



Before: Judge Eleanor Donaldson-Honeywell

Registry: Geneva

Registrar: René M. Vargas M.

WACHIRA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Sandra Baffoe-Bonnie, UNEP
Christopher Gitau, UNEP

Introduction

1. The Applicant, a Senior Administrative Assistant, working with the United Nations Environment Programme (“UNEP”), contests the decision not to apply to her the Salaries and Allowances Scale for General Service (“GS”) Category applicable only to eligible staff on board prior to 1 January 2000.
2. On 15 February 2024, the Respondent filed his reply.

Factual background

3. The Applicant’s entry on duty [“EOD”] at UNEP was on 3 May 1994, as a Programme Assistant, at the G-4 level in Nairobi.
4. Effective 1 September 2019, the Applicant received a long-service step of GS-7/Step 11, which is the highest step in the Salary scale applicable to the GS Category in Nairobi.
5. Effective 22 February 2022, the Applicant was reassigned from UNEP Nairobi to UNEP Paris to serve as a Senior Administrative Assistant at the GS-7/Step11 level on a permanent appointment. This move was recorded as “reassignment” in a Personnel Action (“PA”).
6. Since 1 October 2011, the Paris duty station operates based on two separate salary scales for staff of the General Service category namely:
 - a. Par120a salary scale (“GS Salary Scale 120a”): applicable only to staff recruited on or after 1 January 2000; and
 - b. Par120b salary scale (“GS Salary Scale 120b”): applicable only to eligible staff on board prior to 1 January 2000.
7. The Applicant was placed under GS Salary Scale 120a based on her date of reassignment to the Paris duty station, which was after 1 January 2000. Under this salary scale, the Applicant could qualify for a further in-grade increase to the long service step, namely GS-7/Step 12, subject to fulfilling some conditions, including:

- a. Having had at least 20 years of service within the United Nations common system;
- b. Having five years at the top regular step of the current grade; and
- c. Having had satisfactory service.

8. On 1 March 2023, the Applicant contacted the Staff Pay and Benefits Section (“SPnB”) of the United Nations Office at Nairobi (“UNON”) by email. She inquired whether she should have received a step increment and progressed to step 12 after one year of service at the Paris duty station. This inquiry was based on the Applicant’s understanding that she was entitled to step increments under GS Salary Scale 120b, which provides for increments up to step 14 with no need to meet any service period requirement. The Applicant underscores her view that she was “on board” before 1 January 2000 for purposes of par120b since her EOD date was in 1994 upon recruitment in Nairobi.

9. On 2 March 2023, an SPnB Human Resource Assistant (“HRA”) responded to the Applicant agreeing with the Applicant’s interpretation. The HRA wrote:

I note that your next step increment date was correctly reflected in Umoja as 01.02.2023, see screenshot below. Before escalating the case for review, I am curious to see whether the increment will be picked in the March batch job. I will monitor and revert in the course of this month.

10. On 15 March 2023, the same HRA informed the Applicant that upon further reflection, they had noted that entitlement to increments up to step 14 is only applicable to staff members “on board” prior to 1 January 2020. Accordingly, the Salary scale applicable to the Applicant was GS Salary Scale 120a, i.e., for staff recruited on or after 1 January 2000 as she had moved to the Paris duty station on 22 February 2022.

11. On 8 May 2023, the HRA sought advice from the Department of Operational Support (“DOS”), stating:

Please advise on whether the staff member is entitled to the long service step increment of the Paris salary scale upon completion of five years on G-7 step 11. Please also confirm that the salary scale applicable to the s/m is that applicable to staff recruited on or after 01 January 2000 (Par120a) given that the s/m moved to Paris in 2022.

12. As per the content of the management evaluation response (see para. 22 below), DOS responded on 10 May 2023 as follows:

The qualifying criteria for the Long-Service Step are mentioned in the current local salary scale for Paris and please note that all these criteria must be fulfilled for the staff member to be eligible to receive the long service step increment.

- At least 20 years of service (continuous or cumulative) within the United Nations common system.

- 5 years at the top regular step of the current grade.

- Satisfactory performance.

Based on the above, while the staff member does have 20 years of service within the UN common system, she does not have the 5 years of required service at the top regular step of her current grade. She would only meet the 5 years of required service at the top regular step of her current grade in October 2024.

