



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1509

Rumana Quazi Naquib
(Respondent/Appellant on Cross-Appeal)
v.
Secretary-General of the United Nations
(Appellant/Respondent on Cross-Appeal)

JUDGMENT

Before: Judge Abdelmohsen Sheha, Presiding
Judge Nassib G. Ziadé
Judge Leslie F. Forbang

Case No.: 2023-1852

Date of Decision: 25 October 2024

Date of Publication: 27 December 2024

Registrar: Juliet E. Johnson

Counsel for Ms. Naquib: Shubha Suresh Naik, OSLA
Counsel for Secretary-General: Noam Wiener

JUDGE ABDELMOHSEN SHEHA, PRESIDING.

1. Ms. Rumana Quazi Naquib, a P-3 Programme Management Officer (PMO) working with the United Nations Human Settlements Programme (UN Habitat), challenged before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) the decision to deny her an *ex-gratia* payment for the period from October 2015 to February 2020 and special post allowance (SPA) for the period from February 2020 to April 2021 for carrying out higher level functions.

2. By Judgment No. UNDT/2023/069 dated 7 July 2023 (impugned Judgment), the UNDT granted the application in part. The UNDT ordered the Administration to pay Ms. Naquib an *ex-gratia* payment from November 2015 to January 2020, plus monetary interest at a rate equal to the rate of inflation for the same period in the country of service. The UNDT dismissed the claim for compensation for SPA.

3. The Secretary-General lodged an appeal with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) against the impugned Judgment to grant Ms. Naquib *ex-gratia* payments. Ms. Naquib lodged a cross-appeal against the UNDT's rejection of her request in respect to SPA payments.

4. For the reasons set out below, the Appeals Tribunal grants the appeal, dismisses the cross-appeal, and reverses the impugned Judgment in relevant parts.

Facts and Procedure

5. Ms. Naquib joined UN-Habitat on 1 August 2006 as an Associate Programme Officer at the P-2 level. On 1 May 2013, she was promoted to the position of PMO at the P-3 level at the Regional Office for Africa (ROAf).¹

6. On 1 July 2015, one of Ms. Naquib's colleagues, Mr. JS who served at the P-3 level, was reassigned to UN-Habitat's Regional Office for Arab States (ROAS) and left ROAf. Upon Mr. JS's departure, Ms. Naquib took over some of the countries that Mr. JS had handled.²

7. On 29 September 2016, Ms. Naquib's First Reporting Officer, while undertaking her performance evaluation, stated in the overall End-of Cycle Rating and Comments for the

¹ Impugned Judgment, para. 2.

² *Ibid.*, para. 3.

2015-2016 e-Performance document that Ms. Naquib acted as the Officer-in-Charge (Oic) PMO for the ROAf.³

8. By a memorandum dated 30 April 2021, the Director *ad interim* (a.i.), Management, Advisory and Compliance Service (MACS), informed all PMOs in ROAf of the distribution of their roles effective 1 May 2021. By the same memorandum, Ms. Naquib, supported by Ms. WK, was responsible for Ghana, Nigeria, Zambia, Zimbabwe, Cameroon, Tanzania, and Botswana.⁴

9. On 11 May 2021, Ms. Naquib submitted a request for *ex-gratia* payment for the period from October 2015 to January 2020, and SPA from February 2020 to April 2021.⁵

10. On 10 January 2022, the Acting Chief of Staff (ACoS), Office of the Executive Director, replied to Ms. Naquib informing her that her request for *ex-gratia* payment and SPA was not granted. Among others, the ACoS indicated that Ms. Naquib's request would not be granted due to the following reasons: (a) the post was not classified; (b) the post was not advertised and there was no official communication designating her as Acting PMO Regional Office at the P-4 level; and (c) there was no competitive process to fill the post.⁶

11. On 17 February 2022, through her counsel, Ms. Naquib wrote to ACoS seeking clarification and urged the Administration to reconsider the matter.⁷

12. On 12 March 2022, Ms. Naquib requested management evaluation challenging the contested decision.⁸

13. On 18 April 2022, the Management Evaluation Unit upheld the contested decision.⁹

14. On 18 July 2022, Ms. Naquib filed an application with the UNDT.¹⁰

The impugned Judgment

15. On 7 July 2023, the UNDT issued the impugned Judgment.

³ *Ibid.*, para. 4.

⁴ *Ibid.*, para. 6.

⁵ *Ibid.*, paras. 7 and 8.

⁶ *Ibid.*, para. 9.

⁷ *Ibid.*, para. 10.

⁸ *Ibid.*, para. 11.

⁹ *Ibid.*

¹⁰ *Ibid.*, para. 12.

16. The UNDT granted Ms. Naquib's application regarding the retroactive *ex-gratia* payment for the period of November 2015 to January 2020. The UNDT found that the Administration's failure to reclassify Ms. Naquib's post from the P-3 to the P-4 level was unlawful. The UNDT concluded that the fact that the post was reclassified to the P-4 level after the reorganization of ROAf, demonstrates that the post should have always been at the P-4 level. The UNDT determined that Ms. Naquib was owed the difference between the remuneration she received at the P-3 level, and the remuneration she would have received at the P-4 level had the post been reclassified. The UNDT, consequently, ordered the Administration to make an *ex-gratia* payment to remunerate Ms. Naquib at the P-4 level. The UNDT noted that Ms. Naquib had the right to compensation for the whole period she performed the higher-level functions, but since she had requested the *ex-gratia* payment only till January 2020 and was bound by that request, the UNDT could not allow more than requested.

17. The UNDT, however, dismissed Ms. Naquib's application regarding her request for SPA. The UNDT found that the prerequisites for SPA were not met during the period Ms. Naquib performed the higher-level functions. At the relevant time, between October 2015 and January 2020, there was no classified nor budgeted higher-level post to the functions of which Ms. Naquib could have been assigned. The UNDT found that Ms. Naquib had not established her contention that for the following period, her post had been recognized as a P-4 level post in February 2020, as part of the organizational restructuring and, therefore, from the following month onwards she was entitled to SPA payment.

The appeal and the cross-appeal

18. On 5 September 2023, the Secretary-General filed an appeal, and on 6 November 2023, Ms. Naquib filed an answer.

19. On 6 November 2023, Ms. Naquib filed a cross-appeal, and on 8 January 2024, the Secretary-General filed his answer to the cross-appeal.

20. On 5 June 2024, the Appeals Tribunal issued Order No. 563 (2024), directing the Secretary-General, in the interest of justice and the efficient and expeditious resolution of the proceedings, to submit specific additional documentation within six calendar days. Ms. Naquib was allowed to make comments on the Secretary-General's submissions within six calendar days from their receipt.

21. On 11 June 2024, the Secretary-General submitted several documents in response to Order No. 563 (2024) and requested that the Appeals Tribunal afford additional time to retrieve and search for documentation responsive to the Order, should these outstanding documents still be needed.

22. On 18 June 2024, Ms. Naquib submitted her observations on the documentation adduced by the Secretary-General. She also appended two new documents as additional evidence, requesting the Appeals Tribunal for leave to accept them.

23. On 21 June 2024, the Secretary-General submitted a motion, in response to the request for leave of Ms. Naquib, opposing the submission of this additional documentation.

24. On 4 July 2024, the Appeals Tribunal issued Order No. 567 (2024) by which it denied Ms. Naquib's request for leave to adduce additional evidence and ordered that the additional evidence proffered by Ms. Naquib be struck from the record. Superseding Order No. 563 (2024), the Appeals Tribunal directed the Secretary-General to provide several documents and information necessary for a fair and objective adjudication of the case.

