

# UNDT/2016/004, Yazaki

## UNAT Held or UNDT Pronouncements

The UNDT found that the main legal issue was whether ST/AI/2011/6 (Mobility and hardship scheme) applied to the counting of assignments that the Applicant undertook before the instruction went into effect on 1 July 2011. The UNDT found that ST/AI/2011/6 could not be applied retroactively to assignments that took place before it went into effect. The UNDT further found that the revised staff rule 4.8(b), which allows for different counting of the Applicant's assignments, was applicable only to assignments starting on or after 1 July 2009, and was not retroactively applicable to prior assignments, which continued to be governed by the terms and conditions established at their beginning. The UNDT concluded that the Administration correctly counted the number of the Applicant's assignments. The UNDT further found that, although there was a delay in the Administration's response to the Applicant's inquiries regarding the matter, the Applicant did not adduce evidence of damages caused by the delay. The UNDT dismissed the application.

## Decision Contested or Judgment/Order Appealed

The Applicant, a staff member in the UN Secretariat, contested the decision to grant her mobility count of H-4 instead of H-5 for the purpose of calculating mobility allowance.

## Legal Principle(s)

Retroactive v. retrospective application of law: For all intents and purposes, retroactive and retrospective are synonyms and no meaningful difference exists in the legal understanding of the two words, as also established in the binding Judgments of the UNAT. Therefore, ST/AI/2011/6 cannot be applied retroactively. Compensation: as the Appeals Tribunal stated in Antaki 2010-UNAT-095 "not every violation will necessarily lead to an award of compensation. Compensation may only be awarded if it has been established that the staff member actually suffered damages.

## Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Yazaki

Entity

DPI

Case Number(s)

UNDT/NY/2014/58

Tribunal

UNDT

Registry

New York

Date of Judgement

11 Jan 2016

Duty Judge

Judge Greceanu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Mobility/hardship allowance

Compensation

Applicable Law

Administrative Instructions

- ST/AI/2007/1
- ST/AI/2011/6

Staff Rules

- Rule 4.8