

UNDT/2020/017, Ghanem-Ali

UNAT Held or UNDT Pronouncements

There is nothing in the wording of sec. 2.5(a) that prescribes for ruling out of the count of one-year assignments that were preceded by an assignment that lasted less than a year. Accordingly, even though the prior assignment of nine months in Cairo did not itself count as an assignment, the following period in Tripoli, which was for one year, fully meets the requirements to be counted as an assignment. The Tribunal finds that there is no room to interpret the relevant provisions to claim, like the Respondent does, that his return to Tripoli in April 2012 should be considered as a continuation of service in Tripoli as he only served in Cairo less than one year. The Respondent is adding a clause that does not exist in the relevant legal framework. There is no similar clause in the legal framework for mobility allowance entitlement that treats staff members differently when one returns to a place at which he or she was previously stationed as opposed to someone who goes to a place at which he or she was not previously stationed. As the Appeals Tribunal stated in Faust 2016-UNAT-695, where the law does not distinguish, neither should we distinguish. The Applicant submits that it took two years to process his claim for mobility allowance, which the Respondent does not dispute. Considering that the contested mobility allowance entitlement amounts to USD26,512.38, the interest for such amount even for one year would have certainly exceeded USD1. However, since the Dispute Tribunal cannot award more compensation than the amount requested by the Applicant, the Tribunal will not make a determination as to how much he could have been awarded for interest. Accordingly, the Tribunal awards USD1 as compensation for the delay in the payment of his mobility allowance entitlement as requested by the Applicant.

Decision Contested or Judgment/Order Appealed

The decision that he is not entitled to mobility allowance for his assignment with UNSMIL in Tripoli from 1 April 2012 through 30 June 2013 on the basis that the Applicant did not spend at least one year out of Tripoli when he returned to Tripoli

The delay in the calculation and payment of his mobility allowance entitlement

Legal Principle(s)

When the language is plain and common, the text of the rule must be interpreted upon its own reading, without further investigation. If the text is not specifically inconsistent with other rules set out in the same context or higher norms in hierarchy, it must be respected, whatever technical opinion the interpreter may have to the contrary, or else the interpreter would become the author. Where the law does not distinguish, neither should we distinguish. The delay in the completion of certain procedures in itself is not an administrative decision subject to judicial review. While the absence of a response to a staff member's request could constitute an implied administrative decision and be contested, the alleged delay in reaching the contested decision is preliminary in nature and may only be challenged in the context of an appeal after the conclusion of the entire process. The Dispute Tribunal is not competent to award compensation of the specific kind ... without a previous claim for such damage and compensation.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Ghanem-Ali

Entity

UNSMIL

Case Number(s)

UNDT/NY/2019/064

Tribunal

UNDT

Registry

New York

Date of Judgement

31 Jan 2020

Duty Judge

Judge Honeywell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Applicable Law

Administrative Instructions

- ST/AI/2011/6

Staff Rules

- Rule 3.13