Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

G.

v.

CERN

124th Session **Judgment No. 3876**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr W. G. against the European Organization for Nuclear Research (CERN) on 16 January 2015 and corrected on 3 February, CERN's reply of 27 May, the complainant's rejoinder of 3 July and CERN's surrejoinder of 6 October 2015;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case may be summed up as follows:

The complainant requests the payment, after his death, of a pension for a surviving spouse to his wife and of an orphan's pension to two children of whom he claims to be the biological father. He also claims allowances for dependent children.

The complainant is a former official of CERN who retired on 1 August 1997 and who draws a pension from the CERN Pension Fund. Article II 5.08 of the Rules of the Fund stipulating that "a marriage to a beneficiary of a retirement pension taking place on or after 1 August 2006 shall not give rise to entitlement to a surviving spouse's pension" was adopted in December 2005.

The complainant, having advised the Fund that he had married on 24 October 2011, was informed by a letter of 27 October 2011 that the benefits paid to him remained "unchanged". On 30 May 2014 he wrote

to the Administrator of the Fund asking that the Fund undertake, after his death, to pay his wife a surviving spouse's pension. Furthermore, referring in particular to the results of a DNA test dated 29 August 2006, he asserted that he was the biological father of two children born in 2004 and 2006, respectively, and claimed allowances for dependent children backdated to the date of birth of each of those children. He also asked the Fund to undertake to pay them an orphan's pension after his death. On 18 July 2014 the Administrator of the Fund replied that, under Article II 5.08 of the Rules of the Pension Fund, his wife would not be entitled to a surviving spouse's pension after his death, since their marriage had taken place in 2011. As far as the other two requests were concerned, he noted that it appeared from the supporting documents that paternity proceedings were still pending before a court of the children's country of birth and said he could not therefore take a decision at that stage. He invited the complainant to provide him with a copy of the final judgment and of the birth certificates resulting therefrom proving that he was in fact the children's father.

On 15 September the complainant submitted an appeal to the Chairman of the Fund's Governing Board in which he challenged the rejection of his claims. By a letter of 12 December 2014 he was advised that the Governing Board had decided to uphold the decision of 18 July 2014. He was further informed that he was permitted to refer the issue of the granting of a survivor spouse's pension directly to the Tribunal. On the other hand, with regard to the claims in respect of the children, he was told that it would be premature to file a complaint with the Tribunal before the Fund's Administrator was able to take a decision on the subject. This is the impugned decision.

The complainant asks the Tribunal to find that the payment of a surviving spouse's pension is an acquired right and that his wife will be eligible for such a pension provided that she meets the other conditions of entitlement laid down in the Fund's Rules. He also asks the Tribunal to give him the opportunity to prove by all legal means the facts alleged in his complaint, to find that that the results of the DNA test of 29 August 2006 are sufficient proof of his paternity of the two children born in 2004 and 2006 and, subsidiarily, "to identify any other objective

evidence, other than the judgment of a [national] court, proving that paternity". He also asks the Tribunal to order CERN to pay him allowances for dependent children, plus interest, with retroactive effect from the date of birth of each of those children and to find that if he were to die they "would have the status of orphans" within the meaning of the Fund's Rules. Lastly, he claims costs.

CERN contends that the complaint is premature with regard to the claims relating to the children of whom the complainant is allegedly the father and that it is irreceivable *ratione temporis* with regard to the surviving spouse's pension. Subsidiarily, the Organization argues that the complaint is unfounded.

CONSIDERATIONS

1. The complainant has requested the convening of a hearing, but in view of the abundant and sufficiently clear submissions and evidence produced by the parties, the Tribunal considers that it is fully informed about the case and does not therefore deem it necessary to hold such a hearing.

2. The complainant's claim seeking a declaration by the Tribunal that the results of the DNA test of 29 August 2006 are sufficient proof of his paternity of the two children born in 2004 and 2006 constitutes a claim seeking a declaration of law. According to the Tribunal's case law, it is not for the Tribunal to make such declarations (see Judgments 1546, under 3, 2299, under 5, 2649, under 6, or 3764, under 3). This claim must therefore be dismissed as irreceivable.

3. The Tribunal considers that there are no grounds for allowing the complainant's claim that the Tribunal should give him the opportunity to prove by all legal means the facts alleged in his complaint, since it was incumbent upon him submit to the Tribunal in the course of the proceedings any evidence he considers to be material in support of his case (see Judgments 1248, under 7, and 3678, under 8).

4. With regard to the complainant's claims to be granted allowances for dependent children and orphans' pensions in respect of the children of whom he claims to be the father, CERN explains that it has not denied these claims, since it cannot take a decision until it receives "official documents" proving the complainant's paternity. As it has not been able, in the absence of these documents, to take an individual administrative decision on these requests, the Organization submits that these claims are premature and that the complaint is therefore irreceivable in this respect.

The complainant considers that the decision contained in the letter of 12 December 2014 is a final decision and that Article VII, paragraph 1, of the Statute of the Tribunal "does not preclude" the receivability of his complaint on this point.

5. According to the Tribunal's case law, "[o]rdinarily, the process of decision-making involves a series of steps or findings which lead to a final decision. Those steps or findings do not constitute a decision, much less a final decision. They may be attacked as part of a challenge to the final decision, but they themselves cannot be the subject of a complaint to the Tribunal" (see Judgment 2366, under 16, confirmed in Judgments 3433, under 9, 3512, under 3, and 3700, under 14).

In the instant case, the Organization has not taken any decision on the complainant's above-mentioned claims. As it contends, it is waiting to receive the birth certificates of the children of whom the complainant claims to be the father in order to take a decision which could form the subject of a complaint to the Tribunal. The letter of 12 December 2014, insofar as it concerns the claims related to the children, does not therefore constitute a final decision within the meaning of Article VII of the Statute of the Tribunal. The only decision which may form the subject of a complaint to the Tribunal is the decision that will be taken after the completion of the formalities to which reference is made in the aforementioned letter. Hence the complaint must be dismissed as irreceivable to the extent that it is related to these requests.

6. It should also be noted that it is clearly not the Tribunal's role to identify "any [...] objective evidence [...] proving [the complainant's] paternity", as he requests, since the Tribunal cannot provide the parties with legal or expert opinions.

7. Regarding the claim relating to the payment of a surviving spouse's pension, the Tribunal notes that under Article II 5.08 of the Rules of the CERN Pension Fund, "a marriage to a beneficiary of a retirement pension taking place on or after 1 August 2006 shall not give rise to entitlement to a surviving spouse's pension". It follows from this provision that the complainant's marriage on 24 October 2011 did not confer any entitlement to a surviving spouse's pension.

The complainant contends that this provision, which was adopted in December 2005, does not apply to him as it would breach his acquired rights. The Tribunal draws attention to the fact that international organisations' staff members do not have any right to have all the conditions of employment or retirement laid down in the provisions of the staff rules and regulations in force at the time of their recruitment applied to them throughout their career and retirement. Most of those conditions can be altered during or after an employment relationship as a result of amendments to those provisions.

Of course the position is different if, having regard to the nature and importance of the provision in question, the complainant has an acquired right to its continued application. However, according to the case law established for example in Judgment 61, clarified in Judgment 832 and confirmed in Judgment 986, the amendment of a provision governing an official's situation to her or his detriment constitutes a breach of an acquired right only when such an amendment adversely affects the balance of contractual obligations, or alters fundamental terms of employment in consideration of which the official accepted an appointment, or which subsequently induced her or him to stay on. In order for there to be a breach of an acquired right, the amendment to the applicable text must therefore relate to a fundamental and essential term of employment within the meaning of Judgment 832 (in this connection see also Judgments 2089, 2682, 2986 or 3135).

The possibility for a spouse whom the official has married after his retirement to benefit from a surviving spouse's pension cannot be viewed as fulfilling that condition, and it is clear that the amendment in this regard did not adversely affect the balance of contractual relations. Nor did it alter fundamental terms of employment in consideration of which the complainant accepted an appointment with the Organization in 1962, or which subsequently induced him to pursue his career there.

It follows from the foregoing that this claim must be dismissed, without there being any need to rule on the merits of the objection to receivability raised by CERN on this point.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 April 2017, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