

2018-UNAT-840, Lloret-Alcañiz et al.

UNAT Held or UNDT Pronouncements

UNAT found that the appeal raised significant questions of law about the power of the Organisation to unilaterally alter or reduce the compensation of staff members of the Organisation. For that reason, the President of UNAT in terms of Article 10(2) of the UNAT Statute elected to refer the appeal for consideration by the full bench of UNAT. UNAT recalled that an administrative decision is a unilateral decision of an administrative nature taken by the administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another and produces direct legal consequences. A decision of an administrative nature is distinguished from other governmental action of a regulatory, legislative, or executive nature. The majority held that the Secretary-General's implementation of the resolutions involved an administrative decision with an adverse impact. These judges accepted that the Secretary-General had little or no choice in the implementation of the General Assembly resolutions; the power he exercised was a purely mechanical power, more in the nature of duty. However, they found that such exercises of power were administrative in nature and involved a basic decision to implement a regulatory decision imposing the terms and conditions mandated by it. They were thus administrative decisions that may adversely affect the terms of employment and were reviewable on narrow grounds of legality. Having found that the contested decisions constituted administrative decisions, UNAT examined whether there is indeed a normative conflict or an irreconcilable inconsistency between Resolution 13(I) of 1946, which provides that the Staff Regulations may only be supplemented or amended by the General Assembly without prejudice to the acquired rights of staff members, and Resolutions 70/244 and 71/263, which introduced the Unified Salary Scale. UNAT noted that the purpose of introducing Staff Regulation 12. 1 was to afford staff members some degree of protection from subsequent amendments to the Staff Regulations prejudicing their acquired rights. In UNAT's view, an acquired right means a vested right and employees only acquire a vested right to their salary for services rendered. UNAT held that the limited purpose of Regulation 12. 1 is to ensure that staff members are

not retrospectively deprived of a benefit once the legal requirements for claiming the benefit have been fulfilled. UNAT concluded that the contested decisions did not violate the staff members' acquired rights as the General Assembly resolutions altered the staff members' future salaries. UNAT held that there was no normative conflict between resolution 13(I) of 1946 and resolutions 70/244 and 71/263. Absent any normative conflict, the Secretary-General did not act illegally in implementing Resolutions 70/244 and 71/263. UNAT further held that the fact that the staff members' letters of appointment stated that their initial salary "may rise" did not constitute an express promise by the Organisation to continue to increase their rate of pay and never to reduce it. The salary entitlements of staff members may be unilaterally amended by the General Assembly. As for the staff members' cross-appeal claiming that UNDT erred in finding that it lacked jurisdiction to examine whether the decision of the General Assembly to provide for the transitional allowance was illegal, discriminatory and in violation of Article 8 of the Charter of the United Nations, UNAT held that UNDT was correct to decline jurisdiction on the basis that only appeals in relation to administrative decisions are receivable by it. UNAT upheld the Secretary-General's appeal, dismissed the staff members' cross-appeal, and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

Prior to 1 January 2017, staff members of the Organisation in professional and higher categories were paid their net salary at either a single or a dependency rate, depending on their family status. In 2015, the General Assembly adopted the introduction of the Unified Salary Scale, providing one net salary for all staff members without regard to family status. In 2016, the General Assembly acceded to the Secretary-General's request to amend the Staff Regulations for the implementation of the approved changes. As the gross and net base salaries of the staff members who were previously paid at the dependency rate would be reduced, they would receive a progressively depreciating transitional allowance of six percent of net remuneration for a six-year period. Five staff members claimed that these unilateral variations of their remuneration were illegal and in breach of their contracts of employment and their acquired rights. UNDT held that the decisions implementing the Unified Salary Scale constituted administrative decisions in terms of Article 2 of the UNDT Statute since they negatively impacted the staff members' terms and conditions of appointment. UNDT accordingly held that the applications

challenging these decisions were receivable. It held further that there was a normative conflict between General Assembly resolutions 70/244 and 71/263, adopting the Unified Salary Scale, and preceding General Assembly resolutions still in force protecting staff members' acquired rights. UNDT concluded that the Secretary-General's implementation of the Unified Salary Scale for the staff members, which resulted in their being paid reduced gross and net base salaries, violated their acquired rights and was thus unlawful. By way of remedy, UNDT rescinded the contested decisions and ordered that the six-per cent reduction be reintegrated as part of their salary. Regarding the staff members' claim that the transitional allowance had a discriminatory effect on them, UNDT found that it lacked jurisdiction to examine whether the decision of the General Assembly to provide for the transitional allowance was illegal and discriminatory because the claims concerned a legislative or regulatory decision and not an administrative decision.

Legal Principle(s)

In any contract of employment, an acquired right means a party's right to receive counter-performance in consideration for performance rendered. Thus, the aim of the intended protection is to ensure that staff members' terms and conditions may not be amended in a way that would deprive them of a benefit once the legal requirements for claiming the benefit have been fulfilled - in other words, once the right to counter-performance (the salary or benefit) has vested or been acquired through services already rendered. Staff members only acquire a vested right to their salary for services already rendered. The limited purpose of Staff Regulation 12. 1, therefore, is to ensure that staff members are not deprived of a benefit once the legal requirements for claiming the benefit have been fulfilled. The protection of acquired rights, therefore, goes no further than guaranteeing that no amendment to the Staff Regulations may affect the benefits that have accrued to, or have been earned by, a staff member for services rendered before the entry into force of the amendment. Amendments may not retrospectively reduce benefits already earned. The doctrinal protection of acquired rights is essentially an aspect of the principle of non-retroactivity. The aim is to protect individuals from harm to their vested entitlements caused by retrospective statutory instruments.

Outcome

Appeal dismissed on the merits; Cross-appeal dismissed on the merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Lloret-Alcañiz et al.

Entity

N/A

Case Number(s)

2018-1148

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Jun 2018

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Salary

Salary

Salary scales

Applicable Law

GA Resolutions

- A/RES/70/244
- A/RES/71/263

Staff Regulations

- Regulation 12.1

UNAT Statute

- Article 10.2

UNDT Statute

- Article 2.1

Related Judgments and Orders

UNDT/2017/097

2018-UNAT-842

2017-UNAT-750

2016-UNAT-661

2014-UNAT-404

2014-UNAT-481

2014-UNAT-405

2015-UNAT-526

2015-UNAT-563