

# **UNDT/2019/020, Hailou**

## **UNAT Held or UNDT Pronouncements**

The Applicant had unusually received SPA for the more than the four-year period she performed functions at a higher level (February 2012 – June 2016). The post she encumbered was reclassified upwards to the FS-6 level in 2012, not 2006. The Tribunal refused her claim that she was performing higher-level functions between 2006 and 2012 when those functions were not recognized through an upward reclassification as higher-level functions. Additionally, under section 6.2(c) of ST/AI/2003/3, in respect of posts reclassified upwards at established missions, an SPA may not become effective before the effective date of the reclassification decision. Accordingly, the Applicant was not entitled to payment at the FS-6 level either by way of SPA or promotion before 2012. The Applicant was adequately compensated for performing higher-level functions at MONUSCO. The Applicant's contention that her ineligibility for FCRB rostering and consideration for promotion to the FS-6 level was the fault of the Respondent because he did not advertise the post she encumbered for recruitment was entirely without merit. It was up to the Applicant who had successfully improved her academic qualifications to similarly seek other opportunities within the Organization to get on the FCRB FS-6 roster.

## **Decision Contested or Judgment/Order Appealed**

The Applicant challenged the decision not to grant her retroactive promotion to the FS-6 level and the denial of her request for Special Post Allowance (SPA), and the consequences (on her) of the post she encumbered being reclassified.

## **Legal Principle(s)**

In reversing the UNDT decision in Elmi, UNAT held that the denial of retroactive promotion to the applicant was in full accord with staff rule 3.10 which governs the grant of SPAs. UNAT also held that under the applicable legal framework, promotions

do not go into effect retroactively. It further noted that under section 10.2 of ST/AI/2010/3, the earliest possible date on which a promotion may become effective shall be the first day of the month following the promotion decision. About the applicant's submission that an exception could be granted under staff rule 12.3(b), UNAT held that the respondent had exercised discretion in respect of whether to grant him a retroactive promotion when it declined the applicant's request to do so.

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Hailou

## Entity

MONUSCO

## Case Number(s)

UNDT/NBI/2015/170

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

11 Feb 2019

## Duty Judge

Judge Izuako

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Benefits and entitlements

Classification (post)

Compensation

Loss of chance

## Applicable Law

Administrative Instructions

- ST/AI/2003/3
- ST/AI/2010/3

Staff Rules

- Rule 12.3