

UNDT/2017/043, Kings

UNAT Held or UNDT Pronouncements

The Tribunal found that the Organization's inaction to resolve the failure to timely pay to the Applicant the amount due constituted an implied decision, which, in turn, was an appealable administrative decision subject to scrutiny, regarding the period of delay, even if the amount due had eventually been paid. The Tribunal ruled that the Applicant had a contractual right to receive her salary and to receive it in a timely manner. Technical problems following the deployment of a new ERP system are not a justification for a denial of such an entitlement. Therefore, the Tribunal awarded compensation for both material and moral harm caused by the delay in paying the Applicant's due salary. No need of intention with respect to implied decision: For an administrative decision to exist there is no requirement that there be a specific intention or plan, or that the Applicant was purposefully targeted.

Reviewability of delayed payment of financial entitlements: The eventual payment of a salary due to a staff member will put an end to any breach in respect of the failure to properly comply with the contractual obligations towards him/her. It does not remove the fact that the breach occurred and existed for a time, with consequent impact. The challenge of such a decision does not become moot after the delayed payment of the concerned sums. Any damage resulting from the failure to pay for a certain period attributable to the Administration warrants compensation. Duty to pay salary: Payment of salary for work performed is an obvious primary duty of the Organization vis-à-vis its employees. Although there is no specific provision setting the interval of salary accrual and payment, there is a constant practice since the Organization's inception to pay salaries at the end of every month, with only an exception for free-lance temporary employees who, often, given the brevity of their appointment, are paid on the month of the expiry of their contract. Paying salaries according to this timeframe is, at the very least, an implied condition of contract resulting from the practices of the Organization. Failure to timely pay salary: Such failure amounts to an ongoing breach of a contractual obligation, producing effects between the date when the salary became due and payable until it was actually paid. While the eventual payment of arrears put an end to the ongoing breach by

the Administration, it did not erase the failure to pay the salary when due, nor the damage caused by the lack of payment during an extended period, in this case: four months. Force majeure: Force majeure is an unforeseeable and irresistible event objectively preventing to take the required action. It must be appreciated in respect of the Organization as a whole, not with regard to one or some individual officials. Delay in payment of a financial entitlement entails material injury: Failure to pay a salary owed to a staff member during a certain time deprives him/her of the possibility to spend or invest monies on which he or she could legitimately count. As ruled in Massi: "It goes without saying that a delayed payment entails economic consequences".

Decision Contested or Judgment/Order Appealed

The Applicant contested the late payment of her October 2015 salary, which she ultimately received on 31 March 2016.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Kings

Entity

UNOG

Case Number(s)

UNDT/GVA/2016/35

Tribunal

UNDT

Registry

Geneva

Date of Judgement

21 Jun 2017

Duty Judge

Judge Downing

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Implied administrative decision

Compensation

Non-pecuniary (moral) damages

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Applicable Law

Staff Regulations

- Annex I
- Annex II

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2009/036

UNDT/2009/092

UNDT/2016/100

UNDT/2011/144

UNDT/2014/040

UNDT/2017/013

2010-UNAT-030

2010-UNAT-099

2012-UNAT-218

2012-UNAT-253

2010-UNAT-059

UNDT/2012/025