

UNDT/2015/012, Hosang

UNAT Held or UNDT Pronouncements

Receivability: The Tribunal considered that the contested decision was alleged to be in non-compliance with the Applicant's terms of appointment and produced direct legal consequences adversely affecting the Applicants' rights. The Tribunal found that the application was receivable. Whether there were procedural errors which breached the Applicant's rights following the classification of the post at the G-5 level and, if there were, what consequences flowed from those procedural errors The Tribunal found that the Administration failed to comply with ST/AI/1998/9 in that it did not provide a copy of the classification decision to the Applicant, as the incumbent of the post. The Tribunal also found that this failure, deprived the Applicant of the opportunity to exercise his right to request payment of SPA while performing duties classified at a higher level and to be given an opportunity to compete for a promotion to the G-5 level until the post was advertised on 22 June 2012, after the Applicant had filed a claim. The Tribunal further considered that the Administration's failure to provide the Applicant with a copy of the classification result was in clear breach of staff regulation 2.1 and violated the Applicant's right to equal pay for equal work. Whether the contested decision was a proper exercise of administrative discretion Evidence confirmed that the job description prepared for the purpose of the classification request accurately reflected the duties performed by the Applicant which was further reflected in the Applicant's performance appraisals from 1999 onwards. The contested decision could not rationally and legitimately be based, as it appears to have been, solely on the views of the Applicant's Second Reporting Officer who assumed his role in 2009. Additionally, the statement that the Applicant's request for SPA was "not recommended by the substantive office" is factually incorrect and contradicted by the record. The Tribunal found that the contested decision was not supported by the evidence and was irrational. The Administration failed to fully and properly consider whether the Applicant was eligible, under ST/AI/1999/17 to the retroactive payment of SPA from 19 June 1997 to 8 September 2011 and acted contrary to staff rule 3.10. Whether, and if so, what compensation should be awarded taking into account the payment of

two years SPA already granted to the Applicant by the AdministrationThe Tribunal considered that the compensation already given to the Applicant fell short of the prejudice suffered by the Applicant for over 10 years. The award of compensation made by Tribunal was on the basis of the violations of the staff regulations, staff rules and administrative issuances as well as the unlawful refusal to compensate the Applicant for the duties performed on the post he encumbered, classified at a higher level, for over 10 years, in excess of the period he may have been legally expected to perform higher level duties, in breach of the principle of equal pay for equal work. The Tribunal found that the exceptional circumstances of this case warranted exceeding the award of two years' net salary and grants the Applicant an award of compensation being the difference in salary between his earnings at the G-4 level from 25 January 2000 to the date of conclusion of the selection process for the job opening. The Applicant was also awarded the sum of 1,000 USD for loss of a chance of being considered for promotion to the post at the G-5 level within a reasonable period after 25 January 2000.Abuse of processThe Tribunal found that the Respondent's presentation of evidence, that is based on fundamental procedural and factual flaws, aimed at discrediting a properly and lawfully conducted classification exercise conducted more than a decade ago amounted to an abuse of process for which the Tribunal considered it appropriate to make an award of costs against the Respondent in the sum of 3,000USD.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision by the Executive Office, DPKO/DFS, refusing to grant retroactive payment of Special Post Allowance ("SPA") for performing duties at a higher level for more than ten years .

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Hosang

Entity

DFS

Tribunal

UNDT

Registry

New York

Date of Judgement

4 Feb 2015

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Special Post Allowance

Classification (post)

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Administrative Instructions

- ST/AI/1998/9
- ST/AI/1999/17

Secretary-General's bulletins

- ST/SGB/2001/1

Staff Regulations

- Regulation 1.2
- Regulation 2.1

Staff Rules

- Rule 3.10
- Rule 3.16

UNDT Statute

- Article 2
- Article 3
- Article 8

Related Judgments and Orders

2010-UNAT-009

2010-UNAT-030

2010-UNAT-044

2010-UNAT-059

2010-UNAT-084

2010-UNAT-092

2010-UNAT-093

2010-UNAT-094

2010-UNAT-095

2011-UNAT-107

2011-UNAT-109

2011-UNAT-122

2013-UNAT-288