump sum benefit due to him in respect of his period of UN service and calls on the parties to agree on the exact calculation of the sum due. The Tribunal awards the Applicant interest at the annual rate of 5 per cent on the amount to be reimbursed from the date of the actual payment of the taxes by the Applicant until his reimbursement by the Respondent. The Tribunal also awards \$ 42 costs as requested by the Applicant.

(Signatures)

Mr. Arnold KEAN
First Vice-President

Mr. Endre USTOR
Member

Mr. Roger PINTO
Member

New York, 29 October 1986

R. Maria VICIEN-MILBURN
Executive Secretary