

Judgment No. 2022-UNAT-1238



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earlier 4 November 2016 SPA request. He should not be disadvantaged due to the Administration's inaction to his 4 November 2016 SPA request. Thus, applying Staff Rule 3.17(ii) to the present case, he was entitled to an SPA from 4 November 2015 to 31 January 2018.

29. Mr. Franco contends that he was twice found to have been performing higher level functions during the period between 1 May 2015 and 31 January 2018. As he acted promptly to seek equal pay for equal work, no legal basis existed to deny him an SPA from a year prior to his first SPA request of 4 November 2016.

The Secretary-General's Answer

30. The Secretary-General requests that the Appeals Tribunal

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it. There is no language in the legal framework that allows for any equivalent to such temporary assignment or the substitution of the word “full functions” with “core” functions.

36. The Secretary-General contends that the UNDT’s conclusion that compensation of SPA was required after a staff member has performed duties and responsibilities of a higher-level position for more than three months is inconsistent with Staff Rule 3.10(b) and Section 2.2 of ST/AI/1997/17. The UNAT Judgment in ⁹ that the Dispute Tribunal cited actually supports a different position. The Dispute Tribunal failed to apply the proper legal standard when reviewing the validity of the Administration’s exercise of discretion in administrative matters and improperly stepped into the shoes of the Administration in deciding that Mr. Franco was entitled to an SPA payment.

37. The Secretary-General also contends that the UNDT erred in law by taking into consideration irrelevant issues and improperly shifting the burden of proof to him, when it criticized him for not identifying the name of the person selected for the GS-6 post of Finance and Budget Assistant, and for not providing evidence as to the specific moment of the year when the new GS-6 had been assigned to Mr. Franco’s unit, performed the functions at stake or supervised Mr. Franco’s activity in any way.

Mr. Franco’s Answer

38. Mr. Franco requests that the Appeals Tribunal maintain the reasoning in the UNDT Judgment, except for the UNDT’s pronouncement on the retroactivity of payments that he already sets out in his appeal in Case No. 2021-1578.

39. Mr. Franco submits that the UNDT did not err in law by applying Staff Rule 3.17(ii) as a limitation on relief (i)-3.1 31 0 Td[(M)--3.1 (tat.9 (5 (Tw a7)-3.5 (s)-0.7 ()-t(s)-0.7 (-5.7 .3 (x)1.2t-8.6 (n m-4.3

functions without recourse to reclassification of his post or remuneration for the work carried out, he continued to suffer an assault on his reputation and his career prospects.

40. Mr. Franco also submits that the Dispute Tribunal did not err in law by finding that he was entitled to be paid an SPA, as he had assumed the full functions of the GS-6 post with a satisfactory performance. He had been assigned to a higher-level post and in effect assumed and performed the full functions of the Cashier's Unit including those previously performed by her former FRO. The Administration was fully aware that he had been performing higher level functions but took advantage of this performance for a significant period of time. It is the Administration, through the Classification Appeals Committee, that informed him that his higher functions related to another post rendering reclassification impossible but at the same time advised him that his non-assignment to the GS-6 post prevented the Administration from paying him a commensurate compensation for the higher-level work that he had carried out. That was the reasonable inference that the Dispute Tribunal drew from the Administration's failure to identify, with specificity, those functions that he did not perform or who did perform them.

41. Mr. Franco further submits that, contrary to the Secretary-General's assertion, the Dispute Tribunal did not ignore any discretionary element to the payment of an SPA, nor did it consider irrelevant factors or shift the burden of proof. Nothing in the contested decision suggests a discretionary reason for the non-payment of an SPA to him. Instead, the decision-maker relied on the assertion that Mr. Franco had not performed all the functions of the GS-6 post. At no point before the UNDT was it argued that, had Mr. Franco met the procedural requirements for an SPA, some discretionary reason would have precluded the grant of such. The evidence that the UNDT instructed the Administration to produce related to the identity of the individual selected for the GS-6 post and the comparison between the new GS-6's functions and those previously performed was relevant to the issue as to whether he had assumed the full functions previously performed by his former FRO. The Administration's failure to provide such evidence with specificity effectively robbed him of the opportunity to respond, contrary to the principle of .

45. In the present case, the UNDT found that the requirements for granting an SPA had been met in Mr. Franco's case for the period from 1 August 2015 to 31 January 2018.¹⁰ However, due to the timing of Mr. Franco's 21 December 2018 request for SPA, the UNDT ruled that he was entitled to payment of an SPA only from 21 December 2017 to 31 January 2018.

46. Notably, the UNDT ruled that:¹¹

... pursuant to staff rule 3.17(ii), [Mr. Franco] is required to request SPA

49. On appeal, while Mr. Franco agrees in principle with the UNDT's finding that he was performing higher level functions for the period from 1 May 2015 to January 2018, and that he was qualified for an SPA from 1 August 2015 onwards, he then asserts that the UNDT erred in concluding that his first written request for an SPA was made in December 2018. Mr. Franco claims that the UNDT should have considered the 4 November 2016 communication to have constituted his first request for an SPA when he had "plainly" put this issue to the Administration for consideration. On this basis, Mr. Franco puts forward that an SPA should have been awarded from 4 November 2015 for a period of 27 months. He further seeks moral damages for the harm he allegedly suffered because of the contested administrative decision.

50. Conversely, in his appeal, the Secretary-G

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59. The Secretary-General's appeal is allowed and Judgment No. UNDT/2021/054 is reversed to the extent that it ordered the Administration to pay an SPA to Mr. Franco from 21 December 2017 to 31 January 2018. Mr. Franco's appeal is dismissed in its entirety.

Original and Authoritative Version: English

Decision dated this 1st day of July 2022 in New York, United States.

Judge Raikos, Presiding

Judge Murphy

Judge Halfeld

Judgment published and entered into the Registry on this 12th day of July 2022 in
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