



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/065

Judgment No.: UNDT/2025/027

Date: 29 May 2025

Original: English

Before: Judge Francesco Buffa

Registry: Geneva

Registrar: Liliana López Bello

KISELINCHEV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Jeffrey C. Dahl

Counsel for Respondent:

Aleksandra Gjorgieska, HRLU/UNOG

Introduction

1. The Applicant, a Crime Prevention and Criminal Justice Officer with the United Nations Office of Drugs and Crime (“UNODC”) in Vienna, filed an application contesting his step determination upon promotion (step 1) following his selection for his current P-3 position (“the post”).

2. For the reasons set forth below, the application is rejected.

Facts

3. On 29 May 2024, the Applicant received an Offer of Appointment as a Criminal Prevention and Criminal Justice Officer at the P-3, step 1 level.

4. On 30 May 2024, the Applicant requested a review of the step determination, which was rejected by a decision communicated to the Applicant on 4 June 2024.

5. By email dated 4 June 2024, the Applicant accepted the Offer of Appointment for the post at the P-3 level, step 1, reserving the right to challenge the step determination.

6. On 24 June 2024, the Applicant requested management evaluation of the contested decision.

7. By decision dated 6 August 2024, the Under-Secretary-General for Management Strategy, Policy and Compliance (“USG/DMSPC”) decided to uphold the contested decision.

8. On 4 November 2024, the Applicant filed the instant application.

9. On 5 December 2024, the Respondent filed his reply.

10. By Order No. 3 (GVA/2025), the Tribunal instructed the Applicant to file a rejoinder and encouraged the parties to explore resolving this issue amicably.

11. On 1 February 2025, this case was assigned to the undersigned Judge.

12. On 24 February 2025, the Applicant filed his rejoinder.

13. On 28 February 2025, the parties filed a joint submission informing the Tribunal that they were unable to reach an amicable settlement.

14. By Order No. 24 (GVA/2025), the Tribunal directed the parties to file their respective closing submissions, which they did on 2 May 2025.

Consideration

15. The Applicant submits that, in its core, his case is about the fundamental right to equal pay for equal work. According to him, there exists in the Organization a systematic inequality between internal and external candidates in step determination. To remedy this, the Organization created the provisional staff rule 3.3, effective 1 January 2023. Provisional staff rule 3.3 allowed for higher step levels to be determined based on years of experience.

16. However, on 28 March 2024, the Fifth Committee of the General Assembly adopted draft Resolution A/C.5/78/L.35, later confirmed in the General Assembly (“GA”) Resolution 78/275, by which the GA withdrew the provisional amendments to staff rule 3.3 and reintroduced the “two-step formula” for step determination.

17. The Office of Human Resources (“OHR”) also issued Policy Guidelines, OHR/PG/2024/4 (“OHR Guidelines”), on 28 March 2024, instructing that, effective 1 April 2024, all staff selections must adhere to the reinstated two-step formula. These Guidelines specifically provide the following:

Staff members selected for a higher-level position within the same category BEFORE 28 March will have their step calculated under the old guidance (OHR/PG/2023/3).

As a transitional measure, staff members selected for a higher-level position within the same category between 28 March and 31 March will also have the step calculated under the old guidance (OHR/PG/2023/3).

Selections made on or after 1 April 2024 will have to follow the new staff rule 3.3(b) and will be calculated in accordance with the two-step formula.

18. As a result, the OHR Guidelines dictate that staff rule 3.3 shall read as follows:

(a) On appointment, a staff member shall normally be placed at the first step of the level of his or her post, unless otherwise decided by the Secretary-General.

(b) On promotion, a staff member who holds a fixed-term or a continuing appointment shall be placed at the lowest step of the level to which he or she has been promoted that provides an increase in net base salary equal to at least the amount that would have resulted from the granting of two steps at the lower level.

19. The Respondent notes that since the reintroduction of the two-step formula and the OHR Guidelines mentioned above, by way of paragraph 66 of Resolution 79/257 of 24 December 2024, the GA further directed and requested the Secretary-General to revisit the step determination guidelines. However, any such revisions would not affect the Applicant.

20. On 1 April 2025, the Fifth Committee adopted the draft Resolution A/79/839, subsequently confirmed on 11 April 2025 in GA Resolution 79/280 (see A/79/PV.63, item 144). The GA thereby emphasized that paragraph 66 of its Resolution 79/257 “does not relate to cases of ‘promotions’ under staff rule 3.3(b)”, and that any changes to the guidelines shall be fully in line with GA resolutions and decisions. Thus, the GA confirmed there is no flexibility in applying staff rule 3.3 and the two-step formula contained therein to cases of promotions.

21. Since the Applicant’s selection occurred on 17 May 2024, that is after the “two-step formula” reentered into effect, the Respondent submits, in this connection, that the step determination of the Applicant was consistent with the applicable legal framework at the time of his selection for the post.

22. The Applicant argues, however, that he has a right to equal pay for equal work. Under provisional staff rule 3.3, he would have been placed at step 12 due to his over 17 years of professional experience. After reverting to the old “two-step formula,” as an external candidate, he would have been placed at step 6. However, as an internal candidate promoted from P-2 level, step 7, he was placed at the P-3 level, step 1.

23. Furthermore, although the GA indeed required the rescission of the provisional rule, it did not dictate the timeline or specific requirements for transition. The Administration retained considerable discretion in this regard. It could have managed the transition in a way that would have protected the Applicant's fundamental rights. Instead, it chose a path that violated it and, in doing so, acted unreasonably in its discretionary authority and discriminated against the Applicant as an internal candidate.

24. The Tribunal is tasked, therefore, with determining whether the step determination of the Applicant's promotion constituted a lawful and reasonable exercise of discretionary authority. For this, it will consider the applicable legal framework, the transitional measures, the Administration's discretionary authority, and the Applicant's overall fundamental rights.

Whether the step determination for the Applicant infringed the principle of equal pay for equal work

25. The Applicant argues that he has a right to equal pay for equal work and that, as an external candidate, he would have been placed at step 6. However, as an internal candidate promoted from P-2 level, step 7, he was placed at the P-3 level, step 1.

26. The Tribunal notes that the Appeals Tribunal has held that the general principle of equal pay for equal work, protected as a right under the Universal Declaration of Human Rights, "does not prevent the Administration from establishing different treatments for different categories of workers or staff members, if the distinction is made on the basis of lawful goals (*Tabari*, 2011-UNAT-177, para. 25). The distinction is not discriminatory if it is aimed at achieving general organizational goals and policies, rather than targeting individuals or categories of them unequally. It becomes discriminatory "when it affects negatively the rights of certain staff members or categories of them, due to unlawful reasons" (*Tabari*, para. 26).

27. In the Applicant's case, his promotion and corresponding step determination were conducted in line with the rules and guidelines applicable to promotions of

internal candidates. The Applicant has not demonstrated any discrimination or unequal treatment in this process.

28. The Tribunal preliminarily finds that the Respondent has a point in stressing that the Applicant's assertion that he would have been placed at the P-3 step 12 level under the provisional staff rule 3.3 and earlier guidelines, or P-3 step 6 level under the Guidelines as an external candidate, is unsubstantiated. The Applicant has worked in several different areas before joining UNODC, and any calculations regarding the placement of staff members on step levels are subject to determining the relevance of work experience and standard reference verification checks. To determine what step would have been awarded to him under the earlier guidelines or as an external candidate, a full evaluation of his years of relevant experience would have to be done. Anything less than such a complete exercise is mere speculation by the Applicant.

29. There was no unlawfulness in determining the Applicant's step according to the applicable rules for the category of internal candidates. As such, the Applicant was not individually discriminated against or unequally treated vis-à-vis other internal candidates, whether internal or external, in determining his step placement upon promotion.

30. The Tribunal, in particular, finds that group differentiation is legitimate and considers the Administration's actions correct.

31. Indeed, it is not irrational to attribute different steps to external employees who take part in a competition compared with internal employees who progress only by seniority with milder comparative checks, where they could instead participate in an external competition.

Whether the step determination for the Applicant was unlawful and whether the Administration exceeded its discretion

32. The Applicant argues that under the provisional staff rule 3.3, he would have been placed at step 12 due to his over 17 years of professional experience. However, as an internal candidate being promoted from P-2 level, step 7, he was placed at the P-3 level, step 1.

33. The Tribunal finds that the Administration acted within its discretion by implementing the guidelines on step determination based on the selection date. The Applicant's step upon promotion was determined correctly in line with the applicable policy at the time of his selection, which reflected the GA's direction and intention.

34. Indeed, the Administration properly determined the Applicant's step upon promotion in accordance with staff rule 3.3(b), implemented as of 1 April 2024, and the corresponding Guidelines (*i.e.*, OHR/PG/2024/4 of 28 March 2024).

35. The Applicant was selected for the position on 17 May 2024. By then, the GA had already decided not to accept the provisional amendments to staff rule 3.3(b), effectively preventing the Administration from deviating from the strict application of the two-step formula. The Guidelines further clarify that "selections made on or after 1 April 2024" must follow staff rule 3.3(b) and that step determination in cases of promotions will strictly follow the two-step formula.

36. Furthermore, the Applicant submits that the provisional staff rule 3.3 and earlier guidelines should apply to him because he applied to the JO whilst they were still in effect. The Respondent contends that the earlier guidelines and provisional staff rule 3.3 do not apply to the Applicant and are irrelevant in this case. Provisional staff rule 3.3 was not part of the JO and, as a provisional rule, does not give rise to any acquired rights or legitimate expectation. The correct framework should be the applicable legal framework at the time of the Applicant's selection, as it was.

37. It is true that the conditions of employment are established at the time of the Offer of Appointment, but provisional staff rule 3.3 and OHR Guidelines were not part of the job offer and were also only provisionally part of the Staff Rules and Regulations, pending their acceptance by the GA, which did not happen.

38. Moreover, the Tribunal finds legitimate the Administration's consideration of subsequent facts as regulatory changes that could be relevant to the stipulation of the work contract. Even the GA did not exclude the relevance of supervening

regulatory changes, leaving the Administration with discretion regarding the application of the new criterion to the procedures in progress.

39. The Administration acted well. Indeed, it cannot be considered that there is a retroactive application of the new rules because the new rule is applied from a particular moment onwards, especially the moment relevant for the definition of working conditions is that of the selection. It is definitely correct to refer to the regulatory framework in force at that moment.

40. Hence, the Administration did not “abuse its discretion” by implementing the Guidelines, which rely on the selection date and not the JO posting date as a trigger for implementing the salary policy.

Conclusion

41. In view of the foregoing, the Tribunal DECIDES to reject the application.

(Signed)

Judge Francesco Buffa

Dated this 29th day of May 2025

Entered in the Register on this 29th day of May 2025

(Signed)

Liliana López Bello, Registrar, Geneva