



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

Judgment No. 2017-UNAT-729

**Zakharov
(Appellant)**

v.

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

JUDGMENT

Before:	Judge John Murphy, Presiding Judge Rosalyn Chapman Judge Sabine Knierim
Case No.:	2016-968
Date:	31 March 2017
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Sergio B. Arvizú

JUDGE JOHN MURPHY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal in terms of Article 2(9) of the Statute of the Appeals Tribunal (Statute) by Mr. Alexandre Zakharov against the decision of the Standing Committee of the United Nations Joint Staff Pension Board (Standing Committee and Pension Board, respectively) dated 29 July 2016 upholding the decision of the United Nations Joint Staff Pension Fund (UNJSPF or Pension Fund) rejecting his request for restoration of his prior contributory service in order to receive a deferred retirement benefit. Mr. Zakharov appealed on 7 September 2016, and the Pension Fund answered on 10 November 2016.

The Factual Background

2. The Appellant had two participations as a member of the Pension Fund. This appeal relates to the Appellant's first participation in the Pension Fund from 2 May 1980 to 3 August 1985 under Pension No. A/150842. His second participation was from 28 September 1990 to 31 May 1998 (A/236181).

3. On 2 May 1980, the Appellant joined the United Nations Centre for Human Settlements in Nairobi, Kenya, as a Human Settlements Officer on secondment from the Government of the former Union of Soviet Socialist Republics (USSR). He had a fixed-term appointment for two years and was eligible to participate in the Pension Fund upon taking up his appointment. His contract was renewed and ended on 3 August 1985.

4. The Appellant's complaint arises from a transfer of his pension benefit from the Pension Fund to the Social Security Fund of the USSR after the termination of his first period of service in terms of a transfer agreement between the Pension Fund and the Government of the USSR concluded in 1980 (the transfer agreement).

5. The transfer agreement arose from negotiations between the Pension Fund and various governments. During the 1970s, the Pension Fund was approached by the Governments of the former USSR, Ukrainian SSR and Byelorussian SSR for the conclusion of a transfer agreement in respect of their staff members seconded to the United Nations. At its 25th session in 1979, the Pension Fund decided that, provided the same principles embodied in the transfer agreement that was being negotiated with the Government of Canada at that time were respected, it had no objection in principle. Following negotiations between the representatives of the three governments and the Pension Fund, assisted by

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20 December 2002, the General Assembly decided that the issue did not require further consideration by the General Assembly.

11. The Appellant re-entered the service of the Organization in September 1990 when he joined the United Nations Economic Commission for Africa and again became a participant in the Pension Fund.

12. On 6 March 1991, the Appellant wrote to the Pension Fund expressing his interest in restoring his prior contributory service from May 1980 to August 1985. The Pension Fund responded by letter dated 5 April 1991 informing him that his pension rights had been transferred to the Social Security Fund of the USSR under the transfer agreement, in accordance with his payment instructions of November 1985, and that it was not possible to restore his prior contributory service since there was no provision in the transfer agreement to return the funds once they had been transferred to the Social Security Fund of the USSR.

13. The Appellant responded in a letter dated 18 July 1991. He reiterated his wish to restore his contributory service and referred to the provisions of Section F of the Regulations and Rules of the Pension Fund and stated that he would like to restore his prior contributory service by payment in equal monthly installments, with interest, of the amount which the Pension Fund paid to the Social Security Fund of the USSR. The Secretary of the Pension Fund responded on 10 September 1991, stating that since the Appellant's contributory service in respect of his first participation had been more than five years, he was not eligible to restore his contributory service in terms of the Regulations and Rules of the Pension Fund. The relevant provisions of the Regulations and Rules (Article 24 read with Article 31(b)(i) – discussed below) provided that

15. The Secretary of the Pension Fund responded on 24 March 1993, recalling the previous communications. He recorded that the transfer “extinguished all your UNJSPF entitlements based on your contributory service from 2 May 1980 to 3 August 1985 and severed your relationship with the UNJSPF”. The Secretary explained the legal position as follows:¹

We regret that we must confirm that the restoration option did not exist in your case. Your prior contributory service had ended after 1 January 1983 and its duration had not been for a period of less than five years; in actual fact, your prior service had ended on 3 May 1985, after five years and three months of UNJSPF contributory service. Consequently, when you d6ry

operation of the transfer agreement by officials of the USSR. The Pension Fund responded to the Appellant on 25 February 2015 stating that all decisions were taken in strict compliance with the Pension Fund's Regulations and Rules and the Pension Fund was in no position to take further action. It therefore was unable and unwilling to submit his case to the Standing Committee of the Pension Fund.

19. The Appellant filed an appeal with the Appeals Tribunal on 13 May 2015. The Pension Fund, on 22 May 2015, filed a motion for remand of the appeal to the Standing Committee, to which the Appellant responded on 18 June 2015. The Appeals Tribunal issued its judgment² on 30 October 2015 in which it held that the Pension Fund's decision not to submit the Appellant's appeal to the Standing Committee was a violation of his due process rights and accordingly remanded the case to the Standing Committee. It agreed with the Pension Fund that a referral to the Standing Committee was a jurisdictional pre-condition to an appeal to the Appeals Tribunal and hence that the appeal was not receivable.

20. By letter dated 29 July 2016, the Deputy Chief Executive Officer of the Pension Fund informed the Appellant that the Standing Committee, upon consideration of his request at its 198th meeting held on 20 July 2016, decided to affirm the decision of the Chief Executive Officer to reject the Appellant's request for restoration of his prior contributory service and thus to receive a deferred retirement benefit on the following grounds: i) his request was time-barred; ii) there was no legal or monetary basis upon which the Fund could pay a deferred retirement benefit as the actuarial value of his pension rights in the Pension Fund had been transferred to the USSR; and iii) since all pension rights were transferred to the Social Security Fund of the USSR, recourse is against the Government of the Russian Federation as successor to the USSR.

Mr. Zakharov's Appeal

21. The Appellant contends that

he never made. The UNJSPF's contention that he appeals a decision conveyed to him on 24 March 1993 is therefore wrong.

22. It is common cause that the Appellant has been receiving a pension from the Russian federation since 2002. He nonetheless denies the Standing Committee's contention that he would be "double-dipping", if he received a deferred retirement benefit from the Pension Fund. He claims to have submitted his application to the Social Security Department of

32. The Appellant's claim is based on his belief that he subsequently acquired contractual rights to restore his past contributory service. As explained to him in 1991, that right was only available to participants in terms of Article 24 of the UNJSPF Regulations who had less than five years' previous contributory service and whose only available benefit was a withdrawal settlement consisting of his or her own contributions to the Pension Fund. He did not fall into that category. The relevant provisions of Article 24 of the UNJSPF Regulations provide:

- (a) A participant re-entering the Fund after 1 January 1983 may, within one year of the recommencement of his participation, elect to restore his prior contributory service, provided that on separation therefrom he became entitled to a withdrawal settlement under article 31 (b)(i), and provided further that the service was the most recent prior to his re-entry...

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35. Under Section K5 of the Pension Fund's Administrative Rules governing the review and

38. The Appellant's unsubstantiated allegations of fraudulent collusion between the Pension Fund and the Government of the USSR are beyond the scope of the Appeals Tribunal's jurisdiction. Article 2(9) of the Appeals Tribunal Statute provides that the Appeals Tribunal shall be competent to hear and pass judgment on an appeal of a decision of the Standing Committee alleging "non-observance of the regulations" of the UNJSPF. For the reasons stated, the UNJSPF has acted strictly in compliance with the Regulations.

Judgment

39. The appeal is dismissed and the decision of the Standing Committee is upheld.

Original and Authoritative Version: English

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

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Chap