



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

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Judgment No. 2020-UNAT-1037

**Frehiwot Yabowork  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Martha Halfeld, Presiding Judge Graeme Colgan Judge Kanwaldeep Sandhu
Case No.:	2020-1353
Date:	26 June 2020
Registrar:	Weicheng Lin

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Counsel for Ms. Yabowork:	Self-represented
Counsel for Secretary-General:	Francesca Lagos Pola

**JUDGE MARTHA HALFELD, PRESIDING.**

1. Ms. Frehiwot Yabowork, a permanent staff member at the G-7 level serving as a Senior Human Resources Assistant at the United Nations Economic Commission for Africa (ECA) filed an application before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) contesting the discontinuation of her Special Post Allowance (SPA) as from 1 September 2010. She requested reinstatement of SPA at the P-2 level or, alternatively, classification of her post, as well as compensation for moral damages in the amount of two years' salary. The UNDT dismissed her claims. Ms. Yabowork has appealed. On appeal, even though for different reasons, we dismiss the appeal.

**Facts and Procedure**

2. The UNDT established the following facts:<sup>1</sup>

... The Applicant entered the service of the ECA on 15 May 1989, as a Junior Research Assistant at the G-4 level. On 1 August 2004, she was promoted to the G-7 level as a Senior Human Resources Assistant.

... On 1 December 2004, she was designated as Certifying Officer and Team Leader in the Staff Services Unit (SSU) within the Human Resources Services Section (HRSS). These duties had hitherto been carried out by the then Human Resources Officer (HRO) and Team Leader, who was at the P-4 level. The P-4 HRO went on prolonged sick leave and was subsequently transferred elsewhere out of the duty station.

... The Applicant was thus afforded certifying authority for all human resources related entitlements. In recognition of her performance at the higher level, the Applicant was paid Special Post Allowance (SPA) at the P-2 level covering the period 1 December 2004 through 31 August 2010. During this period, the Applicant served under five different Chiefs and Officers-in Charge of HRSS and three successive Directors of Administration (DOA).

... On 10 September 2010, the OIC HRSS and Chief/SSU informed the Applicant and her colleague that the payment of their SPA would be discontinued.

I am writing to advise you that as both P2 positions in HRSS are now filled and candidates have reported to duty, your SPA's are hereby discontinued effective 1 September 2010.

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<sup>1</sup> Impugned Judgment, paras. 3-21 and 23-48 (internal footnotes omitted).

... They made no mention of the higher-level functions and who these would be assigned to, so both the Applicant and her colleague assumed that those functions were being withdrawn from them.

... On 21 September 2010 and 10 January 2011, the Applicant's colleague responded to the Chief/SSU and OIC/HRSS requesting that SPA be paid or, in the alternative, that the higher-level functions that they had been performing be discontinued. They received no reply.

... On 21 December 2010, the DOA wrote to the Applicant designating her as Certifying Officer for 2011. The Applicant received this memo on 2 February 2011 and continued to perform the higher-level functions she was previously assigned. SPA payment was not restored.

... On 4 February 2011, the Applicant wrote to the DOA acknowledging receipt of the delegation of authority as certifying officer and requested that the SPA be reinstated. The DOA forwarded the email to the Chief/HRSS[.]. There was no response.

... On 25 July 2012, the Applicant wrote to the Chief/HRSS and OIC/SSU with the same request. She copied the DOA and ECA Senior Management. She had, on the same day, been verbally informed that her request for SPA dated 4 February 2011 had not been approved. She did not receive a reply to this email either.

... On 28 August 2012, the Applicant filed for management evaluation. The Management Evaluation Unit (MEU) communicated through Counsel for the Applicant and recommended that HRSS and the Applicant seek a classification review by the Office of Human Resources Management (OHRM) in New York.

... There was correspondence between Counsel for the Applicant and MEU on the classification in October 2012, and MEU reiterated that classification was the way forward.

... On 4 December 2012, the Chief MEU wrote to the Applicant. MEU determined that the Applicant's request for management evaluation entailed a question of classification of the functions she was performing and recommended that a classification of the post be undertaken pursuant to ST/AI/1998/9 (System for the classification of posts).

... The Applicant and her colleague met the Chief/HRSS on 24 December 2012 and suggested mediation. He refused and said that he would rather pursue the classification option.

... On 31 December 2012, the Applicant wrote to MEU and expressed concern that the classification process would be impeded by hurdles at the drafting and signature stages. MEU responded on 23 January 2013 that they would consider the decision on its merits should it come before them.

... On 1 February 2013, the Applicant and her colleague submitted a draft classification document to the Chief/SSU by email.

... On 4 June 2013, the Chief/SSU asked the Applicant and her colleague for clarification on the contents of the draft submitted in February.

... On 8 June 2013, the Applicant and her colleague submitted a detailed clarification with the relevant supporting documents. They copied the DOA and the Chief/HRSS and other relevant colleagues on the email.

... On 13 September 2013, the classification document was finalized and signed by the Applicant, her colleague and her FRO.

... The document was sent to OHRM/NY by the Chief/HRSS with a cover memo on 21 October 2013 requesting classification on the basis of MEU's recommendation. He did not, however, append his signature to the classification document itself.

... ..

... In February 2014, the Applicant and her colleague were asked by the Chief/SSU to provide clarifications sought by OHRM. They did so promptly.

... In December 2014, the Chief/HRSS met with the Applicant and her colleague and suggested mediation through the Ombudsman. He informed them that the classification outcome found the functions to be at the P-4 level. He told them he did not wish to pursue classification and sign the document and would rather have the dispute mediated.

... In January 2015, the then Chief/HRSS left ECA for a different posting. A new Chief/HRSS was appointed in February 2015.

... In April 2015, the new Chief/HRSS told the Applicant that he would like the FRO and the Applicant to redraft the classification document.

... On 8 June 2015, the Applicant, her colleague and an HR Officer were called to a meeting with the Chief/HRSS. They were informed that a classification request had not been submitted to OHRM. He asked that a new classification document be drafted by the FRO. The Applicant and her colleague informed the new Chief/HRSS that not only was there evidence of submission of a classification request, the former Chief/HRSS had even informed them of the outcome before he left.

... The Applicant and her colleague wrote to OHRM on 26 June 2015. They referred to the classification request of 21 October 2013 and asked that it be finalised.

... On 2 September 2015, the Applicant wrote to OHRM to follow-up on their previous request and on 16 September 2015, OHRM informed the Applicant and her colleague that it would be responding to ECA shortly.

... On 21 October 2015, the Applicant wrote to OHRM on the same matter. OHRM responded that they were waiting for a completed classification document from the Chief/HRSS; as his signature was missing from the request.

... On 27 October 2015, the Chief/HRSS wrote to OHRM and informed them that the classification process was on hold as HRSS was proposing an ‘internal resolution’.

... This again surprised the Applicant because the Chief/HRSS had, on 8 June 2015, asked that the classification document be redrafted.

... On 21 January 2016, the Applicant wrote to OHRM for clarification on the status of the classification. There was no movement on the informal resolution that was purportedly being pursued.

... The Chief/HRSS responded on 22 January 2016. He said that a proposal had been submitted to ECA Administration in November 2015.

... On 25 January 2016, the Applicant wrote to the Chief/HRSS and asked that the details requested by OHRM be provided by 31 January 2016. She also received a verbal assurance on the informal settlement.

... On 10 March 2016, the Chief/HRSS wrote to the Applicant and her colleague to inform them that ECA had withdrawn and cancelled the request for classification because there was a substantive error in the description of duties. He asked their FRO to redraft the classification document.

... On 9 May 2016, the Applicant sought management evaluation of the decision to withdraw and cancel the classification, which was pending before OHRM because of the absence of the (then) Chief/HRSS’ signature.

... On 10 June 2016, the Applicant’s FRO sent her a new classification document and asked that she review and sign it.

... On 5 July 2016, the Applicant responded to her FRO and copied MEU. The Applicant declined the invitation to sign the new classification document, provided reasons for so doing, and informed the FRO that she had submitted a request for management evaluation to challenge the decision of 10 March 2016.

... There is on record a HRSS/SSU Task Allocation document, which shows the Applicant as a certifying officer and a team leader, and that her duties and responsibilities are equal to that of her colleagues at the Professional level.

... The Applicant’s performance appraisals are also on record to show that she has, for the four years preceding [her] application, consistently exceeded performance expectations.

3. On 18 November 2019, the Dispute Tribunal in Nairobi issued Judgment No. UNDT/2019/163 in the case of *Yabowork v. Secretary-General of the United Nations*. The UNDT dismissed Case No. UNDT/NBI/2016/071 as it found that the functions of team leader and/or delegated certifying officer, which were performed by Ms. Yabowork, did not represent the full functions of a P-2 level post, but fell within the functions of a G-7 senior

Human Resources Assistant, equivalent to Ms. Yabowork's post. The UNDT also found that the classification document had substantive errors, mainly related to the statement of Ms. Yabowork's duties and responsibilities, which had been extracted from a P-4 Human Resources Officer job description, in fact from her FRO's functions. The UNDT lastly agreed with the Secretary-General that the objective of the classification exercise recommended by the MEU was not to place Ms. Yabowork at a higher level post, but to determine whether the duties and responsibilities assigned to her were commensurate to that of a G-7 Human Resources Assistant, which it finally concluded to be the case.

4. On 17 January 2020, Ms. Yabowork filed an appeal against the impugned UNDT Judgment. On 6 April 2020, the Secretary-General filed his answer. The case was registered as Case No. 2020-1353.

5. On 8 June 2020, Ms. Yabowork filed a request for leave to file a reply to the Secretary-General's answer to the appeal. The Secretary-General filed his response on 15 June 2020.

### **Submissions**

#### **Ms. Yabowork's Appeal**

6. Ms. Yabowork claims that the UNDT failed to consider the evidence produced before it, by having based its Judgment mainly on the statements of the Chief, HRSS. She also refers to the principle of equal pay for equal work, contending that she was deprived of the correct remuneration for over six years, from 1 September 2010 to 21 September 2016, even though she had submitted her claim on 4 February 2011. Ms. Yabowork maintains that she was required to perform the full duties at the same level of complexity, responsibility and accountability of Human Resources Officers, according to Secretary-General's Bulletin ST/SGB/2005/7 (Designation of staff members performing significant functions in the management of financial, human and physical resources).

7. Ms. Yabowork further asserts that the UNDT Judgment did not consider the evidence depicting the similarities of the functions mentioned in the classification document and the five ePAS files, which are at the P-4 level. She insists that the classification document reflects the actual functions she performed from 1 December 2004 until 30 April 2017 (when she was

reverted to G-7 functions), without any corresponding payment. She also states that the UNDT relied on the contested decision itself as evidence of this, which is not accurate.

8. Invoking the Judgment in *Chen*,<sup>2</sup> Ms. Yabowork contends that her rights had been violated by the number of years elapsed before the submission of the case to the UNDT, thereby preventing the finalization of the classification for a total of seven years, during which a series of events had taken place, including mediation before and after the filing of her application to the UNDT.

9. In addition, Ms. Yabowork claims to have suffered moral, emotional and financial damage over nine years due to unfulfilled promises and delay, as well as being treated with neglect. She further states that putting forward her legitimate claim and providing evidence should not be taken as breach of good faith. In this regard, she maintains that the defamation due to the excessive language in the UNDT Judgment reflects negatively on her reputation of thirty years of service.

10. Moreover, Ms. Yabowork maintains that the UNDT Judgment assessed evidence relating to the previous period when she had received SPA, which is outside the scope of the present case, namely, from 1 September 2010 to 21 September 2016. Nevertheless, during this period, owing to the high turnover of Human Resources Officers and Assistants, Ms. Yabowork and another colleague ensured the efficiency of the Human Resources service, performing the full duties related to the management of financial and human resources at P-3, P-4 and P-5 levels, under five Chiefs, Directors and OICs in the division.

11. According to Ms. Yabowork, this performance of higher-level duties is the reason why, under exceptional circumstances, she received SPA, after approval by the Central Review Bodies and the Executive Secretaries of ECA. She states that the Chiefs required that she perform higher-level duties “in exactly the same manner as [Human Resources] Officers in SSU including coordination of major special projects and resolving complex issues”. She claims that this situation persisted even after professional staff were engaged.

12. Ms. Yabowork reiterates that she carried out the full Human Resources Officer’s duties within her unit and that she was the only one responsible for the team which she led for twelve years. She further submits that no reply was given to her after she had claimed for

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<sup>2</sup> *Chen v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-107.

commensurate pay in February 2011. To Ms. Yabowork, a reply with clarification about the functions she carried out in light of her G-7 level post would have given her a chance to reach an understanding and avoid litigation or take a timely decision to appeal “before matters got too complicated”. Moreover, she should have been assigned duties based on her G-7 job description, the classification should have been finalized, according to Administrative Instruction ST/AI/1998/9, and she should now be compensated for moral, emotional and financial damage.

13. Ms. Yabowork states that there was a lack of feedback, decision-making and transparency between 2010 and 2016. She finally submits that she disputes the statement provided by the Chief, HRSS, and that she had been given assurance that her case would be resolved amicably, which did not happen. Ms. Yabowork requests payment of SPA at the P-2 level effective 1 September 2010 through 21 September 2016; or, in the alternative, an order to finalize the withdrawn classification within a given time frame. She also requests compensation in the amount of two years’ salary for the moral, emotional and financial damages suffered.

#### **The Secretary-General’s Answer**

14. The Secretary-General submits that Ms. Yabowork was placed on a P-2 post from 2004 to August 2010, a period during which there was a high vacancy-rate in the posts of professional staff in HRSS. She was thereafter asked to perform the functions of certifying officer and team leader in this unit and, as a result, was paid SPA. However, once HRSS was fully staffed, Ms. Yabowork was notified that the payment would be discontinued effective 1 September 2010. Even though Ms. Yabowork was designated as an alternating certifying officer in December 2010, she accepted the offer under the United Nations Financial Rule 105.5, which provides that the assignment is on a personal basis, and therefore, it is not associated with a position or grade level. This is the reason why her request for reinstatement of SPA was refused.

15. The Secretary-General also submits that the payment of SPA to Ms. Yabowork, from 2004 to August 2010 was not in compliance with the provisions of Administrative Instruction ST/AI/1999/17 (Special post allowance), which required the full performance of the functions of the posts at the professional level (ranging from P-2 to P-4), in which she had been placed. Moreover, when the vacant professional posts in which she had been placed were filled, there

was no justification to extend the payment of SPA, according to ST/AI/1999/17. Therefore, Ms. Yabowork did not meet the requirements for receiving the said SPA, as set out in Staff Rule 3.10 and ST/AI/1999/17. In addition, Ms. Yabowork's supervisor certified that she had not performed the duties and responsibilities contained in the classification document, nor had she performed the full functions of a professional post, which would have been essential so as to enable her to receive SPA pursuant to Section 7.3 of ST/AI/1999/17. The UNDT therefore correctly upheld the decision to discontinue SPA.

16. The Secretary-General further states that the UNDT was correct when it upheld the cancellation of the classification request, since it bore substantive errors related to the functions set out in the job description, and which were much higher than those performed by Ms. Yabowork. It was then within the Organization's right and duty to put an end to the situation, as established by the Appeals Tribunal in *Cranfield*,<sup>3</sup> *Husseini*,<sup>4</sup> *Neocleous*<sup>5</sup> and *Cicek*,<sup>6</sup> thus, correcting the mistake of the Chief, HRSS, who had submitted the classification request without having verified it properly. Subsequently, Ms. Yabowork refused to sign a new classification document based on her performance appraisal.

17. For the Secretary-General, Ms. Yabowork has failed to show any possible reversible error by the UNDT. She also argues, for the first time in her appeal, that she had performed the full duties and responsibilities of a Human Resources Officer. Before the appeal, she had only submitted that she had carried out the functions of certifying officer and team leader. This new introduction of facts is not permitted in the Appeals Tribunal's jurisprudence. Moreover, her new allegation is not supported by any evidence.

18. The Secretary-General maintains that the reference to the period from 2004 to 2010 in the UNDT Judgment was merely intended to provide background to the contested decision. The finding that Ms. Yabowork did not "come with clean hands" was made by the UNDT, not by the Secretary-General. However, it has no impact on the outcome of this case. The principle that no person should be considered guilty until proven so is misplaced here. The Secretary-General further contends that the Appeals Tribunal does not have to address each and every claim made by Ms. Yabowork and that all other submissions in the appeal are

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<sup>3</sup> *Cranfield v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-367, para. 36.

<sup>4</sup> *Husseini v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-701, para. 23.

<sup>5</sup> *Neocleus v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-635, para. 32.

<sup>6</sup> *Cicek v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-636, para. 32.

repetitions of arguments made to the UNDT and fail to satisfy the requirements of Article 2(1) of the Appeals Tribunal Statute.

19. The Secretary-General requests dismissal of Ms. Yabowork's appeal.

### **Considerations**

#### *Motion for leave to file a reply to the Secretary-General's answer*

20. Ms. Yabowork filed a motion, requesting leave to reply to the Secretary-General's answer to her appeal. It contains approximately five pages of arguments and twenty-eight annexes. She submits that there are issues in the Secretary-General's answer which could harm her case, if not replied to.

21. The motion must be refused. Neither the Appeals Tribunal Statute, nor the Appeals Tribunal Rules of Procedure provide for an appellant to file an additional pleading after the respondent has filed his or her answer. Article 31(1) of the Rules of Procedure and Section II.A.3 of Practice Direction No.1 of the Appeals Tribunal allow the Appeals Tribunal to grant a party's motion to file additional pleadings only if there are exceptional circumstances justifying such a motion.<sup>7</sup> Ms. Yabowork has not demonstrated any exceptional circumstances which would justify the Appeals Tribunal exercising its discretion to allow her to file any additional pleadings. What Ms. Yabowork appears to be doing is either to supplement her appeal with new grounds or rebuke the arguments in the answer to the appeal, neither of which is permissible.

#### *Request for payment of SPA*

22. The main issue for consideration and determination in this case is whether the UNDT erred on a matter of law or of fact leading to a manifestly unreasonable decision, when it found that Ms. Yabowork's functions did not entitle her to continue receiving SPA which she had received from 1 December 2004 until 31 August 2010 and whose payment was discontinued to her as of 1 September 2010.

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<sup>7</sup> *Afawubo v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-863, para. 18, citing *Fayek v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-739, para. 7.

23. In her appeal, Ms. Yabowork claims that, during the period between September 2010 and September 2016, she performed duties at a higher level than her official G-7 post, exactly the same as Human Resources Officers at the P-2, P-3 and P-4 levels. She also asserts that this entitles her to continue to receive SPA, even though it had been discontinued from 1 September 2010. She also takes exception to the delay by the Organization following her request, claiming that there was a lack of transparency and feedback on the part of the Administration. The delay also occurred due to the time spent by the UNDT in resolving the case after the filing of her initial application. Also, Ms. Yabowork strongly disagrees with certain linguistic terms used when the UNDT handled her case, and she requests withdrawal of these expressions from the Judgment.

24. Firstly, a recall of the facts reveals that there was unacceptable delay and incoherent administrative attitudes on the part of the Administration in the resolution of the present case. Ms. Yabowork was told in September 2010 of the decision to discontinue the payment of SPA to her. However, after having been assigned duties which she believed entitled her to continue receiving such an allowance, she requested restoration of its payment, initially in February 2011, then in July 2012, and ultimately requested management evaluation of the decision to deny her such payment.

