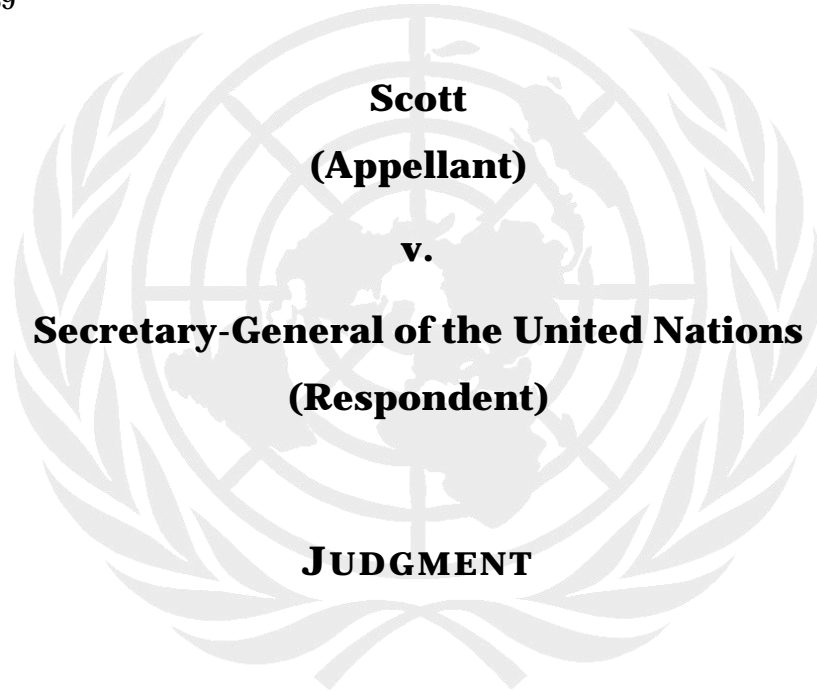




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2011-239



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**Before:** Judge Luis María Simón, Presiding  
Judge Jean Courtial  
Judge Mary Faherty

**Judgment No.:** 2012-UNAT-225

**Date:** 29 June 2012

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** Self-Represented

**Counsel for Respondent:** Amy Wood

**JUDGE LUIS MARÍA SIMÓN**, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Mr. Kenneth R. Scott on 3 August 2011 against Judgment No. UNDT/2011/108, issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 23 June 2011. The Secretary-General filed an answer on 26 September 2011.

### **Synopsis**

2. The Appeals Tribunal considers that the applicable provisions concerning the system of calculation of dependency benefits clearly state that the maximum earning threshold under which a staff member can claim his spouse as a dependent is an amount equivalent of the G-2 level, step-1 gross base salary offered in New York. The text leaves no doubt that the equivalency must be calculated taking into account the currency exchange and no other possible financial or economic criteria such as comparative purchasing power, as suggested by the Appellant but not chosen by the rules.

3. The first step of the interpretation of any kind of rules, worldwide, consists of paying attention to the literal terms of the norm. When the language used in the respective disposition is plain, common and causes no comprehension problems, the text of the rule must be interpreted upon its own reading, without further investigation. Otherwise, the will of the statute or norm under consideration would be ignored under the pretext of consulting its spirit. If the text is not specifically inconsistent with other rules set out in the same context or higher norms in hierarchy, it must be respected, whatever technical opinion the interpreter may have to the contrary, or else the interpreter would become the author.

4. Furthermore, the principle of equal pay as a standard review applies to the main composition of salary for post adjustment and does not prevent eventual differences concerning salary accessories or social benefits as the one under claim on file.

5. The affirmation that only the purchasing power element of comparison would allow an equal pay and treatment of staff members constitutes only a postulation of a certain parameter among many possible options, without real support except in terms of policies' selection, because other criteria could also allow that kind of equal treatment, provided that they are applied in a general and non-discriminating way. The comparator element adopted in the present case fell within this requirement.

6. The Appeals Tribunal finds no breach of Mr. Scott's rights and therefore affirms the Judgment under appeal, dismissing the appeal.

### **Facts and Procedure**

7. Mr. Scott joined the International Criminal Tribunal for the former Yugoslavia (ICTY) at The Hague in January 1998 where he is currently serving as a Senior Prosecuting Trial Attorney at the P-5 level.

8. On 25 March 2008, Mr. Scott completed a yearly dependency status questionnaire in which he certified that his wife's expected income for 2008 would be USD 34,200. In April 2009, Mr. Scott certified that his wife's actual earnings for 2008 had been USD 47,236.

9. Upon reviewing Mr. Scott's 2008 claim for dependency, the ICTY amended his dependency benefit for 2008 on three different occasions before finally determining on 11 August 2009 that his dependency benefit should be adjusted from USD 12,193 to USD 4,836. The ICTY sought the recovery of the difference between the aforementioned amounts which had already been provided to Mr. Scott.