25. On 29 July 2024, the Secretary-General filed his submissions in response to Order No. 567 (2024), and on 19 August 2024, Ms. Naquib filed her submissions pursuant to that Order.

Submissions

The Secretary-General's Appeal

26. The Secretary-General submits that the UNDT erred in finding Ms. Naquib's claim for *ex-gratia* payments receivable. Staff Rule 3.17, applicable at the relevant time,¹¹ provided that "[a] staff member who has not been receiving an allowance, grant or other payment to which he or she is entitled shall not receive retroactively such allowance, grant or payment unless the staff member has made written claim... within one year following the date on which the staff member would have been entitled to the initial payment". The UNAT has previously emphasized that this one-year time limit is set and immovable.¹² Ms. Naquib failed to request retroactive payment in writing, in accordance with Staff Rule 3.17, within one year, and her application was thus not receivable

¹¹ ST/SGB/2017/1.

¹² *Carmelo Franco v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1238.

ratione materiae. The UNAT should, therefore, find that Ms. Naquib’s claim for *ex-gratia* payments was not receivable, and uphold the contested decision.

27. The Secretary-General advances several challenges on the merit to the UNDT’s finding that Ms. Naquib had a right to have her post reclassified, and a right for “equal pay for equal value of work”.¹³

28. The Secretary-General asks that the UNAT reverse the UNDT’s order requiring the Secretary-General to pay Ms. Naquib, *ex-gratia*, for the economic difference between the remuneration she had received and the remuneration she would have received had she been at the P-4 level, to affirm the contested decision, and to dismiss Ms. Naquib’s application in its entirety.

Ms. Naquib’s Answer

29. Ms. Naquib contends that the UNDT did not err in finding her claim for *ex-gratia* payments receivable. The Secretary-General’s contention that the UNDT erred in entertaining Ms. Naquib’s request for retroactive *ex-gratia* payment as the application, in this regard, was not receivable *ratione materiae* is misplaced. Staff Rule 3.17 is not applicable to Ms. Naquib’s case since it pertains to time limits for cases in which the staff member has an entitlement to the specific allowance, grant or payment. Cases of *ex-gratia* payment sought under Staff Rule 12.3(b) are dependent on the discretion of the Administration.

30. Ms. Naquib was purportedly not entitled to SPA from October 2015 at least until January 2020 since SPA only comes to play when there is already a higher-level post existing/budgeted and the staff member is called to carry out the functions of that post. Therefore, Ms. Naquib had sought *ex-gratia* payment on grounds that she had carried out higher-level functions on the principle of equal pay for equal value of work. The Appeals Tribunal in the case of *Alquza* had heard an application for grant of an *ex-gratia* payment which was sought four years after the staff member had taken up higher functions and there was no question of receivability, or time bar raised in that matter.

¹³ Since the outcome of this appeal will be drawn upon receivability, we find no need to retrace the full arguments of the parties thereto.

31. In response to the Secretary-General's substantive arguments, Ms. Naquib made several substantive contentions.¹⁴

32. Ms. Naquib requests that the Appeals Tribunal dismiss the appeal in its entirety.

Ms. Naquib's Cross-Appeal

33. Ms. Naquib avers that the UNDT erred in law and fact resulting in a manifestly unreasonable decision in concluding that she had failed to prove her assertions on SPA and the conditions mentioned in Staff Rule 3.10 were not met.

34. Having concluded that Ms. Naquib was indeed carrying out higher-level functions at the P-4 level from October 2015 until her reassignment in May 2021, it was erroneous for the UNDT to then conclude that she was not entitled to SPA for the post which had the same duties as all other Regional PMOs at the P-4 level.

