

2016-UNAT-704, Elmi

UNAT Held or UNDT Pronouncements

UNAT considered two appeals by the Secretary-General. On the receivability, UNAT held that UNDT had not erred or exceeded its competence in finding the application receivable *ratione materiae*. UNAT held that the Secretary-General's argument of non-receivability *ratione temporis* was without merit. UNAT held that UNDT erred on a question of law and fact and exceeded its competence when it held that the staff member was entitled to be granted a retroactive promotion with effect from 1 January 2012 to ensure that the time of the selection process from January 2012 to May 2013 be considered as "D-1-time" for the purpose of his pension benefits. UNAT held that the denial of this request by the ASG/OHRM was in line with the applicable Staff Rules and administrative issuances and did not violate the principle of equal pay for work of equal value. UNAT held that a promotion may only become effective on the first day of the month following the decision, subject to the availability of the position and the assumption of higher-level functions. UNAT dismissed the Secretary-General's appeal on receivability and granted his appeal on the merits. UNAT affirmed judgment No. UNDT/2015/013 on Receivability and vacated judgment No. UNDT/2016/032 on Liability and Relief.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to grant his request for retroactive promotion to the D-1 level. UNDT issued a judgment on receivability, finding the application receivable. UNDT issued a second judgment on liability and relief, finding that the Assistant Secretary-General of the Office of Human Resources Management (ASG/OHRM) was incorrect in assuming that the Applicant had received equal pay for work of equal value. UNDT found that the situation had given rise to the Applicant earning a lower pension than he was properly entitled to. UNDT granted the Applicant an alternative remedy of 12 months' net base salary.

Legal Principle(s)

Under the applicable legal framework, promotions do not go into effect retroactively. Under Staff Rule 3.10, staff members must, in general, exercise higher-level functions even without any extra compensation, and only in exceptional circumstances may they be granted a non-pensionable special post allowance “from the beginning of the fourth month of service at the higher level”.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Elmi

Entity

UNON

Case Number(s)

2016-938

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Oct 2016

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Temporal (ratione temporis)

Staff selection (non-selection/non-promotion)

Applicable Law

Administrative Instructions

- ST/AI/2010/3

Staff Rules

- Rule 12.3(b)
- Rule 3.10(b)

Related Judgments and Orders

UNDT/2016/032

2011-UNAT-107

2012-UNAT-227

2015-UNAT-538

2011-UNAT-177

2010-UNAT-084

2010-UNAT-079

2013-UNAT-385

2015-UNAT-557