10. On 14 July 2009, prior to the third amendment by the ICTY of Mr. Scott's dependency benefit for 2008, Mr. Scott requested that the Management Evaluation Unit (MEU) review the decision to recover monies from his current and future salaries as a result of the adjustment made to his dependency benefit. On 20 August 2009, the Secretary-General informed Mr. Scott that he would uphold the findings of the MEU "that the ICTY correctly applied the post adjustment multiplier to the net base salary rate" and that no violation of the Staff Rules had been identified.

11. On 23 June 2011, the UNDT issued Judgment No. UNDT/2011/108. The UNDT dismissed the application, finding that the contested decision had been properly taken in accordance with the former Staff Rules and relevant administrative instruction.

### **Submissions**

#### **Mr. Scott's Appeal**

12. Mr. Scott submits that the Dispute Tribunal erred in its interpretation of former Staff Rule 103.24(a) resulting in a breach of the United Nations' principles and policies, namely that

under the principle of equity and equivalence in the terms and conditions of employment of staff members within the Organization, he has a right to equal treatment and equal pay.

13. Mr. Scott submits that the interpretation of former Staff Rule 103.24 cannot be made in a vacuum and that one has to take into account the spirit of the rule so that the compensation packages awarded to staff members, regardless of their location, be equivalent in nature. Mr. Scott submits that an appropriate interpretation of the word “equivalent” would be “equal in value” rather than “equal in number” as the latter interpretation results in serious discrepancies and differences in treatment depending on where a staff member is located.

14. Mr. Scott submits that as a result of the fluctuation of the Euro versus the US Dollar, the current interpretation of former Staff Rule 103.24 results in staff members located in New York being compensated at a significantly higher dependent rate which results in a violation of the principle of compensation equity.

15. Mr. Scott submits that the Dispute Tribunal erred in considering that the concept of purchasing power was not relevant to the calculation of dependency benefits as it is actually part of the United Nations’ established method of determining equivalent value. Consequently, such an interpretation results in a violation of the principles of compensation equity and equal treatment.

16. Mr. Scott submits that the correct application of former Staff Rule 103.24(a) would only require the application of the monthly post adjustment multiplier rather than the fluctuating value of one currency versus another.

17. Mr. Scott requests that the UNDT Judgment be reversed and that the total amount of the dependency benefits that were recovered from him be restored.

### **Secretary-General’s Answer**

18. The Secretary-General submits that former Staff Rule 103.24(a) and Section 2.1 of ST/AI/2000/8 (Dependency status and dependency benefits) clearly state that the maximum earning threshold under which a staff member can claim his spouse as a dependent is the equivalent of the G-2 level, step-1 gross base salary offered in New York.

19. The Secretary-General submits that the Dispute Tribunal was correct in rejecting Mr. Scott’s argument that the term “equivalent” had to be interpreted in terms of purchasing

power as the plain language in the Staff Rule is clear in that it only refers to the equivalence of money and not that of purchasing power. Furthermore, the Secretary-General submits that the Dispute Tribunal correctly noted that the only instance in which the concept of purchasing power is present is with regard to the International Civil Service Commission's calculation of the post-adjustment to be applied to the emoluments of certain staff members.

20. The Secretary-General further submits that the former Administrative Tribunal declined to overrule the Secretary-General's interpretation of a Staff Rule as long as it was reasonable.<sup>1</sup> Consequently, the Secretary-General submits that the Dispute Tribunal "properly relied on the plain meaning of the relevant text and reasonably interpreted the word 'equivalent' in the [applicable] context", and that this interpretation was neither erroneous nor unreasonable. The Secretary-General contends that the above is also applicable in the context of the interpretation of the word "amount" and that Mr. Scott does not demonstrate how a different interpretation of the word "amount" would render the interpretation of the word "equivalent" unreasonable.

21. The Secretary-General submits that a spousal dependency benefit is a benefit and not a right. Consequently, Mr. Scott errs when he states that the Dispute Tribunal's Judgment is contrary to the applicable laws and the United Nations' principles. The Secretary-General also notes that former Staff Rule 103.24(a) was applied equally to all staff members regardless of their duty station without any type of adjustment for the purchasing power, whether the dollar was strong or weak at any given time against the local currency.

22. The Secretary-General also submits that the arguments raised by Mr. Scott are nearly identical to those presented before the Dispute Tribunal. While Mr. Scott states that he disagrees with the conclusion of the Dispute Tribunal, he fails to establish how the Dispute Tribunal made any error that would warrant a reversal of its Judgment.

23. The Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

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<sup>1</sup> See Former Administrative Tribunal Judgment No. 1197, *Merou* (2004).

**Considerations**

24. The main issue in the present case is the interpretation of former Staff Rule 103.24(a) and Section 2.1 of ST/AI/2000/8. Former Staff Rule 103.24 (Definition of dependency) in force in 2008 reads, in part, as follows:

25. For the purposes of the Staff Regulations and Staff Rules:

(a) A dependent spouse shall be a spouse whose occupational earnings, if any, do not exceed the lowest entry level of the United Nations General Service gross salary scales in force on 1 January of the year concerned for the duty station in the country of the spouse's place of work, provided that, in the case of staff in the Professional category or above, the amount shall not at any duty station be less than the equivalent of the lowest entry level at the base of the salary system (G-2, step I, for New York).

26. Section 2.1 (Dependency status of a spouse) of ST/AI/2000/8 (Dependency status and dependency benefits)<sup>2</sup> reads, in part, as follows:

2.1 A spouse shall be recognized as a dependant when the following conditions are met:

(a) For staff members in the General Service and related categories, the spouse's annual gross occupational earnings, if any, do not exceed the lowest entry level of the United Nations General Service gross salary scale in force on 1 January of the year concerned for the closest United Nations duty station in the country of the spouse's place of work;

(b) For staff members in the Professional category and above, technical cooperation project personnel and staff members in the Field Service category, the spouse's annual gross occupational earnings, if any, do not exceed the higher of:

(i) The amount determined under section 2.1 (a); or

(ii) The gross salary for the lowest entry level in force on 1 January of the year concerned at the base of the salary system (G-2, step 1, for New York).

27. Despite the intelligence of the Appellant's argumentation, the Appeals Tribunal shares the view of the first instance Judge and considers that the applicable Regulations and Rules concerning the system of calculation of dependency benefits clearly state that the maximum earning threshold under which a staff member can claim his spouse as a dependent is an amount equivalent of the G-2 level, step-1 gross base salary offered in New York. The text leaves no doubt

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<sup>2</sup> In force at the time. Abolished and replaced by ST/AI/2011/5 dated 2 June 2011.

that the equivalency must be calculated taking into account the currency exchange and no other possible financial or economic criteria such as comparative purchasing power, as suggested by the Appellant but not chosen by the rules.

28. The first step of the interpretation of any kind of rules, worldwide, consists of paying attention to the literal terms of the norm. When the language used in the respective disposition is plain, common and causes no comprehension problems, the text of the rule must be interpreted upon its own reading, without further investigation. Otherwise, the will of the statute or norm under consideration would be ignored under the pretext of consulting its spirit. If the text is not specifically inconsistent with other rules set out in the same context or higher norms in hierarchy, it must be respected, whatever technical opinion the interpreter may have to the contrary, or else the interpreter would become the author.

29. Based on the previous developments, the Tribunal holds that the term “equivalent” must not be understood as relating to purchasing power, because the plain language in the Staff Rule is clear and only refers to the equivalence of money.

30. Moreover, the only instance in which the concept of purchasing power is mentioned is in relation to the calculation of the post-adjustment to be applied to the emoluments of certain staff members, which, as the UNDT correctly pointed out, is not done by the Administration of the Organization, but by the International Civil Service Commission.

31. Furthermore, the principle of equal pay as a standard review applies to the main composition of salary for post adjustment and does not prevent eventual differences concerning salary accessories or social benefits such as the subject matter of the present claim.

32. The interpretation process which led to the dismissal of the claim by the UNDT was neither unreasonable nor unfair. The affirmation that only the purchasing power element of comparison would allow an equal pay and treatment of staff members constitutes only a postulation of a certain parameter among many possible options, without real support except in terms of policies' selection, because other criteria could also allow that kind of equal treatment, provided that they are applied in a general and non-discriminating way. The comparator element adopted in the present case fell within this requirement.

33. The risks of discrepancies among different duty stations referred to by the Appellant would be even higher in a system based on the criteria the Appellant proposes, which requires

more illustration than the simple comparison of currency exchange mandated by the Administration's applicable rule. The economic prejudice argued by the Appellant in support of his proposal could be equally an advantage, depending on the time and place of the calculation. This general approach evidences that no infringement of the principle of equal treatment has occurred and that there has been no breach of Mr. Scott's rights. His alleged prejudice comes from a policy-oriented point of view and not from an actual violation of the law applying a different policy to the calculation of the dependency benefit.

34. Therefore, we find no error that would warrant vacating the Judgment under appeal.

### **Judgment**

35. The appeal is dismissed in its entirety and the UNDT Judgment affirmed.



Original and Authoritative Version: English

Dated this 29<sup>th</sup> day of June 2012 in Geneva, Switzerland.

*(Signed)*

Judge Simón, Presiding

*(Signed)*

Judge Courtial,

*(Signed)*

Judge Faherty,

Entered in the Register on this 12<sup>th</sup> day of September 2012 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar