

UNDT/2010/157, Bhatia

UNAT Held or UNDT Pronouncements

1998 reclassification: The issue of the 1998 reclassification exercise is long out of time and no circumstances justify the review of it now. 2005 reclassification: Examining the 2005 reclassification exercise is moot as the post was abolished and the applicant did not challenge the abolition. Withdrawal of SPA: In relation to the period for which the applicant's SPA was withdrawn, it would be reasonable to expect a notation of a change in functions in the e-PAS records as there was a crossover between two cycles. However, there was none and the SPA should thus be retroactively paid. Alternately, it could be correctly argued that the applicant had a legitimate expectation of the continuing payment, in the context of the pattern of retroactive grants and the failure to consult with the applicant on the change in functions. Other allegations of representations of promotion or reclassification: Even if there was a representation made that the applicant's post would be reclassified, it came to fruition when the post was reclassified to a G-5 level with effect from 30 October 2009; his loss must therefore be limited to the delay between this date and 1 April 2006. However, despite the creation of an atmosphere within the Division which caused unnecessary uncertainty and anxiety for the applicant and is itself compensable, no evidence of a binding representation of promotion or reclassification was put to the Tribunal. Outcome: The applicant is awarded seven months' SPA at the rate then applicable which he should have been paid and USD6000 for emotional harm. The application is otherwise dismissed.

Decision Contested or Judgment/Order Appealed

The applicant performed similar functions at the G-4 level for over twelve years. The reclassification of his post to the G-5 level in 1998 was halted by the Organisation and the applicant was not notified of this. A second reclassification exercise in 2005 was approved, but the post was then abolished for budgetary reasons. The applicant has since been transferred to various similar functions and the Tribunal was informed prior to the hearing that the applicant's current post had been reclassified

effective October 2009, with a selection process underway but incomplete at the time of judgment. There had been a pattern of granting the applicant an SPA to the G-5 level since July 2002, often retroactively, but there was a period of approximately seven months for which the SPA was not retroactively granted. The Division's internal documents noted "G-6 for [the applicant]" as a staffing issue during the years 2005—2007.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Bhatia

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2009/110

Tribunal

UNDT

Registry

New York

Date of Judgement

31 Aug 2010

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Benefits and entitlements

Special Post Allowance

Classification (post)

Compensation

Non-pecuniary (moral) damages

Applicable Law

Administrative Instructions

- ST/AI/1998/9
- ST/AI/1999/17
- ST/AI/2002/3
- ST/AI/2006/3

Related Judgments and Orders

2010-UNAT-059