



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2023-UNAT-1323

Elena Korotaeva
(Appellant)

v.

Secretary -General
of the World Meteorological Organization
(Respondent)

JUDGMENT

Before:	Judge Gao Xiaoli , Presiding Judge John Raymond Murphy Judge Dimitrios Raikos
Case No:	2022-1666
Date of Decision:	24 March 2023
Date of Publication:	13 April 2023
Registrar:	Juliet Johnson

Counsel for Appellant:	Anca Apetria/Edward P. Flaherty
Counsel for Respondent	Daniel Trup

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2023-UNAT-1323

9. On 26 May 2020, Ms. Korotaeva wrote to the Secretary-General of WMO to request reconsideration of the decision not to pay her a termination indemnity arguing inter alia that, as a staff member subject to termination, she was automatically entitled to such payment.

10. By letter dated 2 June 2020, the Administration responded reiterating Ms. Korotaeva's ineligibility for the payment of a termination indemnity.

11. On 22 June 2020, Ms. Korotaeva requested management evaluation of the decision not to pay her a termination indemnity.

12. By Management Evaluation Report (MER) dated 27 July 2020, the Internal Oversight Office (IOO), WMO decided to uphold the contested decision.

13. On 31 August 2020, Ms. Korotaeva was separated from service at the age of 63.

14. On 22 October 2020, Ms. Korotaeva filed an application before the UNDT.

15. By Order No. 173 (GVA/2020) of 18 November 2021, the UNDT inter alia instructed the Respondent to file the WMO Staff Regulations and Rules that were applicable at the time the contested decision was taken and ordered the parties to file their respective closing submissions by 29 November 2021. On 19 November 2021, the Respondent filed the 2019 WMO Staff Regulations and Rules. On 22 November 2021, following further review, the Respondent filed an amended reply to O.3 (f)-(r)30.2 (o)-8.4 (w)6.7 (e)-10u (e)28 (h)15 (u)-11

WMO Staff Rule 193.2(d)(v), and accordingly, Ms. Korotaeva was not entitled to a termination indemnity under WMO Staff Rule 193.2.

23. Finally, the UNDT dismissed Ms. Korotaeva's contention that Article 32 of the UNJSPF Regulations allows her to defer her entitlement to a retirement benefit, thus avoiding the provision of WMO Staff Rule 193.3(c). The UNDT found that while a staff member may elect to defer the exercise of his/her choice of benefit, or between a form of benefit involving payment in a lump sum and another form, for a maximum period of 36 months, such deferment does not affect the entitlement date as of which Ms. Korotaeva's benefit is to be calculated and paid pursuant to Article 28 of the UNJSPF Regulations. The UNDT found that WMO Staff Rule 193.3(c) remained applicable regardless of whether Ms. Korotaeva requested payment of her benefit upon her separation from service or decided to defer such payment to a later date. She was thus ineligible for the payment of a termination indemnity and, therefore, the evidentiary considerations

principles of good faith and of non-retroactivity of law. At the time the impugned decision was

THE UNITED NATIONS APPEALS TRIBUNAL

“retirement benefit” due to separation from service should fall under the broader notion of “pension benefit”.

47. The intention of WMO Staff Rule 193.3(a) is to set out the computation of a termination indemnity. It is evident that all the following paragraphs concern the terparpue]TJ /TT1 15.1 (t)4.1 (e)-10.2 (r

payment in a lump sum and another form, may be deferred at the participant's request for a period of 36 months."

58. Section I.1 of the UNJSPF Administrative Rules provides that an "[e]ntitlement to a

benefit 3-6 p.1685 (TJ (a) (1) - To 8 U.S.C. 1781 (2) (7) (C) (1) (5) (B) (1) (4) (b) - Star (U) 7365 (5.) (p) 01 (e) 7 327 (f) 03

Judgment

61. The Appellant's appeal is dismissed, and Judgment No. UNDT/2021/158 is hereby affirmed.

Original and Authoritative Version: English

Dated this 24th day of March 2023 in New York, United States.

(Signed)

Judge Gao, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Raikos

Judgment published and entered into the Register on this 13th day of April 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar