



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

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Judgment No. 2023-UNAT-1358

**Jesus Suarez Liste  
(Respondent/Applicant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Kanwaldeep Sandhu, Presiding Judge Graeme Colgan Judge Martha Halfeld
Case No.:	2022-1739
Date of Decision:	30 June 2023
Date of Publication:	18 July 2023
Registrar:	Juliet Johnson

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Counsel for Respondent/Applicant: Robbie Leighton, OSLA

Counsel for Appellant/Respondent: Angélique Trouche

**JUDGE KANWALDEEP SANDHU, PRESIDING.**

1. Mr. Jesus Suarez Liste, a Translator with the Department for General Assembly and Conference Management (DGACM), contested the decision to grant him the grade of P-3, step II instead of P-3, step VIII level on initial appointment (the contested decision). In Judgment No UNDT/2022/077 (the Judgment) the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) held that his Ph.D. constituted relevant work experience to be considered in determining the step-in-grade. It rescinded the contested decision and ordered the Administration to retroactively place Mr. Suarez Liste at the P-3, step VIII level and to pay him loss of salary and costs associated with the step adjustment. The Dispute Tribunal rejected Mr. Suarez Liste's request to revise the Grading Guidelines for entry level language staff (Grading Guidelines for language staff).
2. The Secretary-General appeals and argues the Dispute Tribunal erred and usurped the Administration's discretion.
3. For the reasons given below, we grant the appeal and reverse the UNDT Judgment.

**Facts and Procedure**

4. On 24 December 2019, the Executive Officer (EO), DGACM, issued Mr. Suarez Liste an offer for a fixed-term appointment for two years at step II of the P-3 level as Translator in the Spanish Translation Service, New York.
5. By e-mail dated 5 March 2020, Mr. Suarez Liste requested a correction of the step-in-grade offered, and the Deputy EO, DGACM, informed him that his request was denied.
6. On 15 March 2021, Mr. Suarez Liste signed a letter of appointment as Translator in DGACM at the P-3, step II level.
7. By e-mail dated 5 April 2021, Mr. Suarez Liste once again requested the EO/DGACM to modify his step-in-grade, and on 16 April 2021, he filed a request for management evaluation of the decision to grant him the grade of P-3, step II instead of P-3, step VIII.

8. Also on 16 April 2021, the Human Resources Partner in the Executive Office, DGACM informed Mr. Suarez Liste that his initial step-in-grade had been amended to P-3, step III. On 26 April 2021, the EO/DGACM informed Mr. Suarez Liste that the change of his step-in-grade would take effect upon completion of the management evaluation process.

9. On 21 May 2021, the EO/DGACM requested an extension of time to reconsider the determination of Mr. Suarez Liste's initial step-in-grade in light of the supporting documentation that he submitted in conjunction with his first request for management evaluation. On 1 June 2021, the EO/DGACM provided the Management Evaluation Unit (MEU) with the outcome of its reconsideration of Mr. Suarez Liste's years of relevant work experience, assessed to be six years, two months, and 17 days. The EO/DGACM concluded that Mr. Suarez Liste's initial step-in-grade should remain at step III upon recruitment.

10. On 4 June 2021, the MEU provided Mr. Suarez Liste with the outcome of the EO/DGACM's reconsideration of his step-in-grade for his comments.

11. On 11 June 2021, Mr. Suarez Liste provided his comments with supporting documents and indicated that he had 13 years, one month, and six days of relevant work experience. Consequently, he argued that he should be granted step VIII.

12. On 15 June 2021, Mr. Suarez Liste filed a second request for management evaluation contesting the non-implementation of the amended step-in-grade.

13. By letter dated 26 July 2021, the Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC) informed Mr. Suarez Liste of her decision to endorse the MEU's findings and recommendations to rescind the decision to place him at the P-3, step II level and to grant him the P-3, step VI level upon initial appointment while noting that his second request for management evaluation was not receivable.

14. On 3 August 2021, the EO/DGACM issued Mr. Suarez Liste an updated letter of appointment where his step was modified from P-3, step II to P-3, step VI.

15. On 13 August 2021, Mr. Suarez Liste filed an application before the UNDT contesting the decision not to place him at the P-3, step VIII level.

16. On 31 August 2022, the UNDT issued its Judgment, granting the application, in part. It found that Mr. Suarez Liste's Ph.D. in Economics amounted to experience in another profession relevant to the work of the United Nations and accounted for 50 per cent of the time spent studying for the Ph.D. The UNDT held that this amounted to two years and four months of additional relevant experience, making Mr. Suarez Liste's total work experience to be approximately 14 years and seven months. Noting that Mr. Suarez Liste had a Master's degree plus over 14 years of relevant experience, the UNDT concluded that this constituted "exceptional circumstances" justifying the granting of P-3, step VIII under Section 2 of the Grading Guidelines for language staff.

17. The UNDT ordered rescission of the contested decision, retroactive placement of Mr. Suarez Liste at the P-3, step VIII level upon initial appointment, and payment of loss of salary suffered because of the unlawful contested decision. Further to this, the UNDT ordered that each party be responsible for its own share of contributions to pension or medical insurance schemes, and that the Administration bear the costs associated with the step adjustment (e.g., any actuarial costs that the United Nations Joint Staff Pension Fund may charge for this retroactive increase of step). The UNDT dismissed the request to revise the Grading Guidelines for language staff.

### **Submissions**

#### **The Secretary-General's Appeal**

18. The Secretary-General says that the UNDT erred in law and exceeded its jurisdiction in finding that Mr. Suarez Liste should have been granted additional steps upon initial appointment. It usurped the Secretary-General's discretion and replaced the Secretary-General's discretion with its own.

19. It is the Secretary-General, not the UNDT, who has discretion to determine if additional steps should be taken. In order to exercise such discretionary authority, the Administration has developed internal guidance documents to assist in this determination. The relevant guidance in the case of Mr. Suarez Liste are the Grading Guidelines for language staff. It was not for the UNDT to create new policies.

20. The Secretary-General submits that the Administration took the decision to place Mr. Suarez Liste at step VI of the P-3 level pursuant to the relevant internal Guidelines that assist in exercising the discretion provided for by Staff Rule 3.4(a). This decision was not inconsistent with any rights or entitlements of Mr. Suarez Liste. Rather, the Administration's decision to place Mr. Suarez Liste at step VI of the P-3 level was legal, rational, procedurally correct, transparent, and proportionate. It was neither absurd, nor perverse, unfair, or discriminatory. The Administration did not (nor was it argued that it did) take into account irrelevant considerations or neglect relevant facts.

21. In addition, the Secretary-General says that the UNDT manifestly erred in fact and in law when it held that the Administration failed to consider relevant exceptional circumstances in determining Mr. Suarez Liste's step-in-grade pursuant to Section 2 of the Grading Guidelines for language staff. First, the UNDT's error in this regard is a consequence of its error in determining that Mr. Suarez Liste had over 14 years and seven months of work experience, by counting time spent studying for his Ph.D., rather than the 12 years and three months of work experience that the Administration had identified. As demonstrated, there was no basis for the UNDT to find that a Ph.D. could amount to additional work experience for language staff.

22. Second, even if the UNDT's calculation of Mr. Suarez Liste's work experience was correct, which it was not, the UNDT erred by holding that 13 years of work experience automatically amounted to "very exceptional circumstances" warranting additional steps. Pursuant to Section 2 of the Grading Guidelines for language staff, step VI is the maximum step to be granted upon initial recruitment, unless there are very exceptional circumstances; these may exist if, for example, an incoming staff member has 13 years of work experience in addition to a Master's degree. This is the minimum work experience needed to even have the possibility to be considered as meeting the "very exceptional circumstances" threshold. Even if, theoretically speaking, the time spent studying for the Ph.D. would count towards the total number of years of work experience, it does not follow automatically that Mr. Suarez Liste met that threshold leading to additional steps. It is clear that the Administration considered whether exceptional circumstances existed but found that none existed. The UNDT manifestly erred in finding otherwise. The Administration's decision to place Mr. Suarez Liste at step VI was consistent with past practice which is relevant to show that the Administration's decision in the instant case was rational and reasonable.

23. The Secretary-General requests the UNAT to rescind the UNDT Judgment and to uphold the decision to place Mr. Suarez Liste at step VI of the P-3 level on initial appointment.

**Mr. Suarez Liste's Answer**

24. Mr. Suarez Liste argues that the UNDT correctly identified arbitrary decision-making vitiating the decision regarding his step. The fact that the calculation of his appropriate step was altered three times following recruitment calls into question the extent to which the Secretary-General can reasonably rely on institutional expertise to insulate the decision from judicial review as he does and is indicative of arbitrary decision-making. But for his contestation, Mr. Suarez Liste would have suffered a loss of over USD 8,000 per year. The final outcome of the MEU's review could not be accepted at face value and was appropriately subject to judicial review to determine if the exercise of discretion in arriving at step VI was lawful.

25. Mr. Suarez Liste argues that the Secretary-General's contention that Mr. Suarez Liste had made no argument to the UNDT that irrelevant factors had been taken into account and relevant factors ignored is inaccurate. Mr. Suarez Liste had argued from the outset that the failure to apply value to his Ph.D. rendered the exercise of discretion in allocating him step VI unlawful. He had made specific reference to the fact that he was required in his work to translate complex economic documents for the United Nations Conference on Trade and Development for which his Ph.D. in Economics was highly relevant. The Secretary-General did not dispute this factual assertion of the relevance of the Ph.D. to Mr. Suarez Liste's functions. The Grading Guidelines for language staff provide examples of circumstances that would constitute "exceptional circumstances" justifying grant of step VIII.

26. The Secretary-General seeks to defend the arbitrary reasoning on the basis of a difference between the Grading Guidelines for language staff and the Guidelines for Determination of Level and Step on Recruitment to the Professional Category and Above (General Grading Guidelines), with the former making no mention of a Ph.D. and the latter providing for additional steps on the basis of a Ph.D. He essentially argues that because the Grading Guidelines for language staff make no specific reference to the value of a Ph.D. it follows that a Ph.D. must be ascribed no value. Such argument fails to identify a discretion that did accrue to the Secretary-General to apply value to Mr. Suarez Liste's Ph.D. The Secretary-General unlawfully fetters discretion by reading the rules prohibiting the ascribing of value to a Ph.D. while he should have exercised his discretion as to whether and what value to ascribe to a Ph.D.

27. Mr. Suarez Liste avers that given the arbitrary position taken by the Secretary-General, the UNDT was required to evaluate what value should be ascribed to a Ph.D. in a relevant subject matter. In determining that matter, the UNDT appropriately proceeded by reference to the General Grading Guidelines identifying equivalence where appropriate.

28. While the Secretary-General argues that the past practice of not granting step VIII to language professionals demonstrates error on the part of the UNDT in finding that such should have been applied, past practice does not represent law and is not a basis upon which to defend an unreasonable exercise of discretion.

29. In criticizing the UNDT on the one hand for ascribing value to a Ph.D. when such was not explicitly covered by the Grading Guidelines for language staff and arguing on the other hand that the formula for exceptional circumstances set out in those Guidelines should not be applied in a literal fashion, the Secretary-General accepts that the Grading Guidelines for language staff are not concretely binding on the Secretary-General's discretion in designating step on first assignment.

30. Mr. Suarez Liste requests that the Judgment be affirmed in its entirety.

### **Considerations**

31. The issue in the appeal is whether the Administration's exercise of discretion in determining the step-in-grade for Mr. Suarez Liste was lawful.

32. The Administration's discretion is set out in Staff Rule 3.4(a) (Salary Policy)<sup>1</sup> which provides that: "On appointment, a staff member shall normally be placed at the first step of the level of his or her post, unless otherwise decided by the Secretary-General."

33. The Administration placed Mr. Suarez Liste at step VI of the P-3 level pursuant to the Grading Guidelines for language staff that assist in exercising the discretion provided for in Staff Rule 3.4(a).

34. The Grading Guidelines for language staff are a tool to ensure consistency in the Administration's practice in determining step-in-grade for entry level language staff. The Grading Guidelines for language staff prescribe "[s]tep-in-grade determination criteria aligned

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<sup>1</sup> ST/SGB/2018/1 (Staff Regulations and Rules of the United Nations) applicable at the relevant time.

to the NCRE programme (number of requisite years of experience and academic credentials)” which for P-3, step III is a Master’s degree with six years of relevant work experience. They do not specifically provide for the granting of additional steps for a Ph.D. degree.

35. In the Judgment, the Dispute Tribunal found that the study period for Mr. Suarez Liste’s Ph.D. degree should be counted as professional work experience. The Dispute Tribunal found that the General Grading Guidelines allow for additional steps to be granted for a Ph.D., and so it would be fair for a Ph.D. to be considered relevant work experience in the Grading Guidelines for language staff. However, the General Grading Guidelines are not relevant to the present case. Rather, the guidelines that must apply are the Grading Guidelines for language staff that are specific to entry-level language staff which is the position for which Mr. Suarez-Liste was appointed.

36. Mr. Suarez Liste requested a grade of P-3, step VIII due to his Ph.D. in Economics. Section 2 of the Grading Guidelines for language staff provides that “[e]xceptions beyond step VI of the P-3 up to step VIII as well as above, will be determined by HRS/OHRM in accordance with the relevant delegated authority and based on the criteria laid out in these guidelines, specifically by i. determination of actual years of relevant professional experience; and ii. the count of relevant years of experience as per the Table below”.

37. The principle in Section 2 is that “for each additional year of ‘relevant work’ experience a[t] the professional level, an additional step, up to step [VI] would be granted”. Mr. Suarez-Liste achieved step VI on this basis. However, Section 2 states that steps beyond step VI are to be considered in “very exceptional circumstances, for example: BA +15 years: P3/VIII MA +13 years = P-3/VIII”.

38. The Dispute Tribunal relied on this provision and held that the Administration failed to consider relevant “exceptional circumstances”, namely Mr. Suarez Liste’s Ph.D. experience in Economics. Specifically, the Dispute Tribunal found his Ph.D. should be considered “relevant work experience”. The Dispute Tribunal, therefore, interpreted “relevant work experience” as defined in Section 4 of the Grading Guidelines for language staff to include “academic” experience.

39. The criteria for determining “relevant work experience” are set out in Section 4 and include “[e]xperience in any other profession that is relevant to the work of the United Nations”. The criteria in Section 4 do not include academic experience, qualifications or credentials.



40. The Grading Guidelines for language staff specifically provide that “[s]tep-in-grade determination criteria aligned to the NCRE programme” are the “number of requisite years of experience and academic credentials”. Therefore, step-in-grade determination is a combination of work experience and academic credentials. To interpret a Ph.D. as “relevant work experience” is therefore a misinterpretation of these Guidelines. Further, the Guidelines do not contemplate a Ph.D. for determining steps-in-grade for entry level language staff. It is at the discretion of the Administration not to grant additional steps for entry level language staff with a Ph.D., which is what it has done.

41. We agree with the Respondent that the Dispute Tribunal erred in law and exceeded its jurisdiction in finding that Mr. Suarez Liste be granted additional steps upon initial appointment contrary to the Grading Guidelines for language staff. It broadened the definition and criteria of “relevant work experience” to include additional academic qualifications and therefore, it misapplied the provisions of the Guidelines to include additional academic experience in the calculation of Mr. Suarez Liste’s work experience. In doing so, we find the Dispute Tribunal usurped the Secretary-General’s discretion and replaced it with its own.

42. In reviewing the validity of the Administration’s exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate, whether relevant matters have been ignored and irrelevant matters considered, and whether the decision is absurd or perverse. It is not the role of the Dispute Tribunal to consider the “correctness” of the choice made by the Administration nor to substitute its own decision for that of the Administration.<sup>2</sup>

43. In this instance, the Administration did not consider irrelevant matters and did not ignore relevant ones. The Administration considered Mr. Suarez-Liste’s Ph.D. in Economics and correctly applied the Grading Guidelines for language staff which did not contemplate additional steps-in-grade for a Ph.D.<sup>3</sup> There is no indication that the contested decision is absurd and perverse, rather the evidence is that the Administration applied the Grading Guidelines for language staff in the exercise of its discretion in a manner that was consistent with its terms and with past practice. There have been no entry level language staff that have received P-3, step VIII.

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<sup>2</sup> *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-966, para. 14, citing *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, paras. 38 and 40.

<sup>3</sup> See response to management evaluation request, dated 26 July 2021, page 7.

44. In the MEU response of 26 July 2021, the Administration noted that the Grading Guidelines for language staff do not provide for the granting of additional steps for a Ph.D. and the highest degree it considers is the Master's degree.

45. In the Judgment, the Dispute Tribunal created a new factor and criterion in the application of the Grading Guidelines for language staff and exercise of the Administration's discretion, namely consideration of a Ph.D. in the step-in-grade calculation. By doing so, we find the Dispute Tribunal made a policy decision for the Administration which is solely within the purview of the Administration. As such, the Dispute Tribunal usurped the Administration's discretion and inappropriately substituted its own decision.

46. Consequently, we find that the Dispute Tribunal erred in fact and in law when it held that the Administration failed to consider relevant exceptional circumstances in determining Mr. Suarez Liste's step-in-grade pursuant to the Grading Guidelines for language staff. It thus erred by finding the contested decision was unlawful.

47. Therefore, we grant the appeal and reverse the Judgment. We uphold the decision to place Mr. Suarez Liste at P-3, step VI on initial appointment.

**Judgment**

48. The Secretary-General's appeal is granted and Judgment No. UNDT/2022/077 is hereby reversed.

Original and Authoritative Version: English

Decision dated this 30<sup>th</sup> day of June 2023 in New York, United States.

*(Signed)*

Judge Sandhu, Presiding

*(Signed)*

Judge Colgan

*(Signed)*

Judge Halfeld

Judgment published and entered into the Register on this 18<sup>th</sup> day of July 2023 in New York, United States.

*(Signed)*

Juliet Johnson, Registrar