

UNDT/2014/035, Ovcharenko et al and Kucherov

UNAT Held or UNDT Pronouncements

The Tribunal found that the first part of the application was not receivable, since the decision to pay the multiplier of 65.5 from 1 August 2012 through 31 January 2013 to all professional staff member with duty station New York, constitutes a decision with regulatory power and not an administrative decision under art. 2.1(a) of its Statute. The Tribunal further found that decision to pay the Applicants the amount calculated on the basis of the 65.5 for the month of January 2013 as reflected in their respective statement of earning, constitutes an administrative decision hence the application to that extent was receivable. However, it rejected the application in this respect on the merits, since General Assembly decision 67/551 was unambiguous and the explicit intention of the General Assembly was that the multiplier of 65.5 applied until 31 January 2013. Therefore, and since the Secretary-General has not been vested with any discretion in this regard, he was duty bound to implement the decision.

Decision Contested or Judgment/Order Appealed

The Applicants contest the refusal to pay post adjustment based on the multiplier 68 for New York from 1 August 2012 through 31 January 2013, and the amount paid to them in January 2013, as reflected in their respective statements of earning of January 2013.

Legal Principle(s)

Administrative decision: a decision to apply a certain post adjustment multiplier for a certain period to a group of staff member which is only determined by their status and duty station in the Organization at a given time does not constitute an

administrative decision but a decision with regulatory power. The decision by the Secretary-General to pay the Applicants a certain amount as reflected in their payslip for a certain month, in application of a multiplier determined by the ICSC at the direction of the General Assembly, constitutes an administrative decision. Discretionary power of the Secretary-General: The Secretary-General has no discretionary power and is duty-bound to implement the decisions of the ICSC, taken at the direction and in implementation of an unambiguous decision of the General Assembly. The legality of the decision of the General Assembly does not fall within the purview of the Tribunal.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Ovcharenko et al and Kucherov

Entity

DGACM

Case Number(s)

UNDT/GVA/2013/43

UNDT/GVA/2013/44

Tribunal

UNDT

Registry

Geneva

Date of Judgement

25 Mar 2014

Duty Judge

Judge Cousin

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Benefits and entitlements

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Applicable Law

UNDT Statute

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

UNDT/2014/026

2012-UNAT-238

2012-UNAT-269

2013-UNAT-304