

Neville
(Appellant)

v.

(Respondent)

JUDGMENT

[No. 2010-UNAT-004]

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Bernard Cochemé

JUDGE SOPHIA ADINYIRA, Presiding.

recommencement of her participation in the Pension Fund. She argues that upon her re-entry into the Pension Fund on 1 August 1997, it had been her intention to restore her first participation, but she could not do so as she was not given medical clearance and therefore separated from the WHO after eight months. She was therefore deprived of the last four months of the year in which she could have

Considerations

12. Article 24(a) of the Pension Fund's Regulations and Section F.1 of the Pension Fund's Administrative Rules govern the restoration of a participant's prior contributory service. Article 24(a) of the Pension Fund's Regulations in force in 1997 and 1998 - at the time of Neville's second and third re-entry into the Pension Fund - provides:

A participant re-entering the Fund after 1 January 1983 may, within one year of the recommencement of participation, elect to restore his prior contributory service, provided that on separation the participant 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.

Section F.1. of the Pension Fund's Administrative Rules stipulates:

A participant who elects to restore prior contributory service as a former participant under article 24(a) of the Regulations shall give notice in writing of such election to the secretary of the staff pension committee of the member organization by which he or she is employed not later than one year after the re-commencement of participation and in any case prior to the date of separation if earlier.

These provisions are not different from the current UNJSPF Regulations and Rules.

13. Having carefully considered both parties' submissions, we find no merit in Neville's first ground of appeal. Restoration of prior contributory service upon re-entering the Pension Fund is not automatic. If a participant re-entering the Fund *elects* to have restored his or her prior contributory service, he or she must give notice in writing no later than one year after the recommencement of participation. Where there is a separation within less than one year after the recommencement of participation then the notice must be given before the date of the separation. The period which can be restored is only the *most recent prior to his or her re-entry*. As pointed out by the UNJSPF, Neville had prior notice of her separation and she could have exercised her right to restore her first participation prior to the time of her separation in accordance with Section F.1 of the Pension Fund's Administrative Rules. She however failed to do so.

14. The UNJSPF has no discretion under Article 24(a) of its Regulations to make an exception in Neville's case. The decision by the Standing Committee not to restore Neville's prior contributory service with the FAO did not violate her rights. This ground of appeal must therefore fail.


15. We now turn to Neville's second ground of appeal that the WHO/SPC erred in concluding that there were no grounds to establish a Medical Board pursuant to Section K.7 of the Pension Fund's Administrative Rules. Section K.7 (a) provides:

Where the outcome of the review turns in whole or in part on the medical conclusions on which the disputed decision was based, the staff pension committee, or the Standing Committee as the case may be, shall obtain the advice of a medical board on the correctness or otherwise of such conclusions before proceeding with the review.


16. It is clear from the correspondence between Neville and the WHO/SPC and the UNJSPB, respectively that Neville's application for review solely related to the issue of

Judgment

18. In view of the foregoing, the appeal is dismissed in its entirety.



Judge Adinyira, Presiding



Judge Garewal

