

UNDT/2019/090, Nasir

UNAT Held or UNDT Pronouncements

The Tribunal noted the application of two salary scales in this case. One salary scale, effective from 1 January 2015, was applicable to all staff recruited to the General Services category at the Bangkok duty station on or after 1 March 2012. The other salary scale applied to those who were recruited prior to 1 March 2012. The Applicant's terms of appointment were set by specific agreement and were not impacted in any manner by any decision which was implemented in January 2015 or were disclosed to him when he received his first payslip. He agreed to certain terms and conditions in the offer of appointment he signed on 24 May 2017 and in the letter of appointment he signed on 24 August 2017. The salary scale applied to his appointment was that published and applicable. He appeared to be asserting that he had in some manner the same acquired rights as those who had been working for the Organization before 1 March 2012 and who, as a consequence, were not subject to a 27.2 percent salary reduction. The Tribunal found that the Applicant had no contractual relationship at the relevant time and there had been no change in his salary, or contractual terms from those offered and agreed by him with the Respondent. Any rights which may be acquired by him can only run from the time of the commencement of his contractual relationship, and not before. He had no privity of contract in respect of the staff members who were engaged prior to the introduction of the new salary scale. Therefore, he could not assert that such rights were attached to his contract. Applying the test of Andronov, as the Tribunal is bound to do, there simply was no decision of the type claimed. There was no unilateral decision that had a direct legal consequence upon the existing contractual rights of the Applicant. His rights were as agreed with the Organization in his letter of appointment and remained unaltered. The Applicant's complaint about decisions which may result in there not being equal pay for equal work in breach of the Universal Declaration of Human Rights is not a matter which can be considered by this Tribunal unless it may be related directly to an administrative decision in respect of which the Applicant has a right to challenge. No such appealable decision exists in respect of which the Applicant has any rights to bring before the Tribunal. Consequently, the application was dismissed as irreceivable.

Decision Contested or Judgment/Order Appealed

The Applicant contests an asserted decision to pay him a salary which is not equal to that of other GS-4 staff in Bangkok.

Legal Principle(s)

The Flemming principle provides that the conditions of service for locally recruited staff within the United Nations should reflect the best prevailing local conditions found for similar work at the city of a mission or post. An acquired right is an acquired contractual right. It is predicated upon the existence of a contractual relationship at the time that the acquired right is in some manner impacted by a unilateral decision of the Organization.

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Nasir

Entity

ESCAP

Case Number(s)

UNDT/GVA/2017/109

Tribunal

UNDT

Registry

Geneva

Date of Judgement

22 May 2019

Duty Judge

Judge Downing

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

UNDT Statute

- Article 2

Related Judgments and Orders

2013-UNAT-304

UNDT/2019/089