

VI. The Tribunal also notes that the Applicant held a fixed-term appointment and that her letter of appointment referred to 31 August 1968 as the date of expiry of the appointment.

In this respect the Staff Rules provide that:

“The Fixed-Term Appointment does not carry any expectancy of renewal or of conversion to any other type of appointment.” (Rule 104.12 (b)).

It should also be pointed out that this provision was reproduced verbatim in the letter of appointment sent to the Applicant.

VII. Consequently, the Tribunal considers that the Applicant's status as a staff member had ceased on 1 September 1968, since her fixed-term appointment expired on 31 August 1968.

VIII. It is understandable that, having passed the examination for Editorial Assistants, the Applicant should have expected to remain in the service of the Organization even after the date of expiry of her contract. Nevertheless, the Tribunal holds that this expectation could not give rise to any commitment on the part of the Respondent.

IX. Since the Applicant's status as a staff member of the United Nations had ceased prior to the date on which the vacancy occurred for the post of Editorial Assistant which she might have been awarded according to the order of merit established in the roster, the Tribunal concludes that there is no legal commitment on the part of the Respondent to apply a procedure which would eventually result in reinstatement of the Applicant as a staff member of the Organization.

X. For these reasons, the Tribunal rejects the application.

(Signatures)

Suzanne BASTID
Vice-President, *presiding*
Francisco A. FORTEZA
Member

Vincent MUTUALE
Member
Jean HARDY
Executive Secretary

Geneva, 8 April 1971

Judgement No. 141

(Original: French)

Case No. 139
Majid

Against: The United Nations Joint
Staff Pension Board

Request for the rescission of a decision of the Joint Staff Pension Board whereby the benefits payable to a former ILO staff member who retired on 31 December 1969 should be calculated in accordance with the Pension Fund Regulations in force on that date and not the more favourable Regulations which entered into force on 1 January 1970.

Since the last day of the Applicant's period of service was 31 December 1969, his retirement benefits accrue on 1 January 1970 and his entitlements are governed by the Regulations in force on the latter date.—General Assembly resolution 2524 (XXIV) I (c) does not apply.—Article 51 (b) of the Regulations (1970 edition) does not apply, as the legal situation in this case came into being on 1 January 1970.

The contested decision is quashed.—The Applicant is awarded a lump sum, calculated on the basis of one fiftieth of his final average remuneration, representing one third of the actuarial equivalent of his retirement benefit, after deduction of the amount already paid.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Francisco A. Forteza; Mr. Vincent Mutuale;

Whereas, on 12 October 1970, Hafiz Abdul Majid, a former staff member of the International Labour Organisation, hereinafter called ILO, filed an application containing the following pleas:

“The United Nations Joint Staff Pension Board has decided that the Applicant's one-third lump sum should be calculated on the basis of ‘fifty-fifths’ and not on the basis of ‘fiftieths’. I request the Tribunal to reverse this decision and, in concrete terms, to direct the United Nations Joint Staff Pension Fund to disburse to me an extra amount of \$US1,765.82, being the actuarial value of \$137.50 p.a. in my case on 1 January 1970.”;

Whereas the Respondent filed his answer on 5 March 1971;

Whereas the Applicant filed written observations on 26 March 1971;

Whereas, at the request of the President of the Tribunal, the Respondent supplied additional information on 30 March 1971;

Whereas the facts in the case are as follows:

By its resolution 2524 (XXIV) dated 5 December 1969, the General Assembly of the United Nations amended the Regulations of the United Nations Joint Staff Pension Fund and decided that, with effect from 1 January 1970, retirement benefits would be calculated on the basis no longer of one fifty-fifth but one-fiftieth of the final average remuneration. Part I of the resolution read as follows:

“The General Assembly,

“ . . .

