



**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2010-081



**Ihekwaba  
(Appellant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT**

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Before:	Judge Rose Boyko, Presiding Judge Kamaljit Singh Garewal Judge Inés Weinberg de Roca
Judgment No.:	2010-UNAT-083
Date:	27 October 2010
Registrar:	Weicheng Lin

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Counsel for Appellant: Barbara Lew

Counsel for Respondent: Cristián Gimenez Corte

**JUDGE ROSE BOYKO**, Presiding.

### **Synopsis**

1. Rita Ihekwa (Ihekwa) challenges the calculation of her income following her promotion and argues that her gross income cannot be reduced upon a promotion. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) reviewed the relevant instruments and found no error in her income calculation. Ihekwa does not disagree that the calculation of her income was made according to the provisional Staff Rules, but appeals on the ground that the administrative policy in place should be changed because in her situation she was promoted but her gross income was reduced. We note however that her pay calculations also took into account other deductions and increases such that her net income actually increased.

2. We find no error with the UNDT decision and dismiss the appeal.

### **Facts and Procedure**

3. Ihekwa joined the United Nations in 1994 as a General Service staff member in the Department for General Assembly and Conference Management (DGACM). In July 2008, Ihekwa passed the 2007 competitive examination for English copy preparers/proofreaders/production editors and was placed on a roster of qualified candidates for future vacancies for Professional posts. On 2 November 2009, Ihekwa was selected as an Associate Editor at the P-2 level in the Treaty Section of the Office of Legal Affairs. In accordance with Information Circular ST/IC/2007/24, Ihekwa was selected for a trial period of two years and she received a Special Post Allowance (SPA) from the G-7 level, step X, to the P-2 level, step I.

4. In November 2009, Ihekwa submitted a request for management evaluation in which she contested the reduction of her gross annual income as a result of the calculation of her SPA. The management evaluation concluded that the determination of the SPA was made in accordance with the applicable rules. On 1 February 2010, Ihekwa filed an application with the Dispute Tribunal.

5. On 18 March 2010, the Dispute Tribunal issued Judgment No. UNDT/2010/043, which dismissed Ihekwa's application. The Dispute Tribunal found that the application

was receivable as the decision regarding the SPA constituted an administrative decision affecting Ihekwaba's contractual right to proper remuneration. The Dispute Tribunal found that Ihekwaba's contention that her gross income could not be reduced as a result of being placed on an SPA was not supported by any regulation, rule, or administrative instruction. The determination of Ihekwaba's step at the P-2 level and the calculation of her SPA were based on her net base salary at the G-7 level, step X, in accordance with provisional Staff Rules 3.4(b) and 3.10(d). Ihekwaba's net base salary increased under the SPA. With respect to Ihekwaba's assertion that she was informed in 2004 by an officer of the Office of Human Resources Management (OHRM) that a promotion-related salary recalculation should not lead to a reduction in gross or net income, the Dispute Tribunal found that this conversation took place before Ihekwaba passed the examination and was selected for the post as Associate Editor. The Dispute Tribunal also found that Ihekwaba was unable to establish that the basis for the calculation of her salary was discriminatory against G-7 level staff or otherwise improper.

6. Ihekwaba filed an appeal against the Dispute Tribunal's Judgment on 15 April 2010. After receiving the appeal from the Registry on 19 April 2010, the Secretary-General filed an answer to the appeal on 3 June 2010.

### **Submissions**

#### **Ihekwaba's Appeal**

7. Ihekwaba seeks to introduce new evidence before the Appeals Tribunal in support of her assertion that it is contrary to the policy of OHRM for a staff member's gross or net income to be reduced upon his or her assumption of a higher-level function. She argues that Form P.269, entitled "Computation sheet for salary on promotion or special post allowance from the General Service to the Professional category" should not have been used in her case as the calculation of her SPA resulted in a lower gross income.

8. Ihekwaba submits that there is an underlying assumption in the United Nations system that an "increase in net income follows an increase in gross income". Form P.269 is flawed as it does not lead to an increase in gross income on promotion or SPA for higher level G-7 staff, such as her.

9. Ihekweba contends that the reduction of her gross income represents a demotion. Ihekweba submits that “gross income is one’s actual income at any workplace” and it is unconscionable, unfair and discriminatory for a staff member who has worked hard to reach the top of the General Service ladder only to find his or her gross income reduced as a result of the flawed Form P.269.

10. Ihekweba requests that the Appeals Tribunal retroactively recalculate her gross/net income from 2 November 2009 so that it is higher than her previous gross salary and declare that Form P.269 is flawed “as it pertains to staff entering the P-level from the higher steps on General Service level 7”.

**Secretary-General’s Answer**

11. The Secretary-General submits that the Dispute Tribunal correctly determined that the calculation of Ihekweba’s SPA was in accordance with the applicable rules, and that Ihekweba has not identified any error that would require a reversal of the Dispute Tribunal’s determination.

12. The Secretary-General contends that Ihekweba does not have a right to maintain her gross income upon her assignment to her Professional post. There is no basis for such a right under the Staff Rules and related administrative issuances. Provisional Staff Rule 3.4(b) establishes that, upon promotion, a staff member has the right to an increase in his or her net base salary. The fact that some General Service staff members at a lower level than Ihekweba may receive a larger salary increase upon promotion to the Professional category does not amount to unfair treatment or violate provisional Staff Rule 3.4(b). If it were accepted that staff entering the Professional category from the higher steps of the G-7 level should be allowed to maintain the same gross salary, this would effectively create two classes of General Service staff. The Dispute Tribunal has recognized that this outcome would be unfair.

13. The Secretary-General submits that Ihekweba is mistaken in asserting that the calculation of her SPA using Form P.269 was flawed. In essence, Ihekweba disagrees with the Organization’s policies concerning promotion. The Staff Rules reflect the policy that a staff member is entitled to receive only a higher net base salary upon promotion. This policy choice is eminently reasonable and within the prerogative of the Secretary-General. The

Secretary-General argues that the Dispute Tribunal correctly declined to substitute its own judgment for his in determining the appropriate policy for implementing promotions.

14. The Secretary-General contends that Ihekweba is mistaken in claiming that OHRM has acknowledged that a promotion should result in an increase in gross salary. The new evidence which Ihekweba seeks to adduce before the Appeals Tribunal does not support this claim.

15. The Secretary-General requests that the Appeals Tribunal make a number of findings and dismiss the appeal in its entirety.

### **Considerations**

16. Ihekweba tenders as additional evidence under Article 2(5) of the Statute of the Appeals Tribunal excerpts from her personnel file relating to her pay status but not specifically to the calculation of her SPA for the post of Associate Editor. She asserts that the OHRM policy is to the effect that her gross income cannot be reduced upon a promotion. This evidence would have been available to her at the time of her UNDT hearing and she gives no reason why it was not produced at that time. We nevertheless observe that this evidence would be of no assistance to Ihekweba in her appeal.

17. Ihekweba does not challenge the reasoning of the UNDT in the Judgment, but appeals on the ground that the administrative policy in place should be changed because in her situation she was promoted but her gross income was reduced. We note however that her pay calculations also took into account other deductions and increases such that her net income increased.

18. The real issue before this Tribunal is whether the UNDT made a reversible error in fact or law such that this Tribunal as the reviewing court must allow the appeal. Ihekweba does not disagree that on its face the calculations of her salary were made according to the provisional Staff Rules. This is what the UNDT held and we find no error with this decision. For these reasons the appeal is dismissed.

**Judgment**

19. This Tribunal finds that no reversible error was made by the UNDT. The appeal is dismissed.

Dated this 27<sup>th</sup> day of October 2010 in New York, United States.

Original and authoritative version: English

*(Signed)*

Judge Boyko, Presiding

*(Signed)*

Judge Garewal

*(Signed)*

Judge Weinberg de Roca

Entered in the Register on this 29<sup>th</sup> day of December 2010 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar