



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/024

Judgment No.: UNDT/2017/053

Date: 13 July 2017

Original: English

appointed to the post of Chief of Support Services Service (SSS) at

case

17. The Applicant's pleadings is summarized below:
18. The Applicant submits that the Tribunal must consider three substantive issues, when determining her case:
- a. Whether the Administration maintained discretion to grant retroactive promotion;
 - b. Whether an obligation, under the principle of equal pay for work of equal value, had been triggered in the circumstances; and
 - c. Whether the Administration failed to exercise its discretion fairly in refusing to consider the request for retroactive promotion, in order to comply with its obligations under the principle of equal pay for work of equal value.

Whether the Administration maintained discretion to grant retroactive promotion.

19. Pursuant to staff rule 12.3, the Secretary-General may make exceptions to the Staff Rules provided that such exception is not inconsistent with any Staff Regulation or other decision of the General Assembly. The granting of a

affirmed the principle that a pension scheme for public servants falls within the scope of the principle of equal pay¹¹.

29. Article 1 of the Equal Remuneration Convention 1951, while not explicitly defining gross remuneration, is worded in such general terms that it covers not only take-home pay, but also earnings and benefits in a broad sense and is regarded to include pensions¹². Such a position was confirmed by the International Labour Office (ILO), 34th Session in 1951.

30. In *Chen*¹³, the UNDT implicitly accepted that any award of compensation under the heading of equal pay for work of equal value included the payment of backdated pension rights.

31. The Administration failed to give sufficient priority to the Applicant. Once effectively taken 18 months before recruiting her to the D-1 level. During these 18 months, the Applicant had been performing her function to the full. Despite her continued requests to speed up the process of selection, the Administration appeared to not act with due consideration for the position of the Applicant.

32. Although having been paid SPA between January 2012 and June 2013, the Applicant, due to the long process of recruitment, had lost out in relation to her valuable pensionable entitlements.

on the basis of her last three years of service. The Applicant subsequently retired on 31 January 2015, i.e., before her promotion could fully affect her pension level.

33. The Applicant submits that despite payment of SPA, the period of time in which she worked as a P-5 officer on a D-1 post omits pension contributions and as a result

Whether the Administration failed to exercise its discretion fairly in refusing the request for Retroactive Promotion

34. T

Applicant was based on the idea that the costing for retroactive promotion was too high and that payment of SPA meant that its obligations under International Administrative Law had been met. The Applicant submits that such

vis-à-vis the staff member and International Administrative Law.

2015 and that she would not fully benefit from this promotion for the purposes of her pension benefits.

Remedy sought

40. The Applicant requests the Tribunal to set aside the impugned decision and that it be returned to the appropriate official for reconsideration. In the alternative, the Applicant requests a monetary compensation equivalent to the pecuniary damages she will suffer as a result of the Admin a promotion effective 1 January 2012. The Applicant estimates that these damages are equivalent to the amount of 12 months net base salary.

41.

d. Other than the general provision for granting exceptions to the Staff Rules, there is no provision for retroactive promotion within the rules and regulations of the Organization which govern the employment of staff. The relevant instrument governing appointment of staff is ST/AI/2010/3 (Staff selection system), which states at section 10.2 that the decision to

Case No. UNDT/NBI/2014/024

Judgment No. UNDT/2017/053