“I

“RATE OF ACCUMULATION OF BENEFITS

“Decides that, with effect from 1 January 1970:

“(a) The standard annual rate for a retirement benefit shall be obtained by multiplying the number of years of the participant's contributory service, not exceeding thirty, by 1/50 of his final average remuneration;

“(b) The minimum annual rate for a retirement benefit shall be obtained by multiplying the number of years of the participant's contributory service, not exceeding ten, by the smaller of \$180 or 1/30 of his final average remuneration;

“(c) Benefits which accrued before 1 January 1970 shall be recalculated in accordance with (a) and (b) above and shall accrue in such recalculated amounts with effect from that date, save that no additional entitlement shall accrue in respect of any benefit, a part or the whole of which was commuted into a lump sum, except in so far as a part remains which is payable in the form of a periodic benefit, and in respect of that part in the proportion which it bears to the benefit as originally calculated;”.

The Applicant, who was an Assistant Director-General in ILO, retired on 31 December 1969. Prior to his retirement, he had exercised the option available under article IV, paragraph 2, of the Regulations of the Fund (1967 edition) and had requested payment of one-third of the actuarial equivalent of his retirement benefit in the form of a lump sum. Being aware of the changes the General Assembly had just made in the Regulations of the Fund, he had stated that, since his pension was effective from 1 January 1970, the amount of the lump sum should also be calculated according to the new formula. At its January 1970 session, the ILO Staff Pension Committee, by a majority vote, decided to support the Applicant's claim. The matter was then submitted to the Standing Committee of the United Nations Joint Staff Pension Board, which took the opposite view and decided that benefits payable to participants whose last day of service was 31 December 1969 should be calculated in accordance with the Regulations of the Fund in force on that date. This decision was communicated to the Applicant on 12 August 1970 and, on 12 October 1970, he filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Regulations of the Fund do not mention that the calculation of the benefit will be made in accordance with the provisions applicable on a specified day—either the last day of participation or the first day on which the pension is payable. But between those two dates, common sense would dictate a natural preference for the latter, because it is a pension which is to be calculated and not a contribution to be collected from the participant. There is no doubt that all benefit entitlements necessarily accumulate during the period of service, including the last day of participation, but this fact cannot in itself preclude the possibility that benefits will be calculated more generously where the Regulations have become more generous with effect from the day following the last day of participation, i.e., from the first day of pension. In concrete terms the Applicant's pension is payable with effect from 1 January 1970 and should therefore be calculated in accordance with the 1970 Regulations, which were in force on that date.

2. The one-third lump sum which a prospective pensioner can opt for is merely the actuarial valuation of one-third of his pension. When the Applicant's pension, calculated on the basis of “fiftieths”, amounts to \$US4,539 p.a. the lump sum he can take in lieu of one-third of it comes to \$US1,513. The amount paid to the Applicant by the United Nations Joint Staff Pension Fund is arrived at by commuting approximately \$1,375.50. It is not fair that the Fund should pay only that amount and save itself the larger amount (\$1,513) every year during the remainder of the Applicant's life, as from 1 January 1970.

3. The practice followed in the past by the Pension Fund is not a valid argument since that practice has been incorrect.

Whereas the Respondent's principal contentions are:

1. Retirement benefits accrue and are properly calculated as of the last day of contributory service on the basis of regulations in force at that time. In the present case, the Applicant's retirement benefit accrued on 31 December 1969. On 1 January 1970, pursuant to General Assembly resolution 2524 (XXIV) I (c) and article 51 of the newly adopted Regulations, the Applicant's periodic retirement benefits were subject to recalculation, but recalculation of his lump sum entitlement was expressly precluded.

2. On every occasion on which pension entitlements have in the past been liberalized, payments due to participants whose service ended prior to the effective date of the liberalization were increased only to the extent specified by the General Assembly. The practice of the Assembly thus far has been to adjust the periodic portion of the benefit to accord with the liberalization, but to leave the lump sum portion, if any, to be governed by the regulations in force on the last day of service. The text of General Assembly resolution 2524 (XXIV) I (c) clearly confirms this practice and excludes any lump sum portion of an accrued retirement benefit from the new rate.

3. Arbitrary elements are introduced by any non-retroactive liberalization of pension rates, but from this viewpoint the Applicant is no different with respect to his lump sum commutation than any other participant whose contributory service was already completed prior to 1 January 1970.

The Tribunal, having deliberated from 30 March to 8 April 1971, now pronounces the following judgement:

I. The last day of the Applicant's period of service was 31 December 1969; it cannot be the date on which retirement benefits accrue, since one and the same official in one and the same organization cannot be both in service and in retirement. Consequently, no retirement benefit accrued to the Applicant before 1 January 1970.

II. Accordingly, the Applicant's retirement benefit entitlements, both in the form of periodic benefits and a lump sum, are governed by General Assembly resolution 2524 (XXIV), part I ("Rate of accumulation of benefits"), adopted on 5 December 1969 with effect from 1 January 1970, and by the Regulations of the United Nations Joint Staff Pension Fund which came into force on 1 January 1970.

III. In support of the claim that a benefit payable in the form of a lump sum cannot be calculated on the basis of the new rate, the Respondent cites General Assembly resolution 2524 (XXIV) I (c).

In the view of the Tribunal, this provision does not apply in the present instance; it refers to cases involving "benefits which accrued before 1 January 1970" and "any benefit, a part or the whole of which was commuted into a lump sum". However, the Applicant's retirement benefits did not accrue before 1 January 1970, and, prior to that date, the Applicant did not receive either a part or the whole of a lump sum.

IV. In addition to General Assembly resolution 2524 (XXIV) I (c), the Respondent cites article 51 of the Regulations of the Fund (1970 edition), which

"(a) These Regulations shall enter into force and supersede all previous Regulations with effect from 1 January 1970.

“(b) No provision shall be construed as applying retroactively to participants in the Fund prior to 1 January 1970 unless expressly stated therein or specifically amended to such effect by the General Assembly with due regard to the provisions of article 50”.

The Tribunal observes that there is no question of applying the provisions of the 1970 Regulations retroactively, that is to say, of modifying a legal situation established previously on the basis of the 1967 Regulations. In this instance, it is a question of applying a decision of the General Assembly that takes effect from 1 January 1970 to a legal situation—the legal status of a recipient of a retirement pension—which came into being precisely on 1 January 1970. Since the General Assembly makes no distinction between the methods by which a retirement benefit may be paid, the Respondent’s claim is unfounded.

V. For these reasons, the Tribunal quashes the decision of the United Nations Joint Staff Pension Board, decides that the lump sum representing one-third of the actuarial equivalent of the Applicant’s retirement benefit shall be calculated on the basis of one-fiftieth of his final average remuneration, and orders it to be paid to the Applicant after deduction of the amount already disbursed.

(Signatures)

Suzane BASTID
Vice-President, presiding
Francisco A. FORTEZA
Member

Vincent MUTUALE
Member
Jean HARDY
Executive Secretary

Geneva, 8 April 1971

Judgement No. 142

(Original: English)

Case No. 137:
Bhattacharyya

Against: The Secretary-General
of the United Nations

Non-renewal of the fixed-term appointment of a staff member of the United Nations Children’s Fund.

Before the letter of appointment was signed, the Applicant was sent a letter which raised the hope of continued employment with UNICEF dependent upon satisfactory service.—Contention that this letter created a legitimate expectancy of continued employment for the Applicant and that there was a corresponding commitment in this respect by the Respondent.—The Tribunal is competent to consider the contract as a whole in relation to the circumstances in which it was concluded.—Relevance and significance of the above-mentioned letter.—This letter mentioned the opportunities for regular employment dependent upon qualifications and performance only.—The Applicant’s high standard of performance was not disputed.—Finding that the circumstances of the Applicant’s appointment and his performance of service created a legal expectancy of continued employment.—Corresponding obligation on the part of the Respondent to provide continuing employment to the Applicant within UNICEF.