

UNDT/2021/087, Chaoui et al

UNAT Held or UNDT Pronouncements

Receivability: The Applications were found receivable for the following reasons: 1. They were timely, having been filed within the applicable deadline, following a properly requested management evaluation. 2. An individual administrative decision, namely, to apply the new post adjustment in relation to each of the Applicants, had been issued and implemented, as demonstrated by their salary slips for the month of February 2018. 3. The Tribunal rejected the Respondent's claim that the administrative discretion is a criterion for determining receivability of an application. Merits: With regard to the case at hand, the Tribunal observed that the General Assembly decided legal parameters of the post adjustment and the ICSC decided its methodological parameters and applied both to calculating the post adjustment being contested. Further, the Tribunal recalled that the ICSC was established by General Assembly resolution 3357 (XXIX) of 18 December 1974. The ICSC Statute was a General Assembly Resolution, and thus had to be read in conjunction with subsequent General Assembly Resolutions of equal normative value, susceptible to modify, alter or amend resolution 3357 (XXIX) approving the ICSC Statute. Accordingly, where the ICSC exercised its delegated regulatory powers, the ICSC remained subordinated to the General Assembly who may intervene, and indeed did so, mainly in the policy stage and after the ICSC decision had been taken. The Tribunal further reasoned that the intervention of the General Assembly removed the matter from the purview of the Tribunals. In such cases, the regulatory decision would be attributed directly to the General Assembly. Thus, the Tribunal's review became limited to the question of a normative conflict between the acts of the General Assembly, and for this case, whether the individual decision taken by the Secretary-General violated the Applicants' acquired rights. In view of the above, the Tribunal established that the ICSC had acted in exercise of its delegated regulatory powers under art. 11 of its Statute. Further, the General Assembly by resolutions A-RES-74-255, or both A-RES-74-255 and A-RES-72-255 had implicitly approved the ICSC disputed methodology and/or its results for the Geneva post adjustment. On whether the impugned decision violated the Applicants'

acquired rights as per staff regulation 12.1, the Tribunal found that the application of the new post adjustment was not retroactive and as such did not infringe on their rights. Further, the Tribunal found that the contested decision did not undermine the very existence of the Applicants' right to post adjustment. Accordingly, the Tribunal held that the applications failed and were thus dismissed.

Decision Contested or Judgment/Order Appealed

The Applicants contested the decision of the Secretary-General to apply the new post adjustment multiplier for Geneva as decided by the International Civil Service Commission in July 2017 in relation to their salaries, as of February 2018.

Legal Principle(s)

Pursuant to staff rule 3.7(a), staff members are entitled to the payment of post adjustment allowance to ensure equity in the purchasing power across duty stations. Further, pursuant to the jurisprudence, the International Civil Service Commission (ICSC) is the subsidiary organ of the United Nations General Assembly responsible for determining the post adjustment. Accordingly, the ICSC is subject to the supervision of the General Assembly. Where the ICSC recommends the content of regulatory decisions under art. 10 of its Statute, the ultimate regulatory decision emanates from the General Assembly. Such a decision is binding on UNDT and UNAT and may only be reviewed incidentally and narrowly for the conflict of norms between the acts of the General Assembly. On the other hand, where the ICSC exercises a delegated regulatory power under art. 11 of its Statute, its decision, while undisputedly binding on the Secretary-General, may be subject to incidental examination for legality, including that where the contested matter belongs in the field of discretion, the applicable test will be that pertinent to discretionary decisions.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Chaoui et al

Entity

UNOG

Case Number(s)

UNDT/NBI/2018/84

UNDT/NBI/2018/85

UNDT/NBI/2018/86

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

26 Jul 2021

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Salary

Post-adjustment

Salary scales

Applicable Law

GA Resolutions

- A/RES/39/27

Laws of other entities (rules, regulations etc.)

- ICSC Statute

Related Judgments and Orders

2021-UNAT-1107

UNDT/2020/106

UNDT/2020/114

UNDT/2020/115

UNDT/2020/117

UNDT/2020/118

UNDT/2020/122

2018-UNAT-840