



1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Oscar P. Larghi against a decision of the Standing Committee of the United Nations Joint Staff Pension Board (Standing Committee and UNJSPB, respectively) dated 23 July 2012. Mr. Larghi appealed on 27 September 2012, and the United Nations Joint Staff Pension Fund (UNJSPF or the Fund) answered on 30 November 2012. On 10 June 2013, the Appeals Tribunal issued Order No. 136 (2013), ordering the UNJSPF to provide certain information for its deliberations in this case and in the related Case No. 2012-381, *Pio*, and, on 12 June 2013, the UNJSPF submitted its response to the Order. On 14 June 2013, Mr. Pio filed a Motion to Strike or Reply to said submission.

Facts and Procedure

2. Mr. Larghi, an Argentine national, is a retired Pan American Health Organization/World Health Organization staff member, who participated in the UNJSPF from 1966 to 1985. He took early retirement at age 55 and, initially, received his monthly pension benefit in US dollars. He opted to switch to a “local track” pension some years later.

3. In 2009, Mr. Larghi began

T

THE UNITED NATIONS A

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2013-UNAT-343

(b) This special measure shall apply to all beneficiaries who have provided, or will provide in future, proof of residence in a country which meets the criteria in (a) above.

(c) (i) The local currency base amount determined in accordance with (a)(i) above shall be adjusted by the consumer price index movement, in accordance with section H above, as from the date of introduction of the new currency unit;

(ii) The local currency base amount determined in accordance with (a)(ii) above shall be adjusted by the consumer price index movement, in accordance with section H above.

(d) The local currency amount calculated under this special measure will be paid only with effect from the first day of the quarter following submission of proof of residence, or in cases where proof of residence had been submitted earlier, as from the first day of the quarter following the date of introduction of the new local currency unit, with retroactive effect only as from 1 January 1996.

(e) Should the new local currency unit depreciate against the United States dollar by 50 per cent or more from its value on the date of introduction, beneficiaries covered by the special measure may exercise an option, within two years as from the date of implementation of the special measure, 1 January 1997, to withdraw their proof of residence and to have their pension benefits paid thereafter solely on the United States dollar track. Such reversion to the dollar track alone would be effective as from the first quarter following receipt by the Fund secretariat of the beneficiary's withdrawal of proof of residence.

Where a beneficiary resides in a country other than the United States, the determination of the amount of the periodic benefit payable in a given month is made as follows:

The dollar amount as initially determined under subparagraph 5(a) above and then adjusted under section H above, is converted to the local currency equivalent by using the exchange rate in effect for the month preceding the calendar quarter of that payment. The resultant amount is compared to the local currency amount as initially determined under subparagraph 5(b) above and then adjusted under section H above. Except as provided in paragraph 25 below, the beneficiary is entitled, until the next quarter, to the greater of the local currency amount or the local currency equivalent of the dollar amount, subject to a maximum of: (a) 120 per cent of the local currency amount with respect to benefits payable on account of separations or deaths in service before 1 July 1995 and other benefits derived therefrom; (b) 110 per cent of the local currency amount with respect to benefits payable on account of separations or deaths in service on or after 1 July 1995 and other benefits derived therefrom. *The limitations described in (a) and (b) above shall not result in a benefit being smaller than either the United States dollar base amount determined in accordance with the Regulations of the Fund or 80 per cent of the adjusted United States dollar-track amount.* (Emphasis added)

22. The Appellant explains that, some time around 2002, Argentina experienced serious financial problems and abruptly devalued its currency which, in turn, affected the price of commodities and the purchasing power of local currency. Mr. Larghi wrote to the Fund, on 10 January 2009, seeking the application of paragraph 26(i) of the PAS. On 16 January 2010, the Fund responded to the effect that, with regard to the applicable CPI for Argentina, the Fund had met with the United Nations Statistics Office, which had confirmed that the CPI data for Argentina was that officially submitted by Argentina.

23. Mr. Larghi next communicated with the Fund on 28 October 2011, in the following terms:

As you know, the CPI for Argentina has been handled by the Government in such a way that pensioners residing here, both in the dollar and the double tracks, are losing a high percentage of the purchasing power of [their] pensions, which has been reduced more than 100% since 2007. This fact contradicts [paragraph] 1 of the UNJSPF [PAS].