13. On the same day, SPnB sent a follow-up question to DOS asking whether the Applicant is eligible for another long-service step increment although she received a long step for GS-7/11 in 2019.

14. On 13 May 2023, DOS confirmed that the staff member can be considered again for a long- service step increment because the current local salary scale in the current duty station is applicable to the staff member following the staff member's movement to her current duty station.

15. Based on the advice of DOS, SPnB informed the Applicant on 15 May 2023 that the Salary scale applicable to her was GS Salary Scale 120a and that she would be eligible for consideration of a long-service step increment in October 2024. This is the contested decision.

16. On 14 June 2023, the Applicant responded to SPnB indicating that her EOD date in the Organization was 3 May 1994. She also indicated that her 1994 EOD date rather than her 22 February 2022 transfer to Paris date should have been used as the basis to determine whether GS Salary Scale 120a or GS Salary Scale 120b is applicable to her.

17. On 20 June 2023, SPnB responded to the Applicant informing her that DOS had advised that she should be placed on GS Salary Scale 120a after receiving the full information regarding her EOD of 3 May 1994 and transfer to Paris on 22 February 2022.

18. On 21 June 2023, the Applicant responded to SPnB highlighting the cases of two General Service staff members who similarly moved from Nairobi to Paris between 2016 to 2018 and, unlike her, were placed on GS Salary Scale 120b.

19. On 11 August 2023, the Applicant requested management evaluation of the contested decision.

20. On 6 September 2023, SPnB received further advice from DOS as follows (emphasis added):

It is our view that Par120a is the salary scale that would be applicable for the case at hand since the staff member **joined the Paris duty station** after 1 January 2000. **Regardless of her Entry on Duty Date to the Secretariat, it is the date when she was recruited/onboarded to the Paris duty station that should count** for the determination of her salary scale since the salary scale(s) in question are local ones and therefore their application must be in connection with when a staff member was recruited to the respective duty station. As you mentioned in your email, this is also in line with the advice you received from the Policy and Conditions of Service Section (PCSS)/OHRM in 2017 as well as your own office's view on the matter.

We additionally would like to reconfirm our previous advice (DOS-HR-ADVICE-20230508-17127), which you referenced in your email, that the staff member would only meet the 5 years of required service at the top regular step of her current grade in October 2024 in order to be granted the long service step increment to GS-7/12 in her current Par120a salary scale.

21. On 18 September 2023, SPnB transmitted the above advice from DOS to the Applicant.

22. On 19 September 2023, the then Management Evaluation Unit found the Applicant's request time-barred and thus not receivable. The substance of her case was therefore not considered.

Submissions

The Applicant's submissions

23. The Applicant is contesting all administrative decisions communicated to her by UNON/SPnB and DOS, for refusing to place her on the GS Salary Scale 120(b) at the Paris duty station and award her a within grade step increment. She contends that the Administration is in error by arguing that her relevant on-boarding date was when she was recruited to the Paris duty station on 22 February 2022. She points out that existing Human Resource Personnel Action records clearly state that she was recruited into the United Nations Secretariat on 3 May 1994, which remains her EOD to-date and confirms that she was on board and in service with the Organization prior to 1 January 2000.

24. The Applicant seeks to differentiate two issues, which the Administration seems to address together: step increment and a longevity step. The Applicant maintains that SPnB did not expressly respond to her original request which only concerned her entitlement to a step increment. They kept focusing/refocusing her back to the awarding of a longevity step while totally ignoring the missing step increment query.

25. The Applicant avers that both UNON and UNEP are entities of the United Nations Secretariat. Her movement was undertaken as a transfer (movement between two United Nations Secretariat entities) with a change in duty station only. The Applicant cites the "Onboarding and Staff Movements Manual – 1", last updated on 4 August 2022, as the source of policy provision that there are no entitlements attached to General Service category staff moving across duty stations.

Her movement in 2022 cannot therefore be considered as a new recruitment process.

26. The Applicant cites two precedents of other staff members who transferred from Nairobi in circumstances similar to hers but were placed on the GS Salary Scale 120b. This was based on recognition that their EOD was pre-2000, when they were recruited in Nairobi. In contending that her EOD ought to have been likewise recognised, she points to an email dated 1 November 2017 with subject “UNEP Paris GS-staff members – Review of EOD dates and confirmation of contractual status”, entered into the case record as annex R6 to the Respondent’s reply.

27. The Applicant maintains that the contested decision contradicts staff rule 3.2(a), which states that a step increment is awarded based on performance and makes no reference to entry at a duty station.

28. As remedies, the Applicant requests for:

- a. A rightful, comprehensive award together with placement on the GS Salary Scale 120b applicable in Paris to staff on board prior 1 January 2000;
- b. A rightful award of a within step increment benefit in the spirit of staff rule 3.2(a); and
- c. Recognition of her continuous service with the United Nations Secretariat from 3 May 1994.

The Respondent’s submissions

29. The Respondent submits that the decision to place the Applicant under the local salary scales for staff recruited on or after 1 January 2000 was made based on the Applicant’s date of reassignment to the Paris duty station (22 February 2022). The Applicant could not be placed on GS Salary Scale 120b, applicable in Paris to staff on board prior to 1 January 2000, because her reassignment to and onboarding at the Paris duty station was not before 1 January 2000.

30. The Respondent further states that there is no single global salary scale for the General Service category. The Organization's policy is that recruitment of GS staff is done locally and that they are not subject to geographic mobility. Salary scales are based on local prevailing conditions. As stated by the International Civil Service Commission ("ICSC") in its February 2022 publication on the UN Common System, the General Service Category staff "are paid not on the basis of a single global salary scale, but according to local salary scales established on the basis of salary surveys".

31. The Respondent contradicts the Applicant's interpretation of the Paris scales that any General Service staff member, recruited anywhere in the world prior to January 2000 and who has been reassigned to the Paris duty station, should be subject to the GS Salary Scale 120b that is applicable to General Service staff based and onboarded in Paris over 23 years ago. Such an interpretation would appear to extend the framework governing the General Service Salary Scale.

32. The Respondent confirmed that in the case of two staff members referred to by the Applicant, they were placed on the GS Salary Scale 120b even though, like the Applicant, having had pre-2000 EODs in Nairobi they transferred from Nairobi to Paris after the year 2000. However, the Respondent indicated that that took place based on an error. When the error was detected, some ten years after the fact, the Respondent decided to allow the two staff members to remain on GS Salary Scale 120b. This was done "considering the significant period that ha[d] elapsed between the erroneous decisions, their implementation and their discovery".

33. On a review of the application and the Respondent's reply, the Tribunal noted that GS Salary Scale 120a refers to "staff recruited" after 1 January 2020. There is nothing about onboarding and the indication about recruitment does not specify recruitment to Paris. The Respondent had not cited any authority that being placed on GS Salary Scale 120a or GS Salary Scale 120b depends on when the staff member came on board in Paris. Although the Applicant cited two precedents of staff members treated in a different manner, the Respondent did not cite any precedents of application of its interpretation of GS Salary Scale 120a or GS Salary

Scale 120b. Rather the Respondent's case was that the interpretation and the resulting decision were based on advice from DOS.

34. Accordingly, the Tribunal directed by Order No. 116 (GVA/2024) that in closing submissions, the Respondent "should in particular address the issue of the policy document relied on and provide relevant examples of other persons whose cases were treated in the manner that supports their case".

35. The Respondent, thereafter, made further submissions reiterating that the advice from DOS was the basis for the interpretation. The Respondent further conceded that there were only three cases of staff members similarly circumstanced as the Applicant.

36. In the above circumstances, the Respondent requests the Tribunal to dismiss the application.

Consideration

Applicable law

37. Staff rule 3.2(a) provides that:

Satisfactory service for the purpose of awarding a salary step increment shall be defined, unless otherwise decided by the Secretary-General in any particular case, by satisfactory performance and conduct of staff members.

38. Annex 1, para. 7 of the United Nations Staff Regulations and Staff Rules provides that:

The Secretary-General shall fix the salary scales for staff members in the General Service and related categories, normally on the basis of the best prevailing conditions of employment in the locality of the United Nations Office concerned, provided that the Secretary-General may, where he or she deems it appropriate, establish rules and salary limits for payment of non-resident allowance to General Service staff members recruited from outside the local area. The gross pensionable remuneration of such staff shall be determined in accordance with the methodology specified in article 51 (a) of the Regulations of the United Nations Joint Staff Pension Fund and are shown in the salary scales applicable to such staff.

39. The ICSC publication “UN Common System of Salaries, Allowances, and Benefits” (February 2022) provides for the General Service category (emphasis added):

A Salary System

General Service staff are recruited and paid on a local basis. Staff in the General Service category perform functions in areas such as general administration and office support and programme management support. A number of other specialized and technical personnel, such as those engaged in printing, building maintenance, security or laboratory work may be included in the General Service category; in some duty stations, there are one or more separate locally recruited categories for such staff. The term General Service category as used in this booklet normally includes all of the above groups of staff as their salaries and benefits are determined in a similar manner.

A global job classification standard for the General Service and related categories was promulgated in 2010. The introduction of this standard provides a consistent framework for comparisons with the external market by allowing for the establishment of standard benchmark job descriptions.

Although it is the policy of organizations to recruit General Service personnel locally, there may be certain skills (e.g., linguistic) that can be found only outside the local area. A staff member recruited and travelled by the organization from outside the area of the duty station, who is a national of another country, may be granted non-local status and thereby become eligible for appropriate international benefits (see section VI.J below).

B. Level of Salaries

General Service staff are recruited to serve at the same duty station and are not subject to geographic mobility. An underlying concept of the common system is that these staff should be compensated in accordance with the best prevailing conditions of service in the locality; consequently, they are paid not on the basis of a single global salary scale, but according to local salary scales established on the basis of salary surveys. ICSC has developed a methodology for conducting salary surveys which encompasses a wide range of employment conditions. At headquarters duty stations, ICSC recommends General Service salary scales for final approval by the organizations concerned. At non-headquarters duty stations, salary scales for General Service staff are established by the organizations according to agreed arrangements.

C Salary Scales and Increments

There is normally only one General Service salary scale per country. General Service salary scales are expressed in local currency per grade and step. While the number of grade levels and steps per level may vary from one duty station to another, there is a move towards a seven- grade level structure system-wide. Longevity steps may be included in the salary scales where local conditions so justify. At other locations, provision is made for one long-service step in addition to the regular steps for each grade. To qualify, staff must have been at the top of their grade for five years and have a minimum of 20 years' service.

Increments within each salary level are normally awarded annually based on satisfactory service. General Service salary scales are reviewed periodically on the basis of comprehensive surveys of the best prevailing conditions of employment in the locality. [...]

Examination of the merits of the case

40. The Tribunal's determination in this case concerns contending interpretations of the wording of the applicable Paris salary scales in the context of the terms of the Applicant's employment contract. The Applicant's contractual employment terms include the Organization's regulatory framework including Staff Rule 3.2 and Annex 1 para 7 cited above. Thus, the wording of the salary scales applicable to the Applicant's employment also forms part of her contractual terms of employment.

41. In considering the interpretation issues that arise in this case, the Tribunal does not seek to replace the decision maker's role in coming to a determination. Rather the Tribunal's role is limited to a judicial review of the process by which the decision-maker arrived at the interpretation that led to the challenged decision (*Sanwidi* 2010-UNAT-084, para. 40).

42. Appeals Tribunal's jurisprudence provides guidance on the approach to be taken by the UNDT when considering the interpretation of provisions such as those that had to be applied by the decision-maker in this case. In *De Aguirre* 2016-UNAT-705, UNAT explained:

44. The interpretation of a rule is made within the context of the hierarchy in which the rule appears. A staff member's appointment is subject to the Staff Regulations and Rules, and also incorporates the relevant administrative issuances issued by the Organization. In general terms, administrative issuances set out instructions and procedures for the implementation of the Staff Regulations and Rules. Just as a Staff Rule may not conflict with the Staff Regulation under which it is made, an administrative issuance may not conflict with the applicable Staff Regulation or Rule which it implements. Finally, in interpreting the terms of a staff member's appointment, we may also draw upon general principles of law insofar as they apply to the international civil service.

43. The case of *Guedes* 2014-UNAT-418 provides an example of this approach to interpretation taken by the UNDT and upheld by the Appeals Tribunal as follows (emphasis added):

18. Staff Rule 5.3(e) entitled "Special leave" as set forth in ST/SGB/2011/1 applicable at the time stated: "Staff members shall not accrue service credits towards sick, annual and home leave, salary increment, seniority, termination indemnity and repatriation grant during periods of special leave with partial pay or without pay exceeding one month. Continuity of service shall not be considered broken by periods of special leave".

19. The **UNDT did not commit an error of law when it accepted one of the possible reasonable interpretations of this rule** and decided that the SLWOP did not affect the continuous duration of Mr. Guedes' appointment. Article 2 of the Statute of the Appeals Tribunal allows appeals of UNDT judgments when they erred on a question of law. In the instant case, the Administration alleges an error of law because the Judgment did not concur with its own interpretation of the rule. **Internal OHRM guidelines cannot prevail over a judicial interpretation of the rule itself.**

44. In the instant case, the Respondent has cited no guideline or policy as the basis for the interpretation put forward. Rather the interpretation is based on advice from DOS. However, it is recalled that when interpreting legislation, this Tribunal has previously held that the "meaning of any legislative provision is ascertained by the meaning of its words in the light of the intention of the rules as a whole. This intention is generally ascertained by reference to the context of the provision of the rules" (*Hastings* UNDT/2009/030, para. 16).

45. UNAT has further held that in “interpreting a legislative provision ... the principle should be that the words ... are to be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the legislation, the object of the legislation and the intention of the legislature,” (*Reilly* 2019-UNAT-975, para. 33). Moreover, where the occasion warrants, the Tribunals will also consider whether an administrative decision comports with “the letter or the spirit” of the applicable legislative provision, (*Wilson*, 2012-UNAT-235, para. 13).

46. On a plain reading, the wording of GS Salary Scale 120b provides no basis for an interpretation of the words “on board” as referring to the time when a staff member was recruited in Paris as opposed to the Staff Members EOD to the Organization. Thus, there is no basis, from a reading of GS Salary Scale 120b, to exclude the Applicant from being considered as “on board” from her 1994 EOD and thus entitled to be placed on said salary scale. The interpretation that “on board” in GS Salary Scale 120b refers to the EOD date that is indicated in all the Applicant’s employment records is the most reasonably probable meaning to be applied.

47. Similarly, in GS Salary Scale 120a where the wording speaks to “recruited on or after” as the decisive time frame for persons to be placed on that scale, there is no indication that the phrase refers to recruitment in Paris. The Tribunal finds that the Respondent has provided no rule or precedent based contextual explanation for the interpretation that “the 120a Salary Scale was indeed the correct scale for the Applicant to be placed on because the Applicant had joined the Paris duty station after 1 January 2000”.

48. The Respondent’s omission to provide such an explanation for the interpretation is compounded by the fact that the Respondent admits there are only three staff members to whom the interpretation would be relevant. Those must therefore be the Applicant and the two that she cited. The latter have been placed on GS Salary Scale 120b based on what the Respondent contends was an error. However, there is no rationally explained basis for such placement to have been in error.

49. Clearly, the Respondent's preferred outcome is that staff members recruited to Paris from other duty stations ought not to benefit from the GS Salary Scale 120b based on their pre-2000 EOD dates from other duty stations. However, to achieve that outcome clarity of that meaning was required in the wording of the Paris salary scales.

50. In all the circumstances, the Respondent has not provided any rational explanation for not recognising the Applicant's EOD as the 1994 date of her recruitment in Nairobi or for depriving her of the entitlements to increments afforded under GS Salary Scale 120b to those similarly circumstanced.

Conclusion

51. In view of the foregoing, the Tribunal DECIDES:

- a. The application is GRANTED and the challenged decision is rescinded;
- b. The Applicant is to be recognised as having been in continuous service with the United Nations Secretariat from 3 May 1994 and, effective 22 February 2022, she is to be placed on the GS Salary Scale 120b applicable at the Paris duty station to staff on board prior to 1 January 2000 and awarded within step increment benefits on that basis;
- c. The Respondent shall pay arrear salaries to the Applicant arising from the above salary scale placement together with interest on the arrears at the US prime rate to compensate for the delay in the Applicant receiving salary payments; and
- d. Any actuarial cost linked to the recalculation of the Applicant's contributions to the medical insurance or pension scheme arising from the retroactive calculation of her salary shall be borne by the Organization.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 28th day of October 2024

Entered in the Register on this 28th day of October 2024

(Signed)

René M. Vargas M., Registrar, Geneva