

UNDT/2018/049, Hosang

UNAT Held or UNDT Pronouncements

The Tribunal finds that the application is receivable.

Decision Contested or Judgment/Order Appealed

The Applicant seeks retroactive correction of his grade to the GS-5 level from the date of his appointment on 16 June 1997 to 2000 when the post was classified at that level and he seeks compensation for loss of opportunity and the emotional distress caused by the Respondent's administrative delay in responding to his claim.

Legal Principle(s)

The Dispute Tribunal is competent to review its own competence or jurisdiction. When considering the receivability of an application, the Dispute Tribunal is not limited by the pleadings of the parties or their presentation of the possible receivability issues. The date of an implied decision, and thereby also an omission, is based on objective elements that both parties can accurately determine, i.e., when the staff member actually knew or should reasonably have known about it. A valid defense of res judicata provides that a matter between the same persons, involving the same cause of action, may not be adjudicated twice. Res judicata operates to bar a subsequent proceeding if the issue submitted for decision has already been the subject of a final and binding decision as to the rights and liabilities of the parties on the merits in that same regard. The issue of retroactive classification of an unclassified post is distinct and separate from an entitlement to Special Post Allowance, that involves entirely different considerations and administrative processes. The correct classification of a post is a staff member's contractual right.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Hosang

Entity

DFS

Case Number(s)

UNDT/NY/2016/013

Tribunal

UNDT

Registry

New York

Date of Judgement

13 Apr 2018

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Staff Rules

- Rule 11.2(c)

UNDT Statute

- Article 8.4

Related Judgments and Orders

2015-UNAT-605

2011-UNAT-182

2013-UNAT-335

2015-UNAT-526

2016-UNAT-643

2016-UNAT-672

2016-UNAT-644

2010-UNAT-063

2010-UNAT-066

2012-UNAT-198

2014-UNAT-492

2015-UNAT-554

2016-UNAT-622

2016-UNAT-615