

UNDT/2018/099, Haq, Kane

UNAT Held or UINDT Pronouncements

The Tribunal found the application receivable since the contested decision was a new and separate administrative decision distinct from any decisions issued by the UNJSPF Board in relation to their pensions. The Secretary-General decided not to grant the relief requested by the Applicant in the contested decision and thus this is a separate administrative decision.; There was no mention in the Applicants' acceptance of their appointments confirming that they were also provided with a copy of the UNJSPF Regulations, being therefore aware of their content and accepting their contracts to be subject to all the legal provisions applicable to their new appointments both at the ASG and USG levels. Also, there was no specific explanation about changes in the Applicant's pension entitlements upon their appointment at the ASG and USG levels. Therefore, the Tribunal concluded that the Applicants were not fully and accurately informed of their pension entitlements and they accepted their appointments at ASG/USG levels unaware of the applicable rules and of their legal consequences on their pension benefits and entitlements as a result of the change in their contractual status from staff members to UN officials.; The Tribunal found that it cannot be presumed that the Applicants were already aware of the content of the UNJSPF Regulations applicable to their new positions based only on the fact that they were long-serving staff members.; Both Applicants testified before the Tribunal that they were informed about the content and the legal effects of UNJSPF Regulations on their retirement benefit only before their separation from the Organization and not before or at the time of their appointments.; The Tribunal also considered the fact that for the former Secretary-General Annan, who was a long-serving staff member before being elected as the Secretary-General, was provided with clarifications regarding the terms and conditions of their pension contributions and retirement benefit and possible options by the UNJSPF Board at the beginning of the new appointment. However, such relevant information and correlative options were not of public knowledge and remained unknown to the Applicants and the Tribunal held that such information should have been provided to the Applicants at their appointments at ASG/USG levels.; Accordingly, the Tribunal

found that the contested decision was unlawful since the Organization breached its obligation of duty of care by failing to fully and timely inform the Applicants of their entitlements.; As relief, the Tribunal rescinded the contested decision and set three months net base salary as in lieu compensation. The Tribunal further awarded USD10,000 for each Applicant as compensation for the moral damages resulted from the breach of the Applicant's fundamental right to be fully and timely informed of their conditions of service. The Tribunal also ordered the Secretary-General to establish the amount of a fair and reasonable compensation for material damages for each Applicant.

Decision Contested or Judgment/Order Appealed

The refusal to pay any compensation to the Applicants relating to their pension entitlements (The Applicants paid pension contributions at the ASG/USG level during their tenure as ASG/USG and yet their retirement benefits were to remain at the previous D-2 level during their entire mandate due to the existence of a cap of the retirement benefit).

Legal Principle(s)

The Organization has the obligation to fully and accurately inform the staff member of his or her rights and obligation by including in the letter of appointment clear and detailed contractual clauses related to all his/her fundamental and essential terms of appointment, which include the right to the pension, and by providing together with the letter of appointment a copy of the Staff Regulations and Rules, including the ones relating to the UNJSPF, and the relevant administrative bulletins (ST/AI) and/or circulars (ST/IC); The purpose of compensation is to place the staff member in the same position s/he would have been had the Organization complied with its contractual obligations.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Haq
Kane

Entity

DFS

Case Number(s)

UNDT/NY/2017/2

Tribunal

UNDT

Registry

New York

Date of Judgement

5 Oct 2018

Duty Judge

Judge Greceanu

Language of Judgment

English
French

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45
Pension (see also, UNJSPF)

Applicable Law

Former Staff Rules
Staff Regulations

- Regulation 6.1

Staff Rules

- Rule 12.3
- Rule 3.18
- Rule 6.1

UNDT Statute

- Article 10.5
- Article 2.1
- Article 8.1(c)

Related Judgments and Orders

2010-UNAT-073
2011-UNAT-182
2013-UNAT-313
2013-UNAT-335
2016-UNAT-704
UNDT/2011/012
UNDT/2011/068
2018-UNAT-847