

# **UNDT/2021/054, Franco**

## **UNAT Held or UNDT Pronouncements**

Whether the application is receivable The Tribunal considers that the issues concerning the eligibility of SPA and the timeliness of its request are questions for the merits and have no bearing on receivability. Thus, the core receivability issue before the Tribunal is whether the contested decision falls within the scope of art. 2.1(a) of its Statute. The Tribunal is of the view that the contested decision fulfils the test of Andronov. It has been “shown to adversely affect the rights or expectations of the staff member” (see Michaud 2017-UNAT-761, para. 50), and thus has a direct legal effect. Accordingly, the Tribunal concludes that the contested decision constitutes an administrative decision within the scope of art. 2.1(a) of its Statute, and thus finds that the application is receivable. Whether the contested decision is lawful Considering that the Applicant holds a continuing appointment and has at least one year of continuous service with the Organization, the Tribunal is of the view that his eligibility for SPA arises essentially at the occurrence of the following conditions: (i) he was formally temporarily assigned to a higher-level post; (ii) he discharged the full functions of the higher-level post; (iii) the performance of the duties is satisfactory; and (iv) the duration of this performance is over three months. With regard to the first requirement of a formal assignment by the Administration, given that the higher-level functions are related to an unencumbered higher-level post, it should be considered as met if the Administration is fully aware that the Applicant has been performing higher-level functions and it takes full advantage of this performance. This indeed excludes that the performance of the higher-level functions in the present case was only *de facto*, without legal effects. Turning to the second requirement of having discharged the full functions of the higher-level post, the Tribunal is of the view that this does not mean that if one or more of the higher-level functions are not performed, there is no right to SPA; otherwise, the rule would be almost inapplicable. What is relevant is that the core higher-level functions be performed. As to the requirement concerning the duration of performance, the Tribunal notes that staff members are expected to assume temporarily, as a normal part of their customary work and without extra compensation, the duties and

responsibilities of higher-level positions. This, however, is only for a period of three months after which compensation is required not only to protect the staff member from being exploited, but also to respond to the need of the Organization to “ensure that priority be given to fill higher-level vacant posts under the established procedures by means of a competitive recruitment exercise, rather than temporary assignments” (see Frehiwot Yabowork 2020-UNAT-1037, para. 35). The Tribunal recalls that pursuant to staff rule 3.17(ii), the Applicant is required to request SPA within one year following the date on which he would have been entitled to an initial payment. The Tribunal finds that the Applicant is entitled to SPA payment from 21 December 2017 until 31 January 2018, when the GS-6 vacancy was deemed to be filled, and that the contested decision is not lawful with respect to this period. Whether the Applicant is entitled to any remedies The Tribunal observes that the Applicant did not adduce any evidence of the alleged harm as required under art. 10.5(b) of its Statute. Indeed, “compensation for harm can only be awarded where there is a sufficient evidentiary basis establishing that harm has in fact occurred” (see Kallon 2017-UNAT-742, para. 67). Therefore, the Tribunal rejects the Applicant’s request for compensation for harm suffered.

## Decision Contested or Judgment/Order Appealed

The Applicant contests the decision not to grant him a Special Post Allowance (“SPA”) for higher-level functions performed since 1 May 2015.

## Legal Principle(s)

In determining what constitutes an administrative decision within the scope of art. 2.1(a), the Appeals Tribunal has adopted the definition developed by the former UN Administrative Tribunal in Judgment No. 1157, Andronov (2003), namely that: [i]t is acceptable by all administrative law systems, that an “administrative decision” is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. A SPA can be granted to field mission staff members if the requirements in the Staff Rules and ST/AI/2003/3 are met, *inter alia*, that the staff member be temporarily assigned to the functions of a higher-level post in accordance with procedures set forth in section 3 of ST/AI/2003/3; and that the staff member must have discharged the full functions of a post classified and budgeted at a higher level

than the staff member's own level. Moreover, a staff member shall submit his or her written request for SPA within one year following the date on which the staff member would have been entitled to the initial payment.

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Franco

## Entity

UNLB

## Case Number(s)

UNDT/GVA/2019/073

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

17 May 2021

## Duty Judge

Judge Buffa

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Administrative decision

Benefits and entitlements

Classification (post)

Compensation

## Applicable Law

Administrative Instructions

- ST/AI/1999/17
- ST/AI/2003/3

Staff Rules

- Rule 3.10
- Rule 3.17(ii)

UNDT Statute

UNAT Statute

- Article 2.1(a)

## Related Judgments and Orders

2013-UNAT-304

2014-UNAT-481

2017-UNAT-761

2020-UNAT-1037

2017-UNAT-742