25. The MEU recommended a review of the classification of Ms. Yabowork's post in December 2012. Because it lacked the competence to make such a determination and the parties would not agree in substance, the case followed a path comprising vain attempts at mediation and reclassification. Finally in September 2013 a document was signed by Ms. Yabowork and her First Reporting Officer (FRO).<sup>8</sup> One month later, the document was then forwarded by the Chief/HRSS, her Second Reporting Officer (SRO) to OHRM/NY with a cover memo requesting classification on the basis of the MEU's recommendation, without however appending his signature to the classification document itself. That was even though he subsequently questioned the final document containing the same job description, thereby causing the process to stall again. The outcome was only communicated to Ms. Yabowork in December 2014, more than a year later.<sup>9</sup>

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<sup>8</sup> Impugned Judgment, paras. 12-20.

<sup>9</sup> Impugned Judgment, paras. 20, 21 and 24. In a statement before the UNDT, the Chief, HRSS, explained that he had signed to forward the document in a rush, because he was leaving for a travel and would have the opportunity to review the job description later. When he eventually reviewed the job description, he did not agree with it (see Impugned Judgment, paras. 54, 55 and 58).

26. The Appeals Tribunal expresses its strong disapproval of the unjustifiable delays and mixed messages conveyed by the Organization in dealing with Ms. Yabowork's request to restore payment of SPA. These delays and inconsistencies led to confused and confusing mishandling of Ms. Yabowork's requests over the years from 2012 until 2016, before she sought to remove these matters for resolution in the internal justice system. It was unacceptable for the Chief/HRSS to forward a document under the pretext that he had to undertake a hasty journey and because the matter, which had been inordinately delayed, then apparently needed to be moved forward urgently. Such considerations should not have attracted less than careful consideration at that time. They did not warrant the apparently rushed decision which was reviewed and communicated to Ms. Yabowork more than a year later.<sup>10</sup>

27. The Appeals Tribunal finds that the forwarding of the reclassification document by the Chief/HRSS could well have signaled to Ms. Yabowork that the job description in the document had been approved by the Chief/HRSS, particularly after it had been also signed by her FRO. Equally important is the question as to why the FRO had signed the classification document, when he later maintained that it contained substantive errors. These errors related precisely to the description of the duties and responsibilities which were at the very heart of the document.<sup>11</sup> This inconsistency only contributed to the imbroglio.

28. This history of relevant events reveals that Ms. Yabowork's request did not receive appropriate consideration by those in her managerial hierarchy at that time.<sup>12</sup> As a consequence, the MEU's recommendation of a reclassification remained unsatisfied. As Ms. Yabowork herself states in her appeal, her higher-level duties and responsibilities were discontinued effective 1 May 2017, after the filing of the present case. In this regard, as Ms. Yabowork clearly states in her appeal, much of the litigation in this case was attributable to her justifiable sense of opaqueness and inertia on the part of the Organization. We agree that these very unfortunate features could have been avoided by better communication with, and understanding of, Ms. Yabowork's situation.

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<sup>10</sup> Impugned Judgment, para. 21 and 24.

<sup>11</sup> Impugned Judgment, paras. 20, 24 and 60.

<sup>12</sup> Only much later, about four years after the MEU had recommended reclassification, was she invited to sign a new classification document, which she eventually declined, giving the reasons therefor (see Impugned Judgment, paras. 12 and 39).

29. The Organization's administrative stalling of her request was aggravated by the long delay of more than three years, between 2016 and 2019, taken by the UNDT to deal with the case including its assignment to three different judges.<sup>13</sup> When the UNDT finally disposed of the case, it used language that was strongly critical of Ms. Yabowork.<sup>14</sup> In all these circumstances it is not difficult to understand why Ms. Yabowork has spoken in her appeal of having been deeply disrespected, as she sees it, simply because she sought what she considered to be fair. In this regard, she emphasizes thirty years of UN service and what she says is her good reputation of service to the Organization. We note that the Secretary-General himself had acknowledged that Ms. Yabowork had received SPA in good faith. In these circumstances we consider the UNDT's findings in this regard were unwarranted.

30. Having said the above, the Appeals Tribunal will now turn to examine the merits of Ms. Yabowork's request. In her appeal, Ms. Yabowork claims that, during the period after the discontinuation of SPA she had received until August 2010, she was assigned the full Human Resources Officers responsibilities, including management of financial and human resources of the Organization within the unit during the vacancies of Human Resources Officers at the P-2, P-3 and P-4 levels. She also states that she was requested to perform higher-level duties "in exactly the same manner as [Human Resources] Officers in SSU including coordination of major special projects and resolving complex issues".

31. It is not clear from Ms. Yabowork's appeal, however, whether she challenges the UNDT's finding of her non-performing the duties assimilated to the P-2 or P-4 level. What is beyond doubt, however, is that the contested administrative decision ruled out her entitlement to receive SPA at the P-2 level, for the period from 1 September 2010 onwards.<sup>15</sup> This is the claim which was dismissed by the UNDT in its Judgment. The Appeals Tribunal will then restrict its assessment to this specific level (P-2).<sup>16</sup>

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<sup>13</sup> Precisely between September 2016 and November 2019, although some five months in 2018 were spent trying to find a settlement. See Impugned Judgment, paras. 1-2.

<sup>14</sup> The UNDT mentioned "damning aspects", lack of good faith, border on dishonesty and lack of clean hands (see Impugned Judgment, paras. 51, 53, 59 and 63).

<sup>15</sup> It is not clear either until which date the claim of SPA shall be understood. In her appeal, Ms. Yabowork appears to believe that the period under examination is the one until 21 September 2016, the date of the filing of her application before the UNDT. Nevertheless, an interpretation of paragraphs 11 and 45 of the UNDT Judgment leads to the conclusion that the final date for the request, which had been challenged by the management evaluation request, was 25 July 2012.

<sup>16</sup> Section 2.3 of ST/AI/1999/17, on Special Post Allowance, appears to justify this reasoning: "An SPA may only be granted to one level higher than the personal level of the staff member assigned to higher-level functions in his or her own category, whether the higher-level functions are one or several

32. Regarding the payment of SPA, Staff Rule 3.10, in force at the time when the contested decision was taken and in the subsequent year,<sup>17</sup> provides:

Rule 3.10

Special post allowance

(a) Staff members shall be expected to assume temporarily, as a normal part of their customary work and without extra compensation, the duties and responsibilities of higher level posts.

(b) Without prejudice to the principle that promotion under staff rule 4.15 shall be the normal means of recognizing increased responsibilities and demonstrated ability, a staff member holding a fixed-term or continuing appointment who is called upon to assume the full duties and responsibilities of a post at a clearly recognizable higher level than his or her own for a temporary period exceeding three months may, in exceptional cases, be granted a non-pensionable special post allowance from the beginning of the fourth month of service at the higher level.

(c) In the case of a staff member holding a fixed-term or continuing appointment who is assigned to serve in a mission, or when a staff member in the General Service category is required to serve in a higher level post in the Professional category, or when a staff member in any category holding a fixed-term or continuing appointment is required to serve in a post which is classified more than one level above his or her level, the allowance may be paid immediately when the staff member assumes the higher duties and responsibilities.

(d) The amount of the special post allowance shall be equivalent to the salary increase (including post adjustment and dependency allowances, if any) which the staff member would have received had the staff member been promoted to the next higher level.

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levels higher than the personal level of the staff member. Staff in the General Service and related categories temporarily placed against a post at the Professional level may receive an SPA to the P-1 or P-2 level, in accordance with the provisions of section 10 below.” See also Section 10.2 of ST/AI/1999/17, below in this Judgment.

<sup>17</sup> ST/SGB/2010/6 and ST/SGB/2011/1.

33. Administrative Instruction ST/AI/1999/17, on Special Post Allowance provides, in relevant parts, as follows:<sup>18</sup>

**Section 2**

**General provisions**

2.1 Under staff rule 103.11 [**currently sr 3.10**], staff members are expected to assume temporarily, as a normal part of their customary work and without extra compensation, the duties and responsibilities of higher-level posts. Nevertheless, *payment of a non-pensionable SPA is authorized by the same rule in exceptional cases when a staff member is called upon to assume the full duties and responsibilities of a post which is clearly recognizable at a higher level than his or her own for a temporary period exceeding three months.*

2.2 *Payment of an SPA is a discretionary grant*, for which staff members may be considered when the conditions set out in staff rule 103.11 [**currently sr 3.10**] and section 4 below are met. Consideration for granting an SPA shall be given in accordance with the procedures set out in section 5 below.

...

*Temporary assignments to vacant posts*

3.2 In addition to the requirements set out in section 3.1 above and in order to implement paragraph 10 of section III.B of General Assembly resolution 51/226, in which the Assembly requests the Secretary-General “to take effective measures to prevent the placement of staff members against higher-level unencumbered posts for periods longer than three months”, temporary assignments to vacant posts shall require that the department or office concerned has already initiated the proper procedures for filling the post on a permanent basis. This may be demonstrated by requesting:

- (a) Issuance of a vacancy announcement for the vacant post, unless the requirement of such issuance has been waived in accordance with section 3.4 of ST/AI/1999/8 (ST/AI/2006/3/Rev.1, effective 11 January 2010 [**abolished and replaced by section 4 of [ST/AI/2010/3 of 21 April 2010](#)**]);

or:

- (b) Classification of the post, where this is a precondition for issuing a vacancy announcement in accordance with section 3.2 of ST/AI/1999/8 (ST/AI/2006/3/Rev.1, effective 11 January 2010 [**abolished and replaced by [ST/AI/2010/3 of 21 April 2010](#)**]);

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<sup>18</sup> Emphases in italics added.

or:

- (c) Filling of the vacant post through the competitive examination process, where applicable.

The purpose of the present requirement is to ensure that assignments to higher-level vacant posts, as well as any SPAs granted on that basis, are limited to cases where vacant posts cannot be filled within three months under the established procedures for recruitment or placement and promotion, and where successful programme delivery requires temporary assignment to vacant posts for longer than three months.

#### **Section 4**

##### **Eligibility**

Staff members who have been temporarily assigned to the functions of a higher-level post in accordance with the provisions of section 3 above shall be eligible to be considered for an SPA when they meet all of the following conditions:

- (a) They have at least one year of continuous service under the 100 series of the Staff Rules or, in the case of staff members who have been reappointed from the 300 series to the 100 series, at least one year of continuous service under the 300 series and/or the 100 series of the Staff Rules;

- (b) They have discharged for a period exceeding three months the full functions of a post which has been (i) classified, and (ii) budgeted at a higher level than their own level. Such period may be part of the one year required by subsection 4 (a) above;

- (c) They have demonstrated their ability to fully meet performance expectations in all the functions of the higher-level post.

...

#### **Section 7**

##### **Duration and extension of SPAs**

7.1 SPAs shall be granted for a specific period determined in accordance with the provisions of the present section.

*SPA for assignment to a temporarily vacant post*

7.2 When an SPA is granted to a higher-level post which is temporarily vacant, it may be granted for an initial period of up to one year.

7.3 The SPA may be extended by the department or office without reference to the SPA panel to cover a total period of up to two years, including the initial period, upon the supervisor's certification that the staff member continues to satisfactorily perform the full functions of the higher-level post.

...

**Section 8**

**Discontinuance of SPA**

8.1 An SPA shall be discontinued:

(a) From the date on which the staff member ceases to perform the full functions of the higher-level post. For staff in receipt of an SPA while on mission assignment, that date shall be the date of departure from the mission area;

or:

(b) When the staff member is absent on any type of leave for a period of three months or longer. In that case, the SPA shall be discontinued as of the first day of the leave period.

8.2 When an SPA is discontinued, the staff member will revert to his or her regular salary level. The time during which the higher salary was paid will be credited as service for the purpose of determining the date of the next salary increment at the regular level.

...

**Section 10**

**Special provisions concerning staff in the General Service and related categories assigned to the functions of a post in the Professional category**

10.1 Temporary assignment of a staff member in the General Service or related categories to the functions of a post in the Professional category shall normally be limited to mission posts at the P-1 or P-2 levels and to posts temporarily vacant because the incumbent is on mission detail or special leave without pay.

10.2 Exceptionally, a staff member in the General Service or related category may be temporarily assigned to a vacant post at the P-1 or P-2 level pending recruitment of a candidate successful in a competitive examination. Such exception requires prior approval of the Office of Human Resources Management.

34. As clearly set out in the legal framework, the payment of SPA has a discretionary, temporary and exceptional nature. Moreover, it is based on certain requirements, among which: i) it must relate to a temporary assignment to an unencumbered higher-level post; ii) proper procedures for filling the post on a permanent basis must have been initiated; iii) the staff member assigned to the higher-level post must hold a fixed-term or a continuing appointment, having at least one year of continuous service; iv) they must discharge, for a period of over three months and up to two years, the full duties and responsibilities of the higher-level post; and v) they must have demonstrated their ability to fully meet performance expectations in all the functions of the higher-level post.

35. These requirements were established in order to prevent, as much as possible, the placement of staff members against higher-level unencumbered posts for periods longer than three months, this being the minimum threshold to receive the allowance. It also responds to the needs of the Organization to ensure that priority be given to fill higher-level vacant posts under the established procedures by means of a competitive recruitment exercise, rather than temporary assignments.

36. It is not difficult to conclude that Ms. Yabowork received SPA for a period far beyond the two-year time limit set by the applicable law. This alone seems to put an end to Ms. Yabowork's request for SPA. The Secretary-General admits the mistake and argues that it was made because of the shortage of personnel in HRSS. While there is no denying that Ms. Yabowork continued to perform the tasks of team leader and delegated certifying officer, even after the discontinuation of the payment of SPA from 1 September 2010, the UNDT found that the evidence showed that Ms. Yabowork stopped receiving SPA when two Human Resources Officers were recruited and that she was not performing the full-time functions of their posts.<sup>19</sup>

37. Regarding the missing signature of the SRO, the UNDT referred to the statement of the then Chief, HRSS, Ms. Yabowork's SRO.<sup>20</sup> He declared that SPA had been approved against a vacant P-2 position in HRSS, during a shortage of staff members in ECA. He further informed that she had been placed against various posts ranging from P-2 to P-4 from other organizational units of ECA, for the pure purpose of being paid SPA, even though she was not performing the respective functions. He also stated that this was in contradiction with the provisions of Sections 10.1 and 10.2 of ST/AI/1999/17, which prescribe that the situation shall be exceptional and only related to P-1 and P-2, in any event after discretionary approval by OHRM.

38. The Chief, HRSS, also revealed that, after the discontinuation of SPA to Ms. Yabowork, when the section became fully staffed, the fact that she remained the team leader and delegated certifying officer does not count in her favour, as such duties fall within the job description of a G-7, Senior Human Resources Assistant, able to perform

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<sup>19</sup> Impugned Judgment, para. 62. The UNDT also found that there was sufficient evidence that Ms. Yabowork was communicated that the payment of SPA could not be extended because all professional posts in the section had been filled (para. 53).

<sup>20</sup> Impugned Judgment, para. 62. The Chief was relocated in January 2015 (see para. 25 of the Impugned Judgment).

para-professional and managerial tasks, including supervision of lower level staff. Besides, there was impropriety in the prolonged payment of SPA, in violation of its policy and rules.

39. This evidence also showed that the MEU only recommended the classification review in light of the disagreement between ECA and Ms. Yabowork and that the reclassification document reflected much higher functions than the ones Ms. Yabowork was actually performing, which is why the Chief/HRSS did not sign it. The classification process was then stalled by the lack of his signature. According to him, the only higher-level responsibilities which Ms. Yabowork continued to perform were those of certifying officer and team leader, which is not sufficient to conclude that she performed the full functions of a P-2. He also claims to have said this to Ms. Yabowork in many meetings, both formal and informal, and to have suggested either revision of the classification document or mediation, which ultimately turned out to be in vain. The delay in the process of classification was mainly because Ms. Yabowork objected to re-writing the documents to reflect the appropriate statements of duties and functions they performed.

40. On the other hand, the Appeals Tribunal notes that what Ms. Yabowork named as evidence in her appeal are either her own allegations put forward to the UNDT, or internal documents such as job descriptions, e-pas, drafts of reclassification and comparative tables. In this regard, the mere satisfaction of a good rating in the performance assessment does not guarantee an automatic perpetuation of the payment of SPA. Furthermore, the Human Resources Assistant, G-7, job description clearly establishes that Ms. Yabowork could, among other broad functions, process staff entitlements for signature by a Human Resources Officer, as well as perform data-entry for staff members. The same document reveals that Ms. Yabowork could apply sound judgment to search out and apply the appropriate guideline applicable to Human Resources in order to meet the situation at hand, therefore, she had an extensive authority to interpret from guidelines.

41. The same job description also mentions that the post would, *inter alia*, require deputizing and providing support to the Human Resources Officer by assisting him in training other Human Resources assistants in the team and making recommendations to the HRO. These are quite broad tasks, whose performance did not entitle Ms. Yabowork to receive SPA. While there is no contention about the substance of such internal documents, there is no evidence to underpin Ms. Yabowork's assertion that she actually fulfilled all the

requirements warranting her entitlement to continue receiving SPA of a P-2 post which was indisputably no longer vacant.

42. Finally, Ms. Yabowork does not agree with the fact that the UNDT Judgment considered an internal e-mail as evidence to demonstrate that the substantive error relating to the description of the duties and responsibilities, which were not actually performed by Ms. Yabowork, justified the withdrawal of the reclassification document and a discussion of a new one.<sup>21</sup> The Appeals Tribunal is of the view that there is no reason why such an official document, which was signed by the new Chief, HRSS, could not have been taken into consideration by the UNDT in its findings, even though it was internal to the Organization.

43. In light of the evidence on record, the Appeals Tribunal finds no error in the UNDT finding that the decision to discontinue the payment of SPA was a legitimate exercise of the Administration's discretion, based on Ms. Yabowork's not meeting the requirements for her request, and was justified in view of the Administration's obligation and right to correct such an erroneous situation where the eligibility and/or duration criteria had been wrongly applied.<sup>22</sup> Therefore, contrary to Ms. Yabowork's assertions, we hold that the lack of the minimum requirement on her part constituted a valid reason proffered by the Administration for discontinuing the payment of SPA.

#### *Other claims*

44. In her appeal, Ms. Yabowork also claims the finalization of her reclassification, within a given time frame, for the period from 1 September 2010 until 1 May 2017, during which she alleges to have performed the higher tasks. However, as discussed above, her tasks during said period were commensurate to her G-7 post. Moreover, the purpose of the time frame for SPA payment is to avoid indefinite actual "promotion" without a competitive selection process, in which Ms. Yabowork uncontestably did not participate.

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<sup>21</sup> Impugned Judgment, para. 60.

<sup>22</sup> *Diop v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-950, para. 28, citing *Kauf v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-934, para. 22, in turn citing *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 30; *Neocleous v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-635, para. 32; *Cicek v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-636, para. 32, in turn citing *Cranfield v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-367, para. 36.

45. Ms. Yabowork also requests an additional compensation of two years' salary for the moral, emotional and financial damage she suffered. The Appeals Tribunal notes that, in spite of the poor management, Ms. Yabowork has not provided any evidence of the harm she alleges to have suffered from any illegality on the Administration's part, which would be necessary for such an award, in light of Article 9(1)(b) or the Appeals Tribunal's Statute.

46. The appeal, therefore, must fail.

**Judgment**

47. The appeal is dismissed and Judgment No. UNDT/2019/163 is hereby affirmed.

Original and Authoritative Version: English

Dated this 26<sup>th</sup> day of June 2020.

*(Signed)*

Judge Halfeld, Presiding  
Bournemouth, United Kingdom

*(Signed)*

Judge Colgan  
Auckland, New Zealand

*(Signed)*

Judge Sandhu  
Vancouver, Canada

Entered in the Register on this 11<sup>th</sup> day of August 2020 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar