



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

**Domzalski
(Appellant)**

v.

**United Nations Joint Staff Pension Board
(Respondent)**

JUDGMENT

Before: Judge Martha Halfeld, Presiding
Judge Deborah Thomas-Felix
Judge John Murphy

Case No.: 2016-966

Date: 31 March 2017

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existing arrears. In light “of the pending appeal(...

constituted a significant part of the support amount determined by the CSA. Following confirmation of the changed circumstances by the school and by Ms. Domzalski, the UNJSPF requested that Mr. Domzalski propose an amount that he believed would be reasonable as reduced child support in lieu of the amount of USD 1,435.92. He proffered two amounts: USD 530 per month and USD 713.64 per month noting that the former might be too little and the latter more reasonable. The UNJSPF informed his spouse of his request for the reduction and the amounts that he proposed and she confirmed that the higher amount of USD 713.64 would be acceptable for her. The CEO, UNJSPF approved the reduction and determined that the higher amount be applied with effect from 1 February 2016 for the February 2016 pension benefit. His letter further stated that the child's benefit in the amount of USD 286.36 payable under Article 36 of the UNJSPF Regulations would continue to be paid directly to Ms. Domzalski and incorporated into a total child support figure of USD 1,000 per month.

12. By letter dated 29 July 2016, the Deputy CEO, UNJSPF informed Mr. Domzalski of the Standing Committee's decision at its 198th meeting held on 20 July 2016 to uphold the CEO, UNJSPF's decision, finding that the latter acted reasonably within his discretion in applying Article 45 to Mr. Domzalski's case. The Standing Committee further stated that the UNJSPF correctly applied only that part of the Tanzanian court order related to the "incontrovertible obligation" to pay child support and "[i]n making its determination, the Committee took cognizance of the arrears of child support following the assessment by the CSA and [of the fact] that [Mr. Domzalski] had not shown any alternative arrangements to meet [his] obligation in response to the request for deductions for child support by [his] spouse under Article 45". According to the Standing Committee, it was reasonable to implement the deductions based on the amount determined by the CSA because Mr. Domzalski had participated in the process leading to the determination of the amount payable. Since it was "very unlikely" that any appeal of the court order in Tanzania would lead to a court finding that there was no obligation to pay child support, the appeal of the order was no bar to the application of Article 45. Finally, with regard to the payment of a child's benefit under Article 36 of the UNJSPF Regulations, the Standing Committee confirmed that this was a matter between Mr. Domzalski and Ms. Domzalski and there was no obligation on the part of the UNJSPF to ensure that child's benefit paid by the UNJSPF be applied in reducing the arrears in child support with the CSA.

Submissions

Mr. Domzalski's Appeal

13. In his appeal, Mr. Domzalski requests repayment of USD 6,889.12, comprised of USD 286.36 per month paid as child's benefit under Article 36 of the UNJSPF Regulations and USD 1,435.92 per month deducted as child support from his pension pursuant to Article 45 of the UNJSPF Regulations for the period from October 2015 to January 2016.

14. He makes the following contentions:

(a) The CEO, UNJSPF acted ultra vires when unilaterally deciding to make deductions from Mr. Domzalski's pension in the absence of a final and executable court order. The CEO's "discretion" in applying Article 45 of the UNJSPF Regulations finds its limits in the "plain language" of the UNJSPF Regulations requiring such court order. The interim court decision of the Tanzanian court, however, was subject to appeal and was thus neither final nor executable.

(b) The UNJSPF incorrectly used the CSA's child support figures although the Fund had acknowledged that the CSA is an administrative, not a judicial entity. Its use of the CSA calculation was further misguided because Ms. Domzalski had already terminated her arrangement with the CSA and the CSA figure was variable and had not been recently adjusted.

(c) The deductions were also incorrect insofar as deductions for child support have to be reduced by any child's benefit paid under Article 36 of the UNJSPF Regulations. It was only in January 2016 that t6(h)160.12 1 Tf 5(i)166be616

The UNJSPF's Answer

15. On the issue of deductions for child support, both the applicable jurisprudence and legislative history of Article 45 of the UNJSPF Regulations support the view that the CEO, UNJSPF has discretion to make a decision as to whether or not to apply Article 45. The UNJSPF's decision to make deductions in this case was a reasonable exercise of this discretion. The UNJSPF notes, in particular, that during the three-year period between Ms. Domzalski's first application under Article 45 in 2012 - at a time when there were already arrears of over AUD 17,000 in child support - and the decision to grant her request in October 2015, "there was no proof that [Mr. Domzalski] had made any payments to meet his obligation to support his daughter; rather, the arrears with the CSA continued to increase".

16. The UNJSPF maintains that the rationale of Article 45 of the UNJSPF Regulations does not apply to the case at hand. It is clear from the UNJSPF's discussions in 2000 resulting in the adoption of Article 45 of the UNJSPF Regulations that the main concern leading to the requirement of a final executable court order was a situation where the Fund would be faced with competing court orders from different jurisdictions and with participants' lifelong commitments towards former spouses.

17. Concerning Mr. Domzalski's appeal of the Tanzanian court order, the UNJSPF submits that after Ms. Domzalski had withdrawn from the CSA process and obtained the court order, the UNJSPF correctly considered it unlikely that

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of the UNJSPF Regulations and the use of the CSA figures. Consequently, his due process rights were not violated.

Merits of the case: child support related to the period from October 2015 to January 2016

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obligations by making deductions from the pension based on a voluntary agreement outside the scope of Article 45 of the UNJSPF Regulations such as the one reached in this case.

28. The question that still needs to be cons

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Original and Authoritative Version: English

Dated this 31st day of March 2017 in Nairobi, Kenya.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Murphy

Entered in the Register on this 26th day of May 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar