

# UNDT/2019/080, Derseh

## UNAT Held or UNDT Pronouncements

The Tribunal noted that not only is the payment of SPA discretionary, certain conditions must be met before it is considered and granted. One of these conditions is that the applicant's supervisor submits a statement to indicate that he took up the full functions of a higher-level post and whether he demonstrated an ability to fully meet the performance expectations of all functions of the post. The Tribunal noted that even though OSLA counsel initiated a request for SPA on behalf of the Applicant, his supervisor did not submit the statement as required and showed through emails and other documentary evidence that the request was not approved. Further, the onus was on the Applicant to prove that he performed all of the higher-level functions of the G-6 post but he failed to prove his case. With regards to the Applicant's allegation that Annex 07 (the Applicant's performance rating for the 2013/2014 reporting cycle filed by the Respondent) is "a fake and fraudulent e-PAS document", the Tribunal accepted the explanations provided by the Respondent and underscored the obligations owed the Tribunal by parties before it. The Tribunal reiterated that it is tasked with examining the cases brought by the parties with a view to properly applying relevant laws and holding accountable those who have acted unlawfully. The Tribunal pronounced that false and inaccurate statements made by any party with nothing but the intention to do mischief constitute unethical behavior. The Tribunal held that the Applicant's allegations were unethical, unfounded, misleading and malicious.

## Decision Contested or Judgment/Order Appealed

Refusal to grant the Applicant's request for payment of a Special Post Allowance (SPA) against a G-6 Mail Assistant post.

## Legal Principle(s)

Section 2.1 of ST/AI/1999/17 allows the payment of a non-pensionable SPA "in exceptional cases when a staff member is called upon to assume the full duties and responsibilities of a post which is clearly recognizable at a higher level than his or her own for a temporary period exceeding three months." Section 5 provides for the conditions to be met before a request for SPA may be considered. These conditions include the requirement that the request for SPA may be initiated by the staff member or his or her supervisor. There must be a statement also from the supervisor that the staff member took up the full functions of the higher-level post and that the staff member demonstrated an ability to fully meet the performance expectations of all functions of the post.

## Outcome

Dismissed on merits

Outcome Extra Text

The application failed in its entirety because the Applicant failed to establish his claim that he performed the full functions of the higher-level G-6 post in his sub-unit between March 2012 and August 2015. The Tribunal concluded that he was not entitled to the SPA payment.

## Full judgment

[Full judgment](#)

Applicants/Appellants

Derseh

Entity

ECA

Case Number(s)

UNDT/NBI/2016/069

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

10 May 2019

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Special Post Allowance

Compensation

Reassignment or transfer

Applicable Law

Administrative Instructions

- ST/AI/1999/17

UNDT RoP

- Article 16.1