



1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Antonio Pio 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. Pio appealed on 3 October 2012, and the United Nations Joint Staff Pension Fund (UNJSPF or the Fund) answered on 30 November 2012. On 21 February 2013, Mr. Pio filed a Motion for Admission of Further Documents, which was granted by the Appeals Tribunal pursuant to Order No. 123 (2013). On 10 June 2013, the Appeals Tribunal issued Order No. 136 (2013) in the related Case No. 2012-380, *Larghi*, ordering the UNJSPF to provide certain information for its deliberations in both cases, 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. Pio, an Argentine national, is a retired Pan American Health Organization/World Health Organization (PAHO/WHO) staff member who participated in the UNJSPF from 1971 to 1994 and again, for a five-month period, from late 1994

4. Mr. Pio appealed this decision on 16 August 2011. His request for rapid convening of the Standing Committee was denied on 23 September 2011. At its 194 meeting on 9 July 2012, the Standing Committee rejected Mr. Pio's claim, noting that "under paragraph 14 of the [PAS], the Fund is required to use the official CPI rates for each country as published in the United Nations Monthly Bulletin of Statistics". Argentina having produced such rates, and the Bulletin having published them, the Standing Committee concluded "[t]herefore, there is no basis to suspend the application of the local currency track in accordance with paragraph 26 of the PAS". This decision was communicated to Mr. Pio by letter dated 23 July 2012.

#### Submissions

##### Mr. Pio's Appeal

5. Mr. Pio submits that the Fund erred in law when it declined his request to invoke paragraph 26 of the PAS, which was applicable given that use of official CPI data produced aberrant results. He further submits that the Fund's interpretation of the PAS is false and that paragraph 14 does not prohibit the Fund acting pursuant to paragraph 26.

6. He contends that, since 2007, the local CPI indices issued by the Argentine Government have not accurately reflected actual cost of living increases and the true figures reflect high inflation and very limited currency fluctuations. Accordingly, he claims that paragraph 26(b)(i) of the PAS should have been invoked.

7. Furthermore, Mr. Pio asserts that the Fund abused its authority in unduly delaying the Standing Committee's review of his request.

8. Mr. Pio requests rescission of the contested decision and compensation, with interest, or, in the alternative, that the case be remanded.

##### The Fund's Answer

9. The UNJSPF submits that the provisions of the PAS were correctly applied and that the establishment of an adjustable minimum guarantee adequately addressed the situation.

10. It further submits that, as official CPI figures had been published by the Government of Argentina, paragraph 26 of the PAS could not be invoked.

11. The Fund contends that the decision to consider Mr. Pio's case during the annual meeting of the Standing Committee in 2012 was proper and accorded with the meeting schedule for the Standing Committee as adopted by the UNJSPB in 2006.

12. The Fund requests the Tribunal to dismiss the appeal in its entirety.

#### Considerations

##### *Preliminary Matter*

13. By Order No. 136 (2013) dated 10 June 2013, this Tribunal ordered the UNJSPF to provide to it no later than 4:00 p.m. on Friday, 14 June 2013, information concerning decisions to suspend or discontinue the application of "local track" pensions in accordance with paragraph 26 of the PAS.

14. The UNJSPF filed its Response to the Order (Response) on 12 June 2013.

15. Mr. Pio has now filed a Motion applying for an order to strike certain paragraphs of the Response and seeking leave to make observations on the Response. We note that the observations Mr. Pio seeks to make do nothing more than point out the obvious.

16. As regards the Response, unfortunately it does not contain the information we were seeking and so does not assist us. However, we do not consider that the information provided is in any way prejudicial to either Mr. Pio or Mr. Larghi. Moreover, the Response was filed in compliance with an Order of this Tribunal. That the information provided therein was not helpful is no reason to strike it.

17. Accordingly, the Motion is refused.

##### *The jurisdiction of the Appeals Tribunal*

18. Article 2(9) of the Statute of the Appeals Tribunal reads:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal of a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund, submitted by:

(a) Any staff member of a member organization of the Pension Fund which has accepted the jurisdiction of the Appeals Tribunal in Pension Fund cases who is eligible under article 21 of the regulations of the Fund as a participant in the Fund, even if his or her employment has ceased, and any person who has acceded to such staff member's rights upon his or her death;

(b) Any other person who can show that he or she is entitled to rights under the regulations of the Pension Fund by virtue of the participation in the Fund of a staff member of such member organization. In such cases, remands, if any, shall be to the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board.

19. Article 48 of the UNJSPF Regulations states:

(a) Applications alleging non-observance of these Regulations arising out of decisions of the Board may be submitted directly to the United Nations Appeals Tribunal by:

(i) Any staff member of a member organization which has accepted the jurisdiction of the Tribunal in Joint Staff Pension Fund cases who is eligible under article 21 of these Regulations as a participant in the Fund, even after his or her employment has ceased, and any person who has succeeded to such staff member's rights upon his or her death;

(ii) Any other person who can show that he or she is entitled to rights under these Regulations by virtue of the participation in the Fund of a staff member of such member organization.

(b) In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by a decision of the Tribunal.

(c) The decision of the Tribunal shall be final and without appeal.

(d) The time-limits prescribed in article 7 of the Statute of the Tribunal are reckoned from the date of the communication of the contested decision of the Board.

20. Mr. Pio's appeal falls within the scope of Article 2(9) of the Appeals Tribunal Statute and Article 48(a) of the UNJSPF Regulations.

*The background to the appeal*

21. Mr. Pio had two participations in the Fund: the first from 30 March 1971 until 31 March 1994; and the second from 1 December 1994 until 30 April 1995. He initially served as a staff member of PAHO and later moved to the WHO Headquarters in Geneva. Following his separation from service on 31 March 1994, he requested that his periodic benefit be paid under the two-track feature of the PAS, with Switzerland as his declared country of residence. He was

subsequently paid a withdrawal settlement with respect to the five-month period that he re-entered the Fund while on contract with WHO from 1 December 1994 to 30 April 1995. After his contract with WHO ended, payment of his periodic benefit resumed. He moved from Switzerland to Argentina in April 1997 and although he officially remained on the “local track”, the Fund paid his periodic benefit in US dollars with Argentina as his new country of residence. Mr. Pio wrote to the Fund claiming that the application of the “local track”, albeit paid in USD, was a mistake, as he had requested to be paid on the US dollar track following his change of residence to Argentina. However, he was informed that the provision allowing reversion solely to the US dollar track did not apply in his case.

22. In 1996, by Resolution 51/217, the General Assembly approved a recommendation of the UNJSPB for the adoption of a special measure with retroactive effect from 1 January 1996 for determining “local track” pension amounts for beneficiaries residing in countries where a new currency unit had been introduced that significantly strengthened the relationship of the local currency to the US dollar. This was duly codified as paragraph 38 of the PAS, which provides:

(a) For countries where a new currency unit was introduced on or after 1 January 1990 which represented, at the time of its introduction, an increase in the value of the local currency, in relation to the United States dollar, of at least 100 per cent, the local currency base amount under paragraph 5(b)(iii) above shall be determined in the following manner:

(i) For beneficiaries separating before or during the month of introduction of the new currency unit: by applying to the dollar base amount, as adjusted under section H above to the date of introduction of the new local currency unit, the United Nations operational exchange rate in effect as of such date;

(ii) For beneficiaries separating after the end of the month of introduction of the new currency unit: by applying to the dollar base amount the average of the United Nations operational exchange rates for the new local currency unit over the period from the effective month of introduction of the new currency unit to the month of separation, up to a maximum of 36 months.

(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

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*



Statistics, and the Government of Argentina has continued to publish CPI rates that are reported in the UN Monthly Bulletin of Statistics. Therefore, there is no basis to suspend the application of the local currency track in accordance with paragraph 26 of the PAS in your case.

This decision was communicated to the Appellant by letter dated 23 July 2012.

29. Mr. Pio argues on appeal to this Tribunal that the Standing Committee erred in law in refusing to apply paragraph 26 of the PAS. He points out that the only reason provided by the Standing Committee for refusing to invoke paragraph 26 was that the Fund was required by paragraph 14 of the PAS to use official CPI rates. He submits that the Standing Committee's understanding of the "interplay" between paragraphs 14 and 26 is erroneous. He reasons as follows:

The purpose of [paragraph] 26 is to prevent 'aberrant' results arising from PAS scheme, including its use of CPI ... Plainly, one can only rely upon *external* standards to know whether the results are 'aberrant'. One cannot say that because the result was produced by the system (including its CPI data), it cannot be aberrant ... If [paragraph] 14 is invariably applied to assume that country CPI data is complete and correct, paragraph 26(b)(iii) will be incapable of ever being applied ... Further, the *effect* of [paragraph] 26 is to discontinue the 'local currency track' for a country. The local currency track normally increases pension benefits in line with local, official CPI figures. The effect of discontinuing the local currency track is *always* to discard country CPI data. Maintaining fidelity to [paragraph] 14 data therefore cannot be an overriding consideration in the application of [paragraph] 26.

30. The Respondent urges this Tribunal to dismiss the appeal and submits that the Standing Committee acted correctly, and in accordance with the UNJSPF Regulations, Administrative Rules and the PAS in denying Mr. Pio's request to suspend the application 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 asserts that the amount paid to Mr. Pio each month by the Fund is protected by the 80 per cent minimum under paragraph 23 of the PAS and as a result, he has enjoyed a 23 per cent increase in his UNJSPF pension benefit since 2005.

31. 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

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.

34. 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.<sup>1</sup>

35. We are entirely satisfied that, viewed again

for the country as a whole issued by the national Government and published in th

38.

42. Mr. Pio now challenges that decision. He argues that if the Fund is expressing the view that the Standing Committee cannot hold meetings at different times than the Board, then that is a legal error, since the function of the Standing Committee is to operate on behalf of the Board when it is not in session (UNJSPF Regulations, Art. 4(c)). He further argues that “[w]hile it is not suggested that the *Regulations* require the meeting of the Standing Committee on a particular schedule, setting a recurring schedule *designed* to coincide with meeting of the full Board constitutes an abuse of this discretion and a dereliction of delegated authority” (original emphasis). Mr. Pio further claims that the CEO’s statement that it is not economically feasible to convene a special meeting of the Standing Committee is “unsupportable” and he submits that the only costs involved are communications costs, United Nations calls being heavily subsidized and Skype transatlantic calls costing only 1.9 US cents per minute at standard rates. Mr. Pio concludes by asking that this Tribunal “hold that the Standing Committee is not permitted to regularly schedule meetings when the full Board is in session” and “hold that the Standing Committee may not simply schedule inflexible annual meeting times, but ‘shall act when necessary’ (Rules of Procedure, s. B.4) in respect of each case”.

43. The Respondent explains that the Board decided in its 53<sup>d</sup> Session in 2006 to revert to holding annual sessions as from 2007, in response to a Resolution of the General Assembly urging the Board to explore the possibility of meeting annually.<sup>3</sup> The Board further determined that it would consider the budget of the Fund during the odd-numbered years and that the Standing Committee would continue to meet primarily to consider appeal cases, as it had done during each regular session of the Board.<sup>4</sup> This arrangement was noted in Resolution 61/240 of the General Assembly.

44. The Respondent argues as follows:

The decision by the Fund not to convene a meeting of the Standing Committee to consider his appeal was, therefore, in keeping with the practice of the Standing Committee, and the question of the Standing Committee meeting to act on behalf of the Board when the Board is not in session, was no longer applicable after the Board decided that it would meet annually from 2007, and the Standing Committee would continue to meet annually to consider appeals. Therefore, the decision that the Standing Committee would consider the Appellant’s request for review of the decision of the Secretary/CEO at its next meeting in July 2012 can in no way be considered an abuse of authority. Moreover, as acknowledged

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<sup>3</sup> A/RES/59/269.

<sup>4</sup> A/61/9: Report of the UNJSPB, 53<sup>rd</sup> session, 13-21 July 2006.

by the Appellant, his rights were not affected, nor did the delay of considering his case cause any irreparable damage, since he had the recourse to seek remedial compensation. Had the Standing Committee upheld his request, he would have been paid retroactively the amounts he was claiming to be correct under the Fund's Regulations and PAS.

45. In response to Mr. Pio's challenge to the CEO's statement that it is not economically feasible to convene a special meeting of the Standing Committee, the Respondent points out that there are 15 members of the Standing Committee, who are nominated only at the beginning of the Board session and "given the rotation of seats, the Secretary/CEO would not necessarily know the individual names/nominations until the beginning of the new session". The Respondent submits that "the composition of the Standing Committee ensures that there is a fair representation of all views, which would be difficult if the meeting of the 15 members of the Standing Committee as well as representatives of [the Federation of Associations of Former International Civil Servants (FAFICS)] and the Fund Secretariat, as support, were convened by teleconference or Skype". The Respondent further submits that in view of the issues involved being somewhat complicated, and the topic being of general interest to other beneficiaries, a proper hearing and full deliberation by the Standing Committee was required. The Respondent also submits that the Fund's budget, approved by the General Assembly biennially, provides for the cost of only one meeting per year, which includes the cost of travel for the two FAFICS representatives on the Board and the Standing Committee. Finally, the Respondent submits that the decision of the Fund to consider Mr. Pio's case in July 2012 during the annual meeting of the Standing Committee was in keeping with the schedule for the Standing Committee adopted by the Board in 2006.

46. Firstly, we do not consider that Mr. Pio experienced any inordinate delay in the hearing of his appeal by the Standing Committee in July 2012, the appeal having been filed in August 2011.

47. After considering the submissions of both parties, we are not convinced that the Standing Committee meeting annually at the same time as the Board is in any way an "abuse of discretion" or "dereliction of delegated authority". Moreover, Mr. Pio has not established that the decision by the UNJSPF not to convene a special meeting to hear his appeal was the result of any legal error or abuse of authority. Rather, such a decision is consistent with the practice of the Standing Committee. Finally, we find that there are no grounds for granting the orders sought by Mr. Pio preventing the Standing Committee from regularly scheduling meetings when the full Board is in session or from scheduling fixed meeting times.

48. 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. Pio's appeal from the Pension Fund CEO's decision back to the Standing Committee.

49. In *Ansa-Emmim*, we stated that "all proceedings which culminate in appealable nono [( 0 (s39



Original and Authoritative Version: English

Done in New York, United States.

*(Signed)*

Judge Lussick, Presiding

28 June 2013

*(Signed)*

Judge Weinberg de Roca

21 June 2013

*(Signed)*

Judge Faherty

28 June 2013

Entered in the Register on this 26<sup>th</sup> day of August 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar