

Schlagworte: Pensionsreglement; Artikel 18.2 des Pensionsreglements; Kinderrente; Vorzeitige Pensionierung; Gleichbehandlung; obligatorisches Rentenalter.

Mots-clefs: règlement des pensions; article 18.2 du règlement des pensions; rente d'enfant ; retraite anticipée; égalité de traitement; l'âge obligatoire de la retraite.

Key Words: Pensions Regulations; Article 18.2 of the Pensions Regulations; Child's annuity; early retirement; equal treatment; compulsory retirement age.

1/2015

Judgement of 28 January 2016

Administrative Tribunal of the Bank for International Settlements

Prof. Dr. Tobias Jaag, President,
John Cavanagh QC, Reporting Judge,
Prof. Dr. Abbo Junker, Panel Member,
Prof. Dr. Ramon Mabillard, Registrar,

X. _____,

applicant 1

Y. _____,

applicant 2

against

Bank for International Settlements, international organization with seat in Basel, represented by the General Counsel and the Assistant General Counsel,

respondent

regarding

Children's annuities upon early retirement.

As to the facts:

A.

Applicant 1 was born on [...] and commenced employment with the Respondent on 1 September 1984 as [...]. He held a number of posts in the employment of the Respondent, including [...].

The two-year fixed term of Applicant 1's post [...] was due to come to an end in September 2014. Applicant 1 could have worked on (in a different post) at the Respondent until he reached the compulsory retirement age of 66 in March 2018, but, instead, he reached agreement with the Respondent that he would take early retirement on 1 August 2014.

At the time of his early retirement, Applicant 1 was 62 years old. For those, including the Applicants, who were under 65 as at 1 October 2014, compulsory retirement age is 66

(Article 1.5 of the Regulations on the Pension System ("the Pensions Regulations") refers to the compulsory retirement age of 65, but this age has been increased to 66).

The agreement in relation to the terms of Applicant 1's early retirement was set out in a document which was signed on 21 January 2014 by the Deputy Secretary General, and the Head of Human Resources, on behalf of the Respondent, and was counter-signed on 7 February 2014 by Applicant 1.

Prior to this agreement being reached, Applicant 1 was engaged in detailed negotiations with the Respondent as regards the terms, including the financial terms, of his early retirement.

The terms of the early retirement agreement included that the Respondent would, on an exceptional basis, and without recognising any legal obligation, award Applicant 1 a lump sum payment of CHF [...] which he could, if he wished, use to purchase pension rights within the limits of Article 9 of the Pensions Regulations.

The early retirement agreement also included the following term:

"This agreement is offered by BIS without any admission of legal obligation by the Bank, and is in full and final settlement of all claims or rights of actions that you may have arising out of your employment by the BIS and its termination, but excluding any claims you might have to enforce this mutual separation agreement."

Applicant 1 has two children, a son born on [...] and a daughter born on [...]. Accordingly, at the date of his early retirement, Applicant 1's son was [...] years old and Applicant 1's daughter was [...] years old.

On 24 September 2014, Applicant 1 made a written request to the General Manager of the Respondent for payment of a child's annuity under Article 18.2 of the Pensions Regulations in respect of Applicant 1's daughter until she reached the age of 21. The request did not state specifically that if the request was rejected Applicant 1 would make a request for a decision by the Administrative Tribunal of the Bank for International Settlements ("the Tribunal").

On 16 December 2014, the General Manager of the Respondent replied, rejecting the application for payment of a child's annuity, on the basis that Article 18.2 of the Pensions Regulations applied only to those who retired at the compulsory retirement age, not to those who took early retirement.

B.

Applicant 2 was born on [...] and commenced employment with the Respondent on 1 November 1988. Throughout his career with the Respondent, Applicant 2 worked [...] and in July 2009 was appointed [...].

In late 2013/early 2014, the Respondent proposed a reorganisation [...] and, as part of the discussions relating to the proposed re-organisation, an offer of mutually agreed severance was made to Applicant 2.

The offer was made by the Respondent in a letter from the Secretary General, and the Head of Human Resources, dated 15 January 2014. Applicant 2 signified his acceptance of this offer by counter-signing the letter on 22 January 2014.

The terms of the mutually agreed severance agreement included that Applicant 2's employment with the Respondent would end on 30 September 2014, but that he would be released from his duties with effect from 1 April 2014.

It was also agreed that a lump sum severance payment would be made to Applicant 2, in the sum of CHF [...], calculated in accordance with a formula set out in the Respondent's Service Note 1067 ("Reorganisation and its Consequences"). Applicant 2 was informed that he had the right to apply an amount of the termination payment towards the purchase of additional pension rights, if he so wished, subject to limits laid down in Service Note 1067.

The mutually agreed severance agreement also included the following term (which was identical to the equivalent term in Applicant 1's early retirement agreement):

"This agreement is offered by BIS without any admission of legal obligation by the Bank, and is in full and final settlement of all claims or rights of actions that you may have arising out of your employment by the BIS and its termination, but excluding any claims you might have to enforce this mutual separation agreement."

Unlike the position in relation to Applicant 1, during the negotiations which led up to the mutually agreed severance agreement, Applicant 2 had raised with the Respondent the question whether he would have an entitlement to child's annuity payments, upon retirement. Applicant 2 had first raised the possibility of early retirement in 2012, when he attained the age of 60, and, in email correspondence with the Respondent's Human Resources Department in December 2012, Applicant 2 expressed the view that there was an entitlement to child's annuity payments under Article 18.2 of the Pensions Regulations. The Human Resources Department replied by email a few days later, expressing the contrary view, stating that child's annuity payments were only payable to those who took incapacity retirement or "normal" retirement, ie retirement at compulsory retirement age.

On 25 June 2014, Applicant 2 wrote by email to the Head of Human Resources, saying that he had reviewed the issue in more detail and had sought an external opinion, and remained of the view that Article 18.2 of the Pensions Regulations was applicable to him. The Head of Human Resources replied by email on 26 June 2014, reiterating the Respondent's position that Article 18.2 of the Pensions Regulations applied only to those who retired on incapacity grounds or those who retired at compulsory retirement age. The Head of Human Resources also pointed out that the Respondent's position had been made clear to Applicant 2 before Applicant 2 signed the mutually agreed severance agreement.

At the time of his mutually agreed severance on 30 September 2014, Applicant 2 was 61 years old.

Applicant 2 has two children, a son born on [...], and a daughter, born on [...]. Accordingly, at the date of his retirement from his employment at the Respondent, Applicant 2's son was [...] years old and Applicant 2's daughter was [...] years old.

On 24 November 2014, after his employment had ended, Applicant 2 made a written request to the General Manager of the Respondent for payment of children's annuities under Article 18.2 of the Pensions Regulations in respect of his two children. The request did not state specifically that if the request was rejected Applicant 2 would make a request for a decision by the Tribunal.

On 17 February 2015, the General Manager of the Respondent replied, rejecting the application for payment of children's annuities, on the basis that Article 18.2 of the Pensions Regulations applied only to those who retired at the compulsory retirement age, not to those who took early retirement.

C.

On 16 March 2015, the Applicants jointly filed an application with the Registrar of the Tribunal.

The application requested that the Tribunal:

1. Confirms that the Pensions Regulations indeed allow for payment of children's annuities to pensioners that retire ahead of the compulsory retirement age;
2. Overrules the decisions of the Respondent of 16 December 2014 (re Applicant 1) and 17 February 2015 (re Applicant 2) and instruct the Respondent to pay, on behalf of the Pension Fund, outstanding child's annuities regarding the daughter of Applicant 1 counting from 1 August 2014 and for Applicant 2 outstanding children's annuities for his son and daughter as from 1 October 2014.

On 25 March 2015, the President of the Tribunal, Prof. Dr. Dr. h.c. Jean-Marc Rapp appointed the members of the Panel which would deal with the application as follows: Presiding member, Prof. Dr. Tobias Jaag, Reporting Judge, Mr. John Cavanagh QC, and Member of the Panel, Prof. Dr. Abbo Junker.

On 21 May 2015, the Respondent filed its answer.

On 27 July 2015, the Applicants jointly filed a reply to the Respondent's written answer.

On 24 September 2015, the Respondent filed a rejoinder to the Applicants' reply.

Neither the Applicants nor the Respondent requested an oral hearing and there was no dispute between the parties as regards the relevant facts and the written evidence. In consequence, the Panel decided that an oral hearing was not necessary. It follows that this judgment is based upon the written submissions and written evidence of the parties, in accordance with Article VIII(3) of the Statute of the Administrative Tribunal of the Bank for International Settlements ("the Statute") and Article 18.1 of the Rules of Procedure of the Administrative Tribunal of the Bank for International Settlements ("the Rules of Procedure").

The Tribunal is grateful to the Applicants and the Respondent for their clear and helpful submissions.

As to the law:

1. Admissibility

The application is admissible, save to the extent that it seeks a declaratory remedy.

- a) Admissibility of pension-related disputes

The Administrative Tribunal was established pursuant to the Headquarters Agreement of 10 February 1987 (as amended on 1 January 2003) in order, inter alia, to settle disputes arising in matters of employment relations between the Respondent and its officials or former officials or persons claiming through them.

Under Article 4.2 of the Headquarters Agreement, matters of employment relations shall be deemed to include all questions relating to the interpretation or application of contracts between the Respondent and its officials concerning their employment, of the regulations to which the said contracts refer, and in particular of the provisions governing the Respondent's pension scheme and other welfare arrangements provided by the Respondent.

Since the questions in dispute relate to matters concerning entitlements under the Respondent's pension scheme, it follows that, in principle, and, in accordance with Article 4.2 of the Headquarters Agreement, the Tribunal has competence to rule upon them.

b) The Applicants' failure to notify the General Manager of the Respondent in writing of their intention to file an application

The application was filed within the time limit laid down by Article VII(1)(a) of the Statute, being received by the Registrar within 90 days of the Respondent's written rejection of the Applicants' requests for children's annuities. Applicant 1's request was rejected by letter dated 16 December 2014 and Applicant 2's request was rejected by letter dated 17 February 2015. The Applications were filed on 16 March 2015.

The Respondent points out that the Applicants have failed to comply with the requirement in Article VI(2)(d) of the Statute that they notify the General Manager in writing, within the 90-day time limit laid down in Article VII of the Statute, of their intention to file an application.

The Respondent is correct that this requirement has not been complied with. However, Article VI(2) of the Statute provides that applications may be admissible in exceptional circumstances at the discretion of the Tribunal even if the requirements in Article VI(2), including VI(2)(d) of the Statute have not been complied with.

The final sentence of the letters from the General Manager to the Applicants, in which their requests for children's annuities were rejected, stated as follows:

"This letter constitutes the communication referred to in paragraph 2(b) Article VI of the Statute of the Administrative Tribunal. An application against it can be filed with the Registrar of the ATBIS within 90 days of its receipt."

It is clear, therefore, that the senior management of the Respondent were aware that the Applicants might file an application with the Tribunal in relation to this matter, if their requests were rejected. Indeed, this form of words might reasonably have been understood by the Applicants to mean that the Respondent was waiving the obligation to notify the General Manager in writing in advance of filing applications to the Tribunal: the implication of this form of words is that the only formal requirement that the Applicants were required to comply with was to file their applications within 90 days of the rejection of their requests for children's annuities by the Respondent.

Moreover, in its answer, the Respondent makes clear that the Respondent does not invite the Tribunal to dismiss the applications on the ground of the Applicant's failure to comply with Article VI(2)(d) of the Statute.

The Tribunal takes the view that the foregoing means that exceptional circumstances exist in the present case to render the applications admissible notwithstanding the Applicants' failure to write to the General Manager to inform him of their intention to file applications with the Tribunal.

c) The Applicants' standing to complain of a failure to pay children's annuities

Article 18 of the Pensions Regulations provides that the child of an official of the Respondent who is a participant in the pension scheme will, in specified circumstances, become entitled to a child's annuity.

Article II(1) of the Statute provides that the Tribunal shall be competent to hear and determine any dispute in matters of employment relations arising between the Respondent and its officials or former officials or persons claiming through them. "Persons claiming through them" are defined in Article II(4) of the Statute to mean persons who by virtue of their relationship with such officials or former officials are entitled to benefits from the Respondent or under the Respondent's pension scheme and other welfare arrangements provided by the Respondent.

The Respondent submits that as any right to payment of a child's annuity would be vested in the child and not the Applicants, the Applicants have no standing to file the application in their own names. The Respondent submits that the application must be brought by or on behalf of the Applicants' children.

The Tribunal does not agree. Whilst it is the case that the child of a participant in the pension scheme would have standing to file an application in his/her own name, the former official himself or herself also has a direct interest, in these circumstances, such as to vest him/her with standing to make an application in his/her own right. Any rights enjoyed by a former official's children exist as a result of the former official's employment by the Respondent and participation in the pension scheme. Moreover, since, in most cases, where an issue relating to entitlement to a child's annuity arise, the child or children concerned will be minors, it is more appropriate that the application is filed and pursued by the parent, rather than the child.

It should be added that the Respondent did not invite the Tribunal to dismiss the Applicants' claims for lack of standing. As for Applicant 1, the Respondent indicated that the Respondent would have no objection to the application proceeding if Applicant 1 submitted suitable evidence of his authority to act on behalf of his daughter (who is over 18). Applicant 1 subsequently submitted a power of attorney signed by his daughter and dated 20 July 2015. As for Applicant 2, whose children are minors, the Respondent invited the Tribunal to proceed to deal with the application on the basis that Applicant 2 has brought the application on behalf of his two minor children.

In the premises, the Tribunal's ruling on this aspect of admissibility is that the Applicants have standing to file the applications on their own behalf and that these applications should be deemed to be applications on behalf of the Applicants themselves and also on behalf of the three children of the Applicants who are under the age of 21.

d) Admissibility of the Applicants' claim for declaratory relief

Article X(1) of the Statute provides that if the Tribunal finds that the application is well-founded the Tribunal may quash the decision contested and, if necessary, grant an appropriate remedy.

The Applicants have asked the Tribunal to quash the decisions of the General Manager about which they complain and also invite the Tribunal to grant a direct remedy consisting of an order requiring the Respondent to pay, on behalf of the Pension Fund, children's annuities regarding the daughter of Applicant 1 with effect from 1 August 2014, and regarding the two children of Applicant 2 with effect from 1 October 2014.

The above remedy is a remedy that is specific to the Applicants and which would give them complete satisfaction in relation to their complaint.

The Applicants have also invited the Tribunal to make a general declaration to the effect that the Pensions Regulations do indeed allow for payment of children's annuities to pensioners that retire ahead of the compulsory retirement age. This would be a declaratory remedy of general effect.

Regardless of the conclusions that are reached by the Tribunal on the substantive issue, it would not be appropriate to make a general declaration of this nature.

Where an Applicant has made an application for performance, i.e. an application for a remedy that is particular to him and which would provide him with complete satisfaction in relation to his complaint, it is not appropriate for the Tribunal also to make a general declaration. This principle (sometimes described as the principle of subsidiarity) was held to be the position by the Tribunal in its Judgments in ATBIS 1/1996 of 7 July 1997 and ATBIS 1/1998 of 28 June 2000, though in the latter case the Tribunal made clear that there may be cases to which the doctrine of subsidiarity does not apply and in which a declaratory remedy is appropriate, for example where there is a legitimate interest in an immediate declaration in relation to rights which have not yet crystallised.

2.

Has Applicant 2 waived his claim to children's annuities?

The Respondent submits that Applicant 2 should be barred from challenging the refusal to grant children's annuities, because he has signed a mutually agreed severance agreement which was in full and final settlement of all claims or rights of actions that he might have arising out of his employment by the Respondent and its termination, in circumstances in which it had previously been made clear to him that the Respondent's position was that his children were not entitled to children's annuities as a result of his early retirement. This agreement was signed before Applicant 2 filed his application with the Tribunal.

The Tribunal does not accept that Applicant 2 has waived his or his children's rights in relation to children's annuities, or is estopped from making the present application to the Tribunal, as a result of entering into the mutually agreed severance agreement with the Respondent.

The form of words that is used in the mutually agreed severance agreement refers to "full and final settlement of all rights of action that you may have arising out of your employment by the Respondent and its termination". This form of words does not cover disputes in relation to pension entitlements. Rather, this form of words applies to any outstanding claims that Applicant 2 might have had in relation to sums due to him for the services provided by him under his contract of employment, to any liability that the Respondent might have owed Applicant 2 in relation to matters arising during his employment, and to any liability that might have arisen as a result of the termination of Applicant 2's employment. However, the form of words used is not sufficiently clear and unequivocal that it can be interpreted also as debarring Applicant 2 from making an application to the Tribunal in relation to his or his family's pension entitlements.

This conclusion is reinforced by the fact that all that had happened in advance of the mutually agreed severance agreement is that each of the parties had stated its position in relation to the children's annuities issue, but no final resolution had been reached. The "full and final settlement" term in the mutually agreed severance agreement did not specifically refer to the children's annuities issue.

Accordingly, by agreeing to the mutually agreed severance agreement on the basis that it was in full and final settlement of all claims arising from his employment and the termination thereof, Applicant 2 was not waiving his right to make an application to the Tribunal in relation to his or his children's entitlements under the Pensions Regulations. No claims relating to the pension arrangements were included in the severance agreement.

The Tribunal further rejects the contention made in the Respondent's answer that to permit Applicant 2 to proceed with his application would jeopardise the finality of early retirement or any other compromise agreements between the Respondent and members of its staff. If the Respondent wishes to enter into a compromise agreement which extends to disputes relating to pension entitlements, then the point can be made explicitly in the compromise agreement.

Further and in any event, as the Respondent itself acknowledges, the right to a child's annuity is granted by the Pensions Regulations to the children of the staff member, not to the staff member himself or herself. It follows that even if Applicant 2 was barred from proceeding with this application by the settlement which he entered into with the Respondent, his children would not be barred, and the application would be able to proceed on the basis that Applicant 2 is acting on behalf of his children.

The Tribunal notes that the Respondent has not submitted that Applicant 1 is barred from proceeding with his application, even though Applicant 1 signed a compromise agreement in identical terms to Applicant 2. This is because Applicant 1 had not raised the issue of the child's annuity with the Respondent before signing his early retirement agreement, although the Respondent submits that Applicant 1 should not have been surprised to discover, after his retirement, that the Respondent takes the position that no child's annuity should be paid in respect of his daughter. There is an inconsistency in this position. If, contrary to the view that has been reached by the Tribunal, the form of words used in the compromise agreements acted as a bar to applications to the Tribunal in relation to pension entitlements, such a bar would have applied to both Applicants. The bar would not have depended upon whether the individual staff member had raised the particular issue with the Respondent in advance of the compromise agreement.

3.

The substantive issue

a) Introduction

The substantive issue concerns a question of interpretation of the Pensions Regulations, namely whether the right to a child's annuity applies to those who retire from the Respondent for reasons other than incapacity, before compulsory retirement age.

The relevant version of the Pensions Regulations is the version dated 1 October 1998, as revised on 1 April 2003, 1 October 2009, and 13 January 2014, read with the Transitional Rules dated 1 October 1998. The revisions of 2003, 2009 and 2014 are of no direct relevance to this case.

The Pensions Regulations were revised in October 2014. These revisions have no application to the Applicants and do not affect their entitlements.

b) Article 18 of the Pensions Regulations

The relevant parts of Article 18 of the Pensions Regulations, which is headed "Child's annuity", are as follows:

"1... In the event of the death of a participant, or of a former participant, each child of the deceased will be entitled to an annuity. The said annuity for each child will be equal to 15% of the last pensionable remuneration and 30% in the event of the death of both parents.

2. An annuity corresponding to 15% of the last pensionable remuneration for each child will also be paid to the children of former participants who are in receipt of an incapacity pension or a retirement pension... [Article 18.2 of the Pensions Regulations further states that the amount of the child's annuity for the children of those who are in receipt of a retirement pension may not exceed 25% of the minimum annual salary provided for in the salary structure of the Respondent, but this limitation does not apply to the Applicants. Article 5 of the 1998 Transitional Rules provides that, for those who were already participants in the Respondent's pension system prior to 1 October 1998, the equivalent limitation is 15% of the last pensionable remuneration for each child entitled to an annuity, subject to the overall limitation imposed by Article 18.5 of the Pensions Regulations.]

3. If a child is entitled to an annuity in respect of each parent, such annuities will be cumulated.

4. The child's annuity will terminate when the child reaches the age of 21 years....

5. The sum total of any children's annuities payable under the terms of the present Article and any pensions payable under the present regulations may not exceed the last pensionable remuneration of the participant or former participant concerned.

....."

The central question for determination by the Tribunal is whether the words "a retirement pension" in Article 18.2 of the Pensions Regulations refer only to a pension payable after retirement at compulsory retirement age, or whether they refer also to a pension payable after early retirement which has taken place before compulsory pension age.

c) The law that the Tribunal must apply

Article IX(1) of the Statute provides that the Tribunal shall apply the regulations established by the Respondent and the contracts concluded between the Respondent and its officials, and shall satisfy itself, if necessary, that such regulations and contracts are in conformity with general principles of law.

The regulations established by the Respondent include the Pensions Regulations.

Article IX(2) of the Statute provides that, in the absence of applicable rules, the Tribunal shall base its judgments on general principles of the law of the international civil service and, in cases of doubt, on general principles of Swiss law, whereby it is understood that neither judgments delivered by other international tribunals of the international civil service nor those of national courts shall be binding on the Tribunal.

Article IX(3) of the Statute provides that, in all cases, the Tribunal shall take into account the customs and practices of the Respondent.

d) Early retirement benefits under the Pensions Regulations

Before proceeding to consider the question of interpretation of Article 18.2 of the Pensions Regulations, it is convenient to summarise the rules relating to early retirement benefits under the Pensions Regulations.

A staff member does not need to apply for early retirement benefits: if the staff member qualifies, he or she will qualify automatically. The benefits are payable regardless of whether the early retirement is entirely voluntary or is effectively involuntary, for example if it is taking place because a reorganisation means that no suitable position is available for the staff member at the Respondent.

Different benefits are payable, depending upon the staff member's age and his or her length of service at the date of retirement.

For those who retire at compulsory retirement age, Article 10 of the Pensions Regulations provides that participants will be entitled to a retirement pension equal to 2.5% of their pensionable remuneration for each of the first 25 years of membership, and 1.25% of pensionable remuneration for each additional year, subject to a maximum of 75% of pensionable remuneration.

Staff members who leave the Respondent's service before having completed 10 years of service, and who are under the age of 65, are entitled to a lump sum indemnity in settlement of the entirety of their pension entitlement (Article 11.1 of the Pensions Regulations).

Staff members who leave the Respondent's service after having completed 10 or more years' service, and who are under the age of 50, will receive a lump sum indemnity in settlement of the entirety of their pension entitlement, unless they specifically notify the Respondent that they wish to opt for a deferred pension as provided for in Article 13 of the Pensions Regulations (Article 11(2) of the Pensions Regulations). The lump sum indemnity corresponds to the actuarial value of the participant's acquired pension rights at the time of leaving the Respondent's service (Article 11.4 of the Pensions Regulations).

If the participant opts for a deferred pension, the deferred pension will be paid from the former participant's 60th birthday. He or she may at any time before s/he reaches 60 change their mind and opt for lump sum indemnity in settlement of the entirety of their pension entitlement instead (Article 13 of the Pensions Regulations).

Staff members who leave the Respondent's service after having completed 10 or more years' service, and who are over the age of 50 but under the age of 60, will be admitted to early retirement as provided for in Article 14 of the Pensions Regulations, unless they request a lump sum indemnity of the entirety of their pension entitlement (Article 11.3 of the Pensions Regulations). They may alternatively defer their pension until they reach the age of 60 (Article 14.5 of the Pensions Regulations).

Any participant who retires over the age of 50 who does not convert the entirety of their pension to a lump sum indemnity may still convert a part of their entitlement into a lump sum indemnity (Article 12 of the Pensions Regulations). The proportion of his/her pension entitlement which can be converted into a lump sum in this way is set out in a table at Tariff B of the Pensions Regulations.

Staff members who leave the Respondent's service after having completed 10 or more years' service, and who are over the age of 60 but under compulsory retirement age, will be admitted to early retirement as provided for in Article 14 of the Pensions Regulations.

They do not have the option of a lump sum indemnity of the entirety of their pension entitlement (Article 11.3 of the Pensions Regulations).

Article 14 of the Pensions Regulations provides for the calculation of early retirement pension of those who have completed more than 10 years' service and who are aged between 50 and compulsory retirement age. The amount of the early retirement pension is calculated in accordance with Article 10 of the Pensions Regulations, but the sum is reduced in accordance with a table at Article 14.3 of the Pensions Regulations, by reference to the participant's age when the early retirement pension begins to be drawn. There is no reduction for those, like the Applicants, who retire at or over the age of 60: the retirement pension that they receive is the same as if they had retired at compulsory retirement age (save that their length of service will be shorter).

A decision to draw an early retirement pension is irrevocable once the first instalment has been paid (Article 14.6 of the Pensions Regulations).

4. Analysis

The starting point is that the words "a retirement pension" in Article 18.2 of the Pensions Regulations require interpretation.

a) There is no definition of "retirement pension" in the Pensions Regulations

The Pensions Regulations do not contain a list of definitions of words and phrases that are used in the Regulations, and, in particular, do not contain a definition of the phrase "retirement pension".

b) The meaning of "retirement pension" in other parts of the Pensions Regulations

The other provisions of the Pensions Regulations in which the phrase "retirement pension" has been used must be examined to see if any inference can be drawn about the meaning of the phrase in Article 18.2 of the Pensions Regulations. No such inference can be drawn, because there is no uniformity in the meaning ascribed to the phrase. Indeed, in all other instances in which the phrase has been used in the Pensions Regulations, and in contrast to Article 18.2 of the Pensions Regulations, the meaning is obvious from the context.

There are places in the Pensions Regulations at which the phrase "retirement pension" is plainly being used only to refer to the pension payable after retirement at compulsory pension age. This is the case, for example, in Article 10 of the Pensions Regulations, which deals with pensions upon retirement at compulsory retirement age. Article 10 of the Pensions Regulations is headed "Retirement Pension" (rather than, for example, "Compulsory Retirement Pension"), and the references to "retirement pension" in Article 10 of the Pensions Regulations are all plainly references to a pension payable upon retirement at compulsory retirement age. See, in particular, Article 10.1 of the Pensions Regulations ("Participants will be entitled, when they reach 65 years of age, to receive a retirement pension equal to..."), and Articles 10.4 and 5 of the Pensions Regulations.

Another example can be found at Article 15.5 of the Pensions Regulations. Article 15 of the Pensions Regulations deals with incapacity pensions, and states, at Article 15.5 of the Pensions Regulations, "When the recipient of an incapacity pension reaches 65 years of age, the incapacity pension will be replaced by a retirement pension calculated in accordance with Article 10 of these regulations..." It is clear from the context, and from the ref-

erence to Article 10 of the Pensions Regulations, that this is a reference to pension payable upon compulsory retirement.

The same applies to Article 16.2(a) of the Pensions Regulations, dealing with the pension entitlement of a surviving spouse, in which the reference to "retirement pension" is to "the retirement pension which the deceased would have obtained if he/she had been able to continue working at the Bank until the age of 65."

Also, there is one place within the Pensions Regulations at which the word "retirement pension" is plainly being used in contradistinction to "early retirement pension". See the table at Article 14 of the Pensions Regulations which contains the following heading: "Early retirement pension expressed as a percentage of the retirement pension". In this context, "retirement pension" clearly means, and only means, pension payable upon retirement at compulsory retirement age.

Still further, there are other places in the Pensions Regulations at which there is specific reference to "early retirement pension", which implies that this is treated in the Regulations as being a different concept from "retirement pension". See Articles 14.3, 14.5 and 14.6 of the Pensions Regulations.

All of the foregoing parts of the Pensions Regulations suggest that any reference to "retirement pension" is solely a reference to the pension payable upon retirement at compulsory retirement age.

However, the Pension Regulations are not wholly consistent in this regard. Article 12(1) of the Pensions Regulations uses the phrase "retirement pension" in a context which makes clear that the phrase is intended to cover both the pension payable upon retirement at compulsory retirement age and early retirement pension. Article 12.1 of the Pensions Regulations deals with the right to receive a lump sum indemnity in settlement of part the participant's pension entitlement, and this right applies not only to those who retire at compulsory retirement age but also to those who take early retirement at or after the age of 50.

It follows that no firm conclusions can be drawn by the meaning given to the phrase "retirement pension" in other parts of the Pensions Regulations: there is no consistency, and, in the other Articles of the Pensions Regulations in which the phrase is used, it is clear from the context what is meant by it. The same does not apply with the same clarity in Article 18.2 of the Pensions Regulations.

c) The purpose and intendment of the Pensions Regulations

It is not possible to draw any clear conclusion about the interpretation of Article 18.2 of the Pensions Regulations from the purpose and intendment of the Pensions Regulations.

On the one hand, as the Applicants point out, the underlying policy reason for the children's annuities is to provide financial assistance to those who are the children of former staff members who are no longer staff members and so who are no longer in receipt of a salary from the Respondent. It can be argued that this policy should apply to those whose parent happens to be under 65, just as much as it does to someone whose parent happens to be over 65.

Also, as, again, the Applicants point out, the Pensions Regulations provide that those who, like them, retire over the age of 60, are entitled to an unreduced pension (Article 14.3 of the Pensions Regulations). So, it may be argued, the Respondent is implicitly acknowledging that, at least so far as those who retire after the age of 60 are concerned,

their need for a financial “cushion” is just as great as for those who retire at compulsory retirement age.

Again, the Pensions Regulations do not differentiate between those whose early retirement is truly voluntary and those whose early retirement is, in practice, involuntary, because there is no suitable post for them to occupy at the Respondent. It might be argued that those who are, in effect, required to take compulsory early retirement should be treated no less favourably than those who are required to retire because they have reached compulsory retirement age. Additionally, it might be argued that the availability of children’s annuities in these circumstances would be helpful as a means of encouraging staff members to accept voluntary early retirement.

All of these are policy reasons why the right to children’s annuities might be extended to the children of those who take early retirement.

On the other hand, it is clear that the Pensions Regulations make different provision for those who retire at compulsory retirement age as compared to those who retire earlier. It is also the case that the benefits offered to those who retire at normal retirement age are, in general, more generous than for those who retire earlier. It would be consistent with this approach for the Pension Regulations to provide for children’s annuities for those who retire at compulsory retirement age, but not for those who retire earlier.

Moreover, an argument can be advanced (and has been advanced by the Respondent) to the effect that there are valid policy reasons for treating those who retire at compulsory retirement age more generously than those who retire earlier, so far as children’s annuities are concerned. These include that, in general, those who are beyond compulsory retirement age will find it more difficult to obtain new employment to support their family than those who are younger. Also, it may be assumed that the younger a former staff member is, the more likely it is that s/he has children. The right to an early retirement pension is available to all of those who take early retirement from the age of 50 onwards. If the Pension Fund is to provide children’s annuities to the children of all staff members who retire at the age of 50, rather than to the children of all staff members who retire at the age of 65, then the financial obligation that is being assumed will be of a completely different and far more onerous character.

There are, therefore, policy arguments for and against the extension of children’s annuities to those who take early retirement. Since there is no overwhelmingly strong policy argument one way or the other, the policy considerations do not provide any real assistance for the interpretation issue.

d) The “legislative history” of the Pensions Regulations

In contrast, the “legislative history” of the Pensions Regulations lends support to the conclusion that Article 18.2 of the Pensions Regulations does not apply to those who take early retirement.

The predecessor regulations to the 1998 Pensions Regulations were the 1992 Pensions Regulations. The 1992 Regulations were structured differently from the 1998 Regulations. They contained a section, Chapter II, section I, which dealt with benefits payable to those who retired at compulsory retirement age (referred to as “normal retirement age”) and a separate section, Chapter II, section II, which set out the benefits payable in the case of early retirement. The right to a child’s annuity was set out in Article 10, which was in section I. This provided for an annuity if the member of staff had died, or if the member of staff was incapacitated, or if the member of staff was in receipt of a retirement pension. It was absolutely clear from the arrangement of the 1992 Regulations into

sections, and also from Article 5 of the 1992 Regulations, that the reference in Article 10 to "retirement pension" was a reference only to the pension payable upon retirement at normal retirement age.

There was a reference to a child's annuity in section II of the 1992 Regulations, in Article 17, but this was payable only in the event of the death of a former member of staff belonging to the early retirement scheme. Under the 1992 Regulations, it was clear that there was no right to children's annuities for the children of those who retired early unless the former member of staff had died.

Accordingly, there was no room for doubt in the text of the 1992 Regulations: there was no right to a child's annuity where the former staff member had taken early retirement, unless the former staff member had taken incapacity retirement, or had died.

The same goes for the version of the Regulations which was in force before the 1992 Regulations, namely the 1984 Regulations. The same subdivision into sections applied to the 1984 Regulations, and Articles 5, 10, and 17 were the same as the equivalent Articles in the 1992 Regulations.

The significance of this for present purposes is that, though the 1998 Regulations had a different structure from the 1994 and 1992 Regulations, there was no suggestion in 1998 that the Bank was intending to make very significant changes to children's annuities. The main change that was announced was that the cap on children's annuities was to change, and was to become 25% of minimum salary. The Explanatory Note to the 1998 Regulations, Annex 608(D)(1), makes no mention of any other major intended changes to the provision for children's annuities, and nor does the power point presentation that was made to staff members about the pension changes. Accordingly, in 1998, the attention of staff members was drawn to a number of changes in the Pension Regulations but no suggestion was made that the rules relating to children's annuities were going to change (apart from in relation to the cap of 25% of minimum salary).

In light of the above, the "legislative history" lends strong support to the conclusion that the 1998 version of the Pensions Regulations was not intended to, and did not, amend the provision for children's annuities in the manner suggested by the Applicants.

e) The position relating to deferred pensions and relating to lump sum indemnities in settlement of the entirety of a staff member's pension entitlement

The extension of children's annuities to the children of those who take early retirement does not sit easily with the parts of the Pensions Regulations which provide for deferred pensions and for lump sum indemnities in settlement of the entirety of a staff member's pension entitlement.

If the Pension Regulations were intended to provide children's annuities for those who take early retirement, one would have expected to see further provision made to explain how this would apply to those who took deferred pensions or a full lump sum indemnity.

A person can take early retirement but not receive an immediate pension. The person might opt for a deferred pension under Article 13 of the Pensions Regulations, which would only come into payment at the age of 60. If children's annuities are payable to those who take an early retirement pension, how does this work for those who take a deferred pension? Are they entitled to a children's annuity between the ages of 50 and 60, or are they only entitled to a children's annuity after they reach the age of 60? The Pension Regulations do not say.

Again, a person who is over 50 might qualify for an early retirement pension under Article 14 of the Pensions Regulations but might instead choose to take payment of a lump sum indemnity of the entirety of their pension entitlement (Article 11.3 of the Pensions Regulations). If they did so, would their children each still qualify for a child's annuity? Again, the Pensions Regulations do not say.

There would be nothing inherently illogical in the Pensions Regulations if they provided that children's annuities were payable to the dependent children of those who took early retirement and who received a deferred rather than an immediate pension. The children's annuities are payable to the children, rather than the former member of staff. However, the fact that the Pension Regulations do not expressly state whether children's annuities are payable to the children of those who take early retirement and become entitled to a deferred pension, or to the children of those who receive a lump sum indemnity rather than a pension, lends some support for the conclusion that Article 18.2 of the Pensions Regulations does not apply to those who take early retirement.

f) Articles 17.4 and 5 of the Pensions Regulations

These Articles provide for special circumstances in which a child's annuity which would otherwise have been payable will not become payable. These are where the former participant had married over the age of 65 and had died within two years of marriage, and where the former participant had married under the age of 65 if there is evidence that he or she knew that he/she was suffering from a life-threatening illness and when the marriage took place, and the former participant then died within two years. If these conditions apply, the surviving spouse will also forfeit the right to a surviving spouse's pension.

These provisions are neutral as regards the interpretation of Article 18.2 of the Pensions Regulations. They would make sense, and would fit into the overall structure, whether the words "retirement pension" in Article 18.2 of the Pensions Regulations mean only a pension for a staff member who retires at compulsory retirement age, or whether the words also cover an early retirement pension.

g) Article 24 of the Pensions Regulations

Article 24 of the Pensions Regulations provides as follows:

"Interpretation

Participants and other beneficiaries will have no claim to benefits other than those which are expressly mentioned in the present regulations, the provisions of which may not be given an extensive interpretation."

There are two aspects to Article 24 of the Pensions Regulations. First, Article 24 of the Pensions Regulations means that it is not possible to infer the existence of pension benefits that are not expressly mentioned, for example by analogy. This is of no direct relevance to the present issue as the present issue concerns the scope and meaning of a benefit that is expressly granted by the Regulations.

The second aspect to Article 24 of the Pensions Regulations is that the provisions of the Pensions Regulations "may not be given an extensive interpretation." This aspect of Article 24 of the Pensions Regulations does not mean that, in any case in which there is a question of interpretation of a provision of the Pensions Regulations, the answer, inevitably, must be that the most restrictive interpretation should be adopted. Put another way, this aspect of Article 24 of the Pensions Regulations does not mean that the Tribunal is

deprived of its obligation to interpret the provisions of the Pensions Regulations. The function of the Tribunal, in a pensions case, is to make use of appropriate principles of interpretation in order to identify the true meaning and effect of the Pensions Regulations. It will only be in a case in which the application of the appropriate principles of interpretation does not provide an answer that Article 24 of the Pensions Regulations will operate so as to direct the Tribunal towards the correct interpretation. Accordingly, the relevant part of Article 24 of the Pensions Regulations has two consequences. These are, first, that it should not be assumed that, wherever there is a question of interpretation, the most extensive interpretation and that which is most favourable to the Applicant should be adopted; and, second, if the application of normal principles of interpretation does not produce an answer to a question of interpretation, the Tribunal should, as a last resort, adopt the more restrictive of the competing potential interpretations.

In the present case, the Tribunal has been able to obtain an answer to the question in this case by the application of normal principles of interpretation and so has not needed to resort to Article 24 of the Pensions Regulations as an aid to interpretation.

h) Custom and practice

As stated above, Article IX(3) of the Statutes provides that, in all cases, the Tribunal shall take into account the customs and practices of the Respondent.

The Respondent points out that the Respondent has never in practice made payment of children's annuities to the children of those who have taken early retirement. Such payments have only ever been made to the children of those who retired at compulsory retirement age, who retired on incapacity grounds, or who have died.

If the Tribunal had otherwise taken the view that Article 18.2 of the Pensions Regulations, on a proper interpretation, applies to the children of those who have taken early retirement, the Tribunal would not have been deterred in its conclusion by the fact that, until now, the Respondent had not paid children's annuities to the children of those who are in receipt of early retirement pensions. If the Respondent (or the Pension Fund) had engaged in a custom and practice which was the result of a mistaken view of the obligations imposed by Article 18.2 of the Pensions Regulations, this custom and practice would not override the true meaning of the relevant provision. Put another way, the Respondent cannot justify a failure to apply Regulations correctly on the basis that it has acted on the basis of its mistaken understanding for many years.

i) The position since October 2014

The new version of the Pension Regulations, which was introduced in 2014, sets out new rules for child annuities. Such annuities will, in future, not be paid to the children of any staff members who retire (whether at compulsory retirement age or at any other age), unless they are retiring on incapacity grounds.

This can have no relevance to the interpretation of the 1998 version of the Pensions Regulations. The 2014 Regulations do not purport to have retrospective effect.

j) Swiss law

The Swiss Federal Supreme Court has ruled that, under the Swiss Federal Act on Occupational Retirement, Survivors' and Disability Pension Plans (BVG) of 25 June 1982, child annuities are payable to those who take early retirement (Judgment B7/07, of 28 August 2007, Official Court Reports BGE 133 V 575).

The Tribunal does not regard the position under Swiss law as being relevant or determinative for the issue under consideration. The question before the Tribunal concerns the proper interpretation of a provision of the Respondent's Pensions Regulations. The conclusion that was reached by the Swiss Federal Court in relation to Swiss legislation is of no relevance to this question, even though the Swiss legislation also concerned children's annuities.

The Tribunal bears in mind Article IX(2) of the Statute which provides that, in the absence of applicable rules, the Tribunal shall base its judgments on general principles of the law of the international civil service and, in cases of doubt, on general principles of Swiss law. However, in the present case there are applicable rules, albeit somewhat ambiguous, and, in any event, the ruling of the Swiss Federal Court upon a specific question of statutory interpretation of Swiss law cannot be characterised as a "general principle of Swiss law".

The Tribunal also notes Article 21 of the Pensions Regulations, which provides as follows:

"Equivalent coverage

1. The benefits of the Pensions System will in general be at least equivalent to those provided by the Swiss legislation regarding old age and surviving dependents insurance (AHV) in combination with the compulsory provisions of the Swiss law on occupational pension schemes for old age, surviving dependants and incapacity (BVG). The bank will from time to time commission a comparative analysis by external actuaries to verify that this equivalence is maintained.

2. The Bank will, if necessary, top up the benefits paid out in accordance with these regulations in individual cases so as to ensure that equivalent coverage is maintained."

The Tribunal does not interpret Article 21 of the Pensions Regulations to mean that each individual aspect of the pension provision must be at least equivalent to the comparable aspect of the BVG, and the Applicants have not suggested that this is how Article 21 of the Pensions Regulations should be interpreted.

In this regard, it is relevant that Article 11.1 of the Headquarters Agreement states that:

"1. The Bank in its capacity as an employer, shall not be subject to Swiss legislation regarding old-age and surviving- dependants insurance, incapacity insurance, unemployment insurance, the compensation for loss of income scheme, and compulsory provision of occupational pension schemes for old age, surviving relatives and incapacity."

This Article makes clear that it is not the intention of the Pension Regulations to make exactly equivalent provision for the Respondent's staff members as is made for citizens of Switzerland who do not work for the Respondent.

k) The rules that apply to other International Organisations

The Applicants point out that some other International Organisations, including the UN and CERN, make provision for child benefits or child allowances which are the same for the children of those who take early retirement as they are for those who retire at compulsory retirement age.

The Tribunal does not regard this as a matter of any significance for the purposes of the present application. The outcome of this matter depends upon the proper interpretation of Article 18.2 of the Respondent's Pensions Regulations and the terms of the pensions

regulations relating to other international organisations cannot have any relevance to this question of interpretation.

l) Equal treatment

The Applicants say that it would be wrong to interpret Article 18.2 of the Pensions Regulations in such a way that it applies only to those who have retired at compulsory retirement age because this would amount to age discrimination against younger former staff members.

The Tribunal accepts that the principle of equality and of the prohibition of discrimination are part of the general principles of law which the Tribunal must apply.

The position has helpfully been set out by the Tribunal in ATBIS 1/1998 of 28 June 2000, as follows:

"Nevertheless, the principle of equality or the prohibition of discrimination is acknowledged to be a general principle of law within the meaning of Article 9 of the Statute and Article 26 of the Rules of Procedure in international public law generally and in international civil service law in particular (see C F Amerasinghe, *The Law of the International Civil Service*, 2nd ed, Oxford 1994, vol 1 (Chapter 22 Discrimination and Inequality of Treatment, pp 313 ff)). This is also how international administrative tribunals have ruled, especially on the question of ex-patriation allowances (judgments of the Administrative Tribunal of the International Labour Organization of 8 July 1997, No 1866, and 10 July 1999, No 1874). Furthermore, Article 38 of the Statute of the International Court of Justice in The Hague describes generally accepted legal principles as sources of international law. Court decisions and legal doctrine number the prohibition of discrimination among them (Wengler, *Völkerrecht* [international law], p 1028). The defendant itself in its memoranda explicitly acknowledged the justification of the principle of equality and the prohibition of discrimination for itself as an international organisation. "In a material respect, it must be acknowledged that the defendant, as an employer, is obliged to observe the basic principle of equal treatment. This basic principle is a fundamental element of any civilised system of laws and belongs to the universally accepted bases of international public law ... The defendant has never disputed that it is bound by the principle of equal treatment; on the contrary, it has lived up to this principle since the time of its founding" (defence answer of 30 April 1999, p 13, subsection 31).

However, the principle of equality and the prohibition of discrimination, like almost all fundamental rights, are not absolute or unrestricted. Not all inequalities of treatment represent an inadmissible infringement of the general principle of equality, but only those that are not founded on objective grounds; this was rightly emphasised by the defendant in its memoranda (defence answer of 30 April 1999, p 13, subsection 32). "In the doctrine a distinction is made between absolute and relative equality. The general principle of equality is satisfied if an objectively plausible reason for the legal differentiation can be adduced, whereas the strict principle of equality admits differentiation only if there is a compelling reason for it. As suggested, the principle of equality requires that equal be treated equally and unequal unequally (BGE 106 Ib 188, 104 Ia 295, 103 Ia 519, 102 Ia 43). If there are no significant actual differences, differentiation under the law is not permitted. Given significant actual differences, unequal treatment under the law is not only allowed, but even mandatory" (Arthur Haefliger, *Alle Schweizer sind vor dem Gesetze gleich* [all Swiss are equal before the law], Berne 1985, pp 57-8). The same is true for the European Court of Human Rights in the area of application of Article 14 ECHR: "La différence de traitement ne devient une discrimination prohibée au sens de l'art. 14 que lorsque l'autorité introduit des distinctions entre des situations analogues ou comparables, sans que des distinctions puissent se fonder sur une justification objective et rai-

sonnable" (Jacques Velu and Rusen Ergec, *La convention européenne des droits de l'homme* [the European Convention on Human Rights], Brussels 1990, p 117, item 146 with references)."

This Panel of the Tribunal respectfully adopts the review of the legal principles given by the Tribunal in ATBIS 1/1998.

Applying those principles to the present case, the difference in treatment between the children of those who retired at compulsory retirement age and those who retired early is capable of objective justification. In particular, it is justified to treat more favourably, in financial terms, those who retire at age 65 or 66 as compared to those who retired at a younger age, not least because those who retired at a younger age have a better prospect of obtaining alternative paid employment, if that is what they wish. It is a common feature of pension schemes that those who retire at compulsory retirement age are treated better, financially speaking, than those who retire at a younger age. It could not realistically be argued that such treatment offends against the principle of equality. The position in relation to children's annuities in the Respondent's Pensions Regulations is just an example of this principle in action. Different situations can be treated differently.

m) The financial impact upon the Respondent's pension system if children's annuities are payable to the children of those who take early retirement

As stated above, the Respondent has proceeded, until now, on the assumption that children's annuities are not payable to the children of those staff members who take early retirement. It follows that if the Applicants' arguments were to succeed, this would impose a substantial and unanticipated financial burden on the Pension Fund.

In the event, in light of the ruling of the Tribunal on this matter, this issue does not arise. However, if the Tribunal had taken the view that the correct interpretation of Article 18.2 of the Pensions Regulations was that children's annuities are payable to the children of those who have taken early retirement, the Tribunal's view would not have been altered by the potential financial consequences. The fact that a particular outcome would have adverse financial consequences for the Pension Fund should not deter the Tribunal from applying the Pension Regulations in accordance with the interpretation which the Tribunal considers to be the correct interpretation.

n) The generosity of the Respondent

The Applicants mention that the Respondent has, on the whole, a very generous pension system. The Applicants do not suggest, however, that this should affect the interpretation to be applied to Article 18 of the Pensions Regulations. For the avoidance of doubt, the Tribunal agrees: the Tribunal does not consider that this is of any relevance to the issue of interpretation.

o) Are those who take early retirement over the age of 60 in a special position?

The Applicants have suggested that, even if the position is, in general, that the children of those who take early retirement do not qualify for children's annuities, an exception should be made for those who retire at or over the age of 60. The retirement pension of such persons is calculated on the same basis as it would have been if they had retired at compulsory retirement age (Article 14.3 of the Pensions Regulations) and so, by analogy, it is suggested, their children should qualify for children's annuities in the same way as the children of those who retired at compulsory retirement age.

This argument cannot be accepted. There is no suggestion in Article 18 of the Pensions Regulations that the children of those who have taken early retirement at age 60 or above are in a different position, as regards children's annuities, as the children of those who have retired at age below 60. It does not follow from the fact that those who retire at 60 or above receive the same retirement pensions as those who retire at compulsory retirement age that the position in relation to children's annuities should be the same. As regards the scope of the right to children's annuities, there are two possibilities, either such annuities are available to the children of all those who receive a retirement pension, regardless of the age at retirement, or such annuities are available only to the children of those who receive a pension upon retirement at compulsory retirement age. For the reasons set out above, the Tribunal has concluded that the latter is the correct answer.

5.

Conclusion as to the law: The right to a child's annuity applies only to the children of staff members who retire at the compulsory retirement age.

Applying the appropriate principles of interpretation, the Tribunal concludes that the correct interpretation of Article 18.2 of the Pensions Regulations is that only the children of staff members who retire and take a pension at the compulsory retirement age qualify for a child's annuity. This gives a meaning to the phrase "a retirement pension" in Article 18.2 of the Pensions Regulations which is consistent with the meaning given to the same phrase in most of the other places in which the phrase appears in the Pension Regulations; such an interpretation explains why the Pension Regulations do not go on to spell out whether or not the right to a child's annuity extends to the children of those who take a deferred pension or a lump sum indemnity, rather than an immediate pension; and, perhaps most significantly, such an interpretation is consistent with the "legislative history" of the Pensions Regulations, as earlier versions of the Regulations made clear that the right to a child's annuity was triggered only by retirement at compulsory retirement age and no suggestion was ever made that the revisions to the Pensions Regulations in 1998 were intended to, or did, amend the provision for children's annuities in the manner suggested by the Applicants.

In view of the foregoing, the Tribunal finds:

1.

The application is dismissed.

2.

The Respondent bears the costs incurred by the Tribunal for this proceeding.

3.

Each party bears its own costs.

Basel, 28 January 2016

President:

Registrar:

Prof. Dr. Tobias Jaag

Prof. Dr. Ramon Mabillard