I am sure that you as me consider this an unjust and aberrant situation. Consequently, I respectfully request that, in accordance with section (C) of [paragraph] 26 of the PAS, my local currency base amount is discontinued. You will probably notice that with this change I will recuperate as much as one fifth of the purchasing power already lost.

THE

of the “local track” in his case. The Respondent asserts that as official CPI data is being published by the Government of Argentina and as the Fund cannot challenge the official figures provided, there is no basis for the application of paragraph 26 of the PAS. Furthermore, the Respondent informs this Tribunal that, until March 2002, the Appellant benefited from the fact that the Argentinian local currency track amount was higher than the US dollar amount; that from 1 April 2002 to 31 March 2005 he was paid at the minimum guaranteed amount provided for in the then extant regulations and that since 1 April 2005 he has benefited from the 80 per cent minimum guaranteed by paragraph 23 of the PAS.

28. From our analysis of both parties’ documentation and submissions, we are satisfied that the issue for judicial review in this appeal is whether the Standing Committee exercised the jurisdiction/discretion with which it is vested pursuant to paragraph 26 of the PAS, either properly or at all.

29. Paragraph 26 provides as follows:

(a) For countries where the application of the local-currency track would lead to aberrant results, with wide fluctuations depending on the precise commencement date of the underlying benefit entitlement, establishment of a local currency base amount in accordance with section C may be discontinued by the Chief Executive Officer of the Pension Fund. In such cases, the Chief Executive Officer shall duly inform the Board or the Standing Committee of this action, as soon as feasible.

(b) Aberrant results in (a) above may be due, inter alia, to:

- (i) Very high inflation rate and an exchange rate which either remained fixed or whose fluctuation was very limited in relation to the level of the inflation rate;
- (ii) The 36-month average of exchange rates covered different currency units or included a currency unit that was no longer applicable;
- (iii) Substantial depreciation of the local currency, combined with non-existent, inconsistent or outdated information on the movement of the country's consumer price index.

(c) For countries where up-to-date CPI data is not available, after examining possible alternative sources of cost-of-living data and taking into account the particular circumstances of the beneficiaries residing in those countries, the application of the local currency track may be suspended; such suspensions shall apply only prospectively, with due notice given to the beneficiaries concerned.

30. Before addressing the specific arguments made by both sides, it is worth reiterating the purpose for which the PAS was devised, which is encompassed in paragraphs 1 to 3 as follows:

1 Pension adjustment is intended to ensure that, subject to paragraph 23 below, a periodic benefit payable by [UNJSPF] never falls below the ‘real’ value of its United States dollar amount and to preserve its purchasing power as initially established in the currency of the recipient’s country of residence.

2 The ‘real’ value of a United States dollar amount is the base amount as determined under the Regulations of the Fund, adjusted over time for movements of the United States consumer price index (CPI), while the purchasing power of a recipient’s benefits, once established in local currency, is preserved by adjusting it for movements of the consumer price index in the recipient’s country of residence.

3 The operation of PAS involves keeping a record of two amounts for a beneficiary:

- (a) one in United States dollars, which is adjusted periodically to reflect changes in the United States CPI;
- (b) the other, if applicable, in local currency, which is adjusted periodically to reflect changes in the CPI in the beneficiary’s country of residence.

31. In *Merani*, the former Administrative Tribunal described the purpose of the PAS in the following terms:

... The first objective is protecting pensions against *inflation*. The CPI adjustments to the United States dollar base and to the local currency amount accomplish this objective. The second is taking into account the *cost-of-living differential* [(COLD)] for those residing outside of the United States. The COLD factor accomplishes this goal. The third is *converting* the United States dollar *pension* amount *into local currency*, when the retiree chooses to be paid in local currency. The currency conversion accomplishes this third aim.¹

32. We are entirely satisfied that, viewed against the objectives set out in paragraphs 1 to 3 of the PAS, the primary effect of paragraph 26, if invoked by the UNJSPF, is to either discontinue or suspend, as the case may be, the “local track” currency for a particular country, once the UNJSPF is satisfied that the conditions set out in paragraph 26(a) or 26(c) are met. Furthermore, we note that while paragraph 26(b) defines what may constitute

¹ Former Administrative Tribunal Judgement No. 942, *Merani* (1999), para. XI. Original emphasis.

opportunity to make his case to the Standing Committee and thereafter dependent on his persuading the Standing Committee of the merits of the case he is presenting.

34. Furthermore, we do not regard as persuasive the Respondent's arguments that Mr. Larghi's complaint has been addressed by virtue of the historical benefits that have accrued to the Appellant or of his being able to benefit from the protections contained in paragraph 23 of the PAS; those arguments are not germane to the specific issue he raises in his application to the Fund and on appeal to the Standing Committee.

35. The decision of 9 July 2012, communicated to Mr. Larghi on 23 July 2012, was in effect a failure by the Standing Committee to exercise its jurisdiction to consider his appeal of the CEO's decision. In declining to render a decision based on Mr. Larghi's submissions, in the erroneous belief that the very existence of official CPI figures for Argentina precluded them from so doing, the Standing Committee erred in law and fact with regard to the powers vested in the Pension Fund under paragraph 26 of the PAS. Accordingly, the decision of 9 July 2012 is set aside. We hereby remand Mr. Larghi's case to the Standing Committee for its consideration forthwith of his application for discontinuance of the "local track" pension payment in his case and a reversion to a payment in US dollars.

The claimed due process violations

36. Mr. Larghi submits that the process by which the Standing Committee reviewed his appeal fell short of the standards required "to respect general notions of procedural due process". He states that he was neither present at the review by the Standing Committee, nor apprised of how the case was presented to that body. Neither was he informed what specific documentation was put forward. He claims that his views were presented to the Standing Committee at the very discretion of the person against whom he was appealing. He submits "[o]n information and belief, the review was perfunctory".

37. The Respondent contends that no due process violations occurred; that all the documentation that Mr. Larghi submitted in respect of his appeal was furnished to the Standing Committee; and that there was no need for Mr. Larghi's personal attendance, as "the UNJSPF regulations do not need a final instance to hear evidence or make findings of fact". The Respondent further submits that the composition of the Standing Committee ensures that there is fair representation of all views and that the Federation of Associations of Former

International Civil Servants (FAFICS), as the representative of retirees, attends the meetings of the Standing Committee and is allowed to present views, which was done in this case.

38. In the present case, we are not persuaded that Mr. Larghi's due process rights were violated by reason of his not being present before the Standing Committee. There is no suggestion from the correspondence furnished to this Tribunal that he sought to be heard in person. We are satisfied from the contents of the 23 July 2012 letter that all the documentation furnished by him in support of his appeal was submitted to the Standing Committee. While Mr. Larghi has raised the concern that his appeal is submitted to the Standing Committee by the very person whose decision he is appealing, we are satisfied that this concern is alleviated both by the fact that Mr. Larghi's case is presented in written form to the Standing Committee and by the composition of that body, which includes representatives of FAFICS.

39. As we have already set out, the shortcomings evident in the present case concern the Standing Committee's erroneous interpretation of the PAS provisions, a situation which has now been remedied by our decision to remand Mr. Larghi's appeal from the Pension Fund CEO's decision back to the Standing Committee.

40. In *Ansa-Emmim*, we stated that "all proceedings which culminate in appealable decisions must be conducted in a reviewable manner, by observing the principles of natural justice. The affected party must get a proper hearing, and the order detailing a decision must contain sound reasons which can be judicially scrutinized upon appeal."³ This is the standard we have set for appeals before the Standing Committee.

Judgment

41. The decision of the Standing Committee is set aside and Mr. Larghi's case is remanded back to the Standing Committee for its consideration forthwith of his application for discontinuance of the "local track" pension payment in his case and a reversion to a payment in US dollars.

³ *Ansa-Emmim v. UNJSPB*, Judgment No. 2011-UNAT-155, para. 31.

Original and Authoritative Version: English

Done in New York, United States.

(Signed)

Judge Faherty, Presiding
28 June 2013

(Signed)

Judge Weinberg de Roca
21 June 2013

(Signed)

Judge Lussick
28 June 2013