35. Ms. Naquib submits that the conditions to be fulfilled for the grant of SPA as per Staff Rule 3.10 and as laid down under ST/AI/1999/7 had been met in her case and were similarly proven at the UNDT stage. Firstly, Ms. Naquib had the requisite continuous service. Secondly, she had carried out the functions of Regional PMO/PMO (ROAf) from October 2015 until April 2021 as evidenced from her ePASes. Further, she had indeed carried out the full functions of the P-4 post, after the restructuring of the post was budgeted and classified at the P-4 level. It is also reflected by the Administration's decision to remove Ms. Naquib and laterally move a P-4 to the position without any reclassification of the post. Lastly, her performance had always been rated as successfully meets expectations/exceeds expectations. It was thus erroneous for the UNDT to conclude that she had not established that the post was now recognised at P-4 level.

36. In support of her claim that the post in question was budgeted as a P-4 post in February 2020, Ms. Naquib argues as follows: First, she had been informed, in early 2020, by the UN-Habitat Director of Management, Advisory and Compliance Service, that the post she had encumbered had been established at the P-4 level. Second, the lateral transfer of a P-4 level staff member in May 2021, pursuant to a memorandum issued on 30 April 2021 by the UN-Habitat Director (a.i.), Management, Advisory and Compliance Service, and the later lateral transfer of the Regional PMO from Cairo in 2023 to the post she had previously encumbered prove that the post

¹⁴ *Ibid.*

had been budgeted at the P-4 level in February 2020. And third, while the 30 April 2021 memorandum from the UN-Habitat Director (a.i.), Management, Advisory and Compliance Service, denotes that Ms. SM, who was at the P-4 level, will commence acting as the PMO for the Regional Office for Africa starting 1 May 2021, an earlier draft of this memorandum stated that Ms. SM was “in charge of the overall coordination of financial, administrative, and human resources matters in ROAF” which proves that the post Ms. Naquib had encumbered was budgeted at the P-4 level.

37. The UNDT concluded that for the period between October 2015 until January 2020 the fact that the P-4 post was not budgeted was the main obstacle which impedes to allow any SPA. The UNDT failed to take note that Director MACs had told Ms. Naquib that after the restructuring the post had been upgraded to the P-4 level thereby indicating that it was budgeted. For these reasons, the UNDT erred in not taking judicial notice of these facts; had it done so, it would have found that Ms. Naquib was indeed entitled to the SPA.

38. Ms. Naquib requests that the UNAT find the UNDT erred in fact and law when it found that Ms. Naquib was not entitled to SPA from February 2020 until April 2021.

The Secretary-General’s Answer to Ms. Naquib’s Cross-Appeal

39. The Secretary-General contends that Ms. Naquib has failed to demonstrate that the UNDT erred when it held that she was not eligible to be paid an SPA. Having found that Ms. Naquib had not provided evidence to support her claim that the post she had encumbered had been reclassified and budgeted at the P-4 level, the UNDT determined that she did not fulfill the requirements for receiving SPA as set forth in ST/AI/1997/17 and held that she was not eligible to be paid an SPA.

40. The Secretary-General submits that Ms. Naquib has not furnished any evidence of a decision to reclassify the post in question from the P-3 level. Reclassification of a post, either pursuant to the request by a staff member or otherwise, must follow a detailed procedure set forth in ST/AI/1998/9. The policy set forth in ST/AI/1998/9 specifies the manner in which requests for the reclassification of posts by various stakeholders may be made, including the means by which an incumbent staff member may request the review of the classification of a post, and the means by which to appeal decisions related to the classification of posts. This is a complex process that requires extensive correspondence and documentation. Ms. Naquib argues that the UNDT should

have found that her post had been reclassified to the P-4 level, notwithstanding the complete lack of documentation that such a process had been undertaken.

41. Furthermore, contrary to Ms. Naquib's contentions, the UNDT correctly determined that the evidence produced did not prove that the post in question had been budgeted at the P-4 level in 2020 when it was encumbered by Ms. Naquib. Ms. Naquib provided no evidence of any communication between her and the UN-Habitat Director of Management, Advisory and Compliance Service in which she was informed that the post she had encumbered had been established at the P-4 level. The fact that in May 2021, and then in 2023, the post in question was encumbered by staff members at the P-4 level is, at most, evidence that the post was budgeted at the P-4 level in May 2021, and that it continued to be budgeted at that level in 2023. These lateral transfers do not prove that the post in question was budgeted at the P-4 level more than a year earlier. Thus, the UNDT was correct to hold that the lateral transfers do not support Ms. Naquib's assertions.

42. Finally, the Secretary-General contends that Ms. Naquib's claim that the 30 April 2021 memorandum, and some earlier version of that memorandum, which is not in evidence, demonstrate that the post she had encumbered had been budgeted at the P-4 level since February 2020 is a *non sequitur*. First, there is no evidence on the record of an earlier draft of the 30 April 2021 memorandum. Second, even if such a draft memorandum had been submitted into evidence, Ms. Naquib herself maintains that this would have been a mere draft, which was then changed, and issued as the 30 April 2021 memorandum. Third, even if such a draft had existed, had been submitted into evidence, and its contents were to be considered substantively demonstrative, such a draft would not have proven that the post was budgeted at the P-4 level; it would have only proven that the post was encumbered by the PMO for the Regional Office for Africa. Consequently, absent any evidence that the post had been established at the P-4 level, the UNDT was correct to determine that Ms. Naquib was not eligible to be paid SPA.

43. The Secretary-General asks that the UNAT uphold the UNDT's holding that Ms. Naquib was ineligible for an SPA and dismiss the cross-appeal.

The Secretary-General's submission in response to Order No. 567 (2024)

44. In response to Order No. 567 (2024), the Secretary-General submits the organigram issued by UN-Habitat management on 22 January 2020, which lists Ms. Naquib in the Operational Support Unit at the P-3 level. He contends that the organigram reflects the various PMO posts in

UN-Habitat, including for the period of February 2020 to May 2021. The Secretary-General further submits a Microsoft Excel spreadsheet, produced on 3 May 2021, showing three staff members serving administrative functions in the ROAf at the time: an Associate Programme Management Officer at the P-2 level, a PMO at the P-3 level (Ms. Naquib), and an Administrative Officer at the P-4 level.

45. As to UNAT's request to provide the job description of the post of PMO, ROAF that Ms. SM was assigned to on a temporary basis on 1 May 2021, the Secretary-General submits that the recruitment for the post did not take place at that time. The post was finally classified in February 2023. Its terms of reference are found in the classification document, and a draft vacancy announcement was prepared which describes the requirements of the position. As to Ms. Naquib's performance review document for the performance cycle 2020-2021, the Secretary-General contends that UN-Habitat has been unable to provide a copy.

46. Turning to the UNAT's inquiry of what the effective date of the reclassification of the post encumbered by Ms. SM was, the Secretary-General contends that post No. 30606109 was not reclassified. The post vacated by Mr. JS, No. 603683, was eventually abolished and a new post, No. 31047648, was classified in February 2023. The Secretary-General submits that Ms. Naquib did not, at any stage, serve on a post that had been classified at the P-4 level. She is, therefore, not eligible for special post allowance or for any sort of *ex-gratia* payment in lieu of special post allowance. The Secretary-General further recalls that in accordance with Staff Rule 3.17, Ms. Naquib's application should have been found not receivable as it was made, for the first time, in 2021, six years after she had been assigned responsibilities in ROAf.

Ms. Naquib's submission pursuant to Order No. 567 (2024)

47. Ms. Naquib contends that the organigram of 2020 submitted by the Administration merely shows the level at which Ms. Naquib was at that time and not the functions that she was carrying out. It is an organigram of UN-Habitat as a whole whereas the UNAT had specifically requested an organigram of ROAf. Ms. Naquib submits that there are promulgated organigrams of each region (as evidenced from the organigrams submitted by Ms. Naquib in response to Order 563 (2024) which were struck from record) and the Administration should clarify as to why those organigrams were not submitted.

48. Turning to the draft job description of the position assigned to Ms. SM, Ms. Naquib submits that in its introduction, the draft refers to the post as a post of Regional, PMO; Ms. SM was therefore performing functions of Regional PMO which is also reflected in her ePAS of 2021-2022 submitted by the Administration. Ms. Naquib submits that the draft vacancy announcement reflecting a job description of the P-4 level post and the functions that Ms. Naquib was performing until the 30 April 2021 memorandum were almost identical.

49. Ms. Naquib seeks leave to submit her performance review document for the performance cycle 2020-2021 which UN-Habitat was unable to produce. It is seen in this ePAS that Ms. Naquib at various points refers to her functions as that of Regional PMO and the supervisors have not refuted the claim in the comments.

50. Ms. Naquib alleges that the Administration is “skirting” the issue that Ms. SM was in fact performing Mr. JS’s functions and she was being paid a P-4 level staff salary which indicates, when she was moved to perform those functions, the post was budgeted at the P-4 level. However, the Administration has failed to explain when and how it got budgeted at the P-4 level when Ms. SM took over the functions.

Considerations

51. Due to the difference in scope of both the appeal and the cross-appeal, we shall address each of them separately below.

The Secretary-General’s appeal regarding the matter of ex-gratia payments

52. At the outset, we note that the term “*ex-gratia*” has been used by Ms. Naquib, the Administration, and the UNDT. We recall that Ms. Naquib requested payments to compensate her for the alleged higher-level functions she had been carrying out in the period from October 2015 to February 2020. As she was not formally entitled to SPA payments, Ms. Naquib named these payments “*ex-gratia*”, and relied in her claim on Staff Rule 12.3(b), allowing the Secretary-General to grant exceptions to Staff Rules where appropriate.

53. The term “*ex-gratia*” in this context is inaccurate and may lead to confusion. This term is nowhere reflected in Staff Regulations and Rules, but only in United Nations Financial Regulation 5.11 and Financial Rule 105.12, providing for the payments decided by the Administration on a moral, rather than legal, basis. However, Ms. Naquib made her claim on

a legal basis, not on a moral one, which in the latter case might not be reviewable as lacking the normative character required in reviewable administrative decisions.¹⁵

54. The Appeals Tribunal, therefore, recognizes Ms. Naquib's request as one of payments in lieu of SPA, to be granted under Staff Rule 12.3(b) as an exception to Staff Rule 3.10. Nonetheless, since the term "*ex-gratia*" has already been used by Ms. Naquib and the Administration in their submissions, and then by the UNDT in the impugned Judgment, we find it convenient to continue using that same term, without prejudice to the observation made above.

55. We turn now to the merits of the appeal.

56. Relying on our precedent in *Franco*,¹⁶ the Secretary-General submits that the UNDT erred in law when it did not consider Ms. Naquib's case not receivable *ratione materiae* under Staff Rule 3.17, applicable at the relevant time of events.¹⁷

57. In response, Ms. Naquib submits that her case is distinguishable from the case of *Franco* as her claim is not bound by Staff Rule 3.17. She argues that the grant of *ex-gratia* payments is discretionary and there is no prior date of entitlement thereto. Absent a prior date of entitlement, time limits under Staff Rule 3.17 do not apply.

58. Staff Rule 3.17 on retroactivity of payments, applicable at the relevant time of events, reads:¹⁸

A staff member who has not been receiving an *allowance, grant or other payment to which he or she is entitled* shall not receive retroactively such allowance, grant or payment unless the staff member has made written claim:

(i) In the case of the cancellation or modification of the staff rule governing eligibility, within three months following the date of such cancellation or modification;

(ii) *In every other case, within one year following the date on which the staff member would have been entitled to the initial payment.*

¹⁵ *Mahasin Alquza v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1065, paras. 22 and 40.

¹⁶ *Carmelo Franco* Judgment, *op. cit.*

¹⁷ Although the Secretary-General's submission is new, as it was not made in his reply before the UNDT, his contention goes to a matter of jurisdiction that can be raised for the first time on appeal.

¹⁸ Emphases added. The same provision is still in force under Staff Rule 3.15(b).

59. Staff Rule 3.17 on “Retroactivity of payments” is cited under Chapter III “Salaries and related allowances”, that includes *inter alia* Staff Rule 3.10 on “Special post allowance”.

60. It follows that the scope of Staff Rule 3.17 extends, not only to allowances and grants, but also to all other similar payments to which the staff member would have been legally entitled at a certain point in time.¹⁹ The date of “entitlement” to the “initial payment” is the triggering date out of which the one-year time limit, which is set and immovable,²⁰ to submit the written claim kicks off.²¹ Such date of entitlement would exist if it were possible to objectively determine a point in time on which the legal entitlement to the payment arises.

61. In the present case, Ms. Naquib claimed her right to entitlement to an exceptional grant of *ex-gratia* payments (payment in lieu of SPA) under Staff Rule 12.3(b). She did so on the legal grounds of “equal pay for equal value of work”. To substantiate her claim, Ms. Naquib provided a copy of her performance evaluation for the performance cycle 2015-2016 which noted that she had been carrying out the functions of Regional PMO. In this case, it is reasonable to determine the date of entitlement as the date on which Ms. Naquib became, or should have become, aware of her right to such exceptional payments, e.g., the date on which she first got her performance evaluation. Thus, starting from that date, Ms. Naquib should have made her claim for *ex-gratia* payments. She did not do so. Instead, she waited until 2021 to raise her claim for the first time; a claim she was required to have presented five years earlier. Therefore, Ms. Naquib’s claim was out of time, and her application before the UNDT should have been declared non receivable *ratione materiae*. In finding Ms. Naquib’s case receivable, the UNDT committed a reproachable error of law.

62. We also reject Ms. Naquib’s argument that since *ex-gratia* payments are discretionary, there was no prior date of entitlement. According to the plain meaning of Staff Rule 3.10, the grant of SPA payments is also discretionary for the Administration. Nonetheless, we have already ruled that SPA payments have an objective date of alleged entitlement, and the claim resulting thereof is bound by the time limits of Staff Rule 3.17.²²

¹⁹ *Kobi Jackson v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1475, para. 46.

²⁰ *Carmelo Franco* Judgment, *op. cit.*, para. 51.

²¹ *Mizerska-Dyba v. Registrar of the International Tribunal for the Law of the Sea*, Judgment No. 2018-UNAT-831, para. 33.

²² *Carmelo Franco* Judgment, *op. cit.*, para. 54.

63. We also disagree with Ms. Naquib that our precedent in *Alquza* allowed a claim that was made four years after the relevant events. In that case, there was no discussion about time limits. Even if it could be said that our Tribunal should have raised that issue of jurisdiction *sua sponte*, that silence would not preclude us from making an express ruling on this important question of law.

64. Finally, we are mindful that, under Staff Rule 12.3(b), the Secretary-General may decide to waive the time limits set under Staff Rule 3.17. However, in the case before us, Ms. Naquib did not request such a waiver. Even if it could be argued that she implicitly did so in requesting *ex-gratia* payments belatedly, it stands that the Secretary-General has a wide discretionary power to allow such exception, both in terms of time limits and of substance, where he deems appropriate.²³ Such determination could be challenged on limited grounds of legality.

65. The Secretary-General's appeal, therefore, succeeds, and we find no need to discuss the other arguments raised by the parties in respect of the merits of this part of the case.

Ms. Naquib's cross-appeal regarding the matter of SPA payments

66. Ms. Naquib takes issue with the UNDT's conclusion that the recognition of the post of Regional PMO at the P-4 level during the period from February 2020 to April 2021 was not proven. Ms. Naquib disagrees with the UNDT's assessment of facts. She submits that, following a reclassification of her post in February 2020, she had exercised functions at the P-4 level until April 2021, when the Administration decided to laterally transfer a P-4 staff to take over. The Secretary-General claims that Ms. Naquib could not substantiate her allegations that a restructuring exercise had been made in ROAf in 2020. Furthermore, he submits that the fact that a P-4 staff was laterally transferred to the post of Regional PMO, ROAf, does not mean that the post had been reclassified.

67. We agree with the Secretary-General.

68. Staff Rule 3.10, on special post allowance, applicable at the time, reads:

- (a) Staff members shall be expected to assume temporarily, as a normal part of their customary work and without extra compensation, the duties and responsibilities of higher level posts.

²³ *Mahasin Alquza* Judgment, *op. cit.* paras. 30 to 32.

(b) Without prejudice to the principle that promotion under staff rule 4.15 shall be the normal means of recognizing increased responsibilities and demonstrated ability, a staff member holding a fixed-term or continuing appointment who is called upon to assume the full duties and responsibilities of a post at a clearly recognizable higher level than his or her own for a temporary period exceeding three months may, in exceptional cases, be granted a non-pensionable special post allowance from the beginning of the fourth month of service at the higher level.

69. Administrative Instruction ST/AI/1999/17 lays down specific rules to be observed to grant SPA payments. In particular, Section 4 on eligibility provides in relevant part:²⁴

Staff members who have been temporarily assigned to the functions of a higher-level post in accordance with the provisions of section 3 above shall be eligible to be considered for an SPA when they meet *all* of the following conditions:

...

(b) They have discharged for a period exceeding three months the full functions of a post which has been (i) *classified*, and (ii) *budgeted at a higher level than their own level*[.]

70. As we held in *Yabowork*, payment of SPA “is based on certain requirements, among which: i) it must relate to a temporary assignment to an unencumbered [classified and budgeted] higher-level post”.²⁵ Absent that condition, there shall be no eligibility for SPA payments.

71. In Ms. Naquib’s case, the record shows that during the alleged period from February 2020 to April 2021, there was no classified post of Regional PMO. The functions of administrative and financial coordination at the regional level of ROAf were, until then, undertaken by the PMOs in ROAf. These, it appears, were assigned to Mr. JS (a P-3 staff) until his transfer in 2015, then to Ms. Naquib (a P-3 staff) until the redistribution of tasks in 2021, without proof of reclassification, or request to do so, until this point in time, and finally to Ms. SM (a P-4 staff) in May 2021. It was not until 2023 that the functions of regional coordination were incorporated into the newly established post of Regional PMO, that was finally classified at the P-4 level and filled by way of lateral transfer.

72. In view of the foregoing, we conclude that, contrary to Ms. Naquib’s claims, her post remained at the P-3 level, was not reclassified to the P-4 level in 2020, and the post of Regional

²⁴ Emphases added.

²⁵ *Frehiwot Yabowork v. Secretary General of the United Nations*, Judgment No. 2020-UNAT-1037, para. 34.

PMO did not formally exist until 2023. Consequently, we affirm the UNDT's conclusion in this regard that Ms. Naquib had not met the legal prerequisites to be paid SPA payments.

73. Ms. Naquib's cross-appeal must, therefore, be dismissed.

Judgment

74. The appeal is granted and the impugned Judgment No. UNDT/2023/069 is hereby reversed in part. The part of Ms. Naquib's application related to *ex-gratia* payments is dismissed as not receivable *ratione materiae*.

75. The cross-appeal is dismissed, and the remainder of the impugned Judgment No. UNDT/2023/069 is hereby affirmed.

Original and Authoritative Version: English

Dated this 25th day of October 2024 in New York, United States.

(Signed)

Judge Sheha, Presiding

(Signed)

Judge Ziadé

(Signed)

Judge Forbang

Judgment published and entered into the Register on this 27th day of December 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar