

UNDT/2022/077, Suarez Liste

UNAT Held or UNDT Pronouncements

In asserting whether the Administration properly determined the Applicant's step-in-grade, the core issue before the Tribunal is whether and, if so, to what extent, the Applicant's Ph.D. experience in Economics would constitute relevant work experience for a language professional under the Grading Guidelines for language staff.

The documentary evidence on record shows that the Applicant did his Ph.D. in Economics from 1 October 2014 to 9 June 2019 on a full-time basis. Therefore, his Ph.D. experience in Economics would amount to around two years and four months of relevant experience pursuant to sec. 4(b) of the Grading Guidelines for language staff. Furthermore, the Administration had determined that upon recruitment, the Applicant had approximately 12 years and three months of relevant experience. Therefore, at the time of recruitment, the Applicant had approximately 14 years and seven months of relevant experience. Accordingly, the Applicant had a MA plus over 14 years of relevant experience, constituting "exceptional circumstances" justifying the granting of P-3, step VIII under sec. 2 of the Grading Guidelines for language staff. Moreover, the fact that no staff member has been placed above P-3, step VI in the last two years does not mean that the Applicant is not entitled to P-3, step VIII. To hold otherwise would render the last sentence of sec. 2 of the Grading Guidelines for language staff null and void. It would also breach the principle of fairness because it would imply that a Masters' degree amounts to two years of relevant experience whereas a Ph.D. degree would amount to no relevant experience. In this respect, it is noted that under sec. 10.2 of the General Guidelines, up to a maximum of two additional steps may be granted for a Ph.D. degree. Accordingly, the Administration failed to consider relevant exceptional circumstances in determining the Applicant's step-in-grade and, as such, the contested decision is unlawful.

Decision Contested or Judgment/Order Appealed

By application filed on 13 August 2021, the Applicant, a Translator with the Department for General Assembly and Conference Management (“DGACM”), contests the decision not to place him at the P-3, step VIII level on initial appointment.

Legal Principle(s)

In examining the validity of the Administration’s exercise of discretion in step-in-grade determination, the Tribunal’s scope of review is limited to determining whether the exercise of such discretion is legal, rational, reasonable and procedurally correct to avoid unfairness, unlawfulness or arbitrariness (see, e.g., Abusondous 2018-UNAT-812, para. 12). It is not its role “to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary General” (see Sanwidi 2010-UNAT-084, para. 40).

Nevertheless, the Tribunal may “consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse” (see Sanwidi, para. 40). If the Administration acts irrationally or unreasonably in reaching its decision, the Tribunal is obliged to strike it down (see Belkhabbaz 2018-UNAT-873, para. 80). “When it does that, it does not illegitimately substitute its decision for the decision of the Administration; it merely pronounces on the rationality of the contested decision” (see Belkhabbaz, para. 80). For initial recruitment cases, the maximum allowable step is VI for P-3 language staff unless there are exceptional circumstances such as “BA + 15 years” and “MA + 13 years”, which justify the granting of step VIII. A finding of unreasonableness or unlawfulness, and consequent invalidity of a contested decision, will “give rise to the discretion to award specific performance—an order directing the Administration to act as it is contractually and lawfully obliged to act” (see Belkhabbaz, para. 80).

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Suarez Liste

Entity

DGACM

Case Number(s)

UNDT/NY/2021/036

Tribunal

UNDT

Registry

New York

Date of Judgement

31 Aug 2022

Duty Judge

Judge Belle

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Salary

Applicable Law

UNDT Statute

- Article 10.5

Other UN issuances (guidelines, policies etc.)

- Guidelines for Determination of Level and Step on Recruitment to the Professional Category and Above
- Recruitment policy for entry level language staff: Grading Guideline

Staff Rules

- Rule 3.4(a)

Related Judgments and Orders

2018-UNAT-812

2010-UNAT-084

2018-UNAT-873