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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/063

Judgment No.: UNDT/2020/010

Date: 23 January 2020

Original: English

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**Before:** Judge Eleanor Donaldson-Honeywell

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

ALQUZA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Aleksandra Jurkiewicz, OSLA

**Counsel for Respondent:**

Melissa Bullen, UN Women





13. On 31 December 2017, the Applicant [redacted] tions Associate was abolished, in keeping with the prior notice she had received. The Applicant was subsequently separated from service.

## **Consideration**

### *Issues*

14. Under the [redacted] to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial r [redacted] *Fasanella* 2017-UNAT-765, para. 20).

15. As a preliminary matter, the Tribunal notes that, in the present case, the decision the Applicant challenges is not in relation to a request for Special Post Allowance for undertaking functions above her level. Instead, she is challenging the decision made to reject her request pursuant to staff rule 12.3(b), for a retroactive *ex gratia* payment in lieu of such a Special Post Allowance, as also reflected in her request for management evaluation. It is therefore the denial of this specific request that the Tribunal is to review.

16. In light of the above, by Order No. 175 (NY/2019), the Tribunal delineated the principal her [redacted]

*Did UN Women improperly est for an ex gratia payment in lieu of Special Post Allowance?*

17. The Applicant submits that in light of her dedicated service and performance of the higher-level duties for almost four years, the Administration violated the principle of equal pay for work of equal value when failing to consider granting her an *ex gratia* payment. In this regard, the Administration ignored the following facts: (a) the Applicant had been performing the duties of an Operations Manager for almost four years; (b) during this period, the Applicant's work as Operations Manager was fully recognized by two consecutive first reporting officers in her 2014, 2015, and 2016 performance reviews; (c) the need for an Operations Manager post in the Jordan country office was pressing for years, given that Syrian crisis operations and the influx of refugees were concentrated in Jordan since 2011, and that there was a need to align the Jordan Country Office with the regional practice of having Operations Managers at the National Officer level; and (d) the Administration relied on the performance of the Applicant in her *de facto* capacity of Operations Manager to avoid the necessity of creating such a position, which was subsequently only created following the abolition of the Applicant post.

18. The Applicant contends that the principles of the Appeals Tribunal in *Chen* 2011-UNAT-107 apply to her case as the two cases are similar the need for an Operations Manager post in the Jordan Office was clearly documented and pressing for years when the general practice of UN Women in the region was to have Operations Managers at the National Officer level, which is not denied by the Respondent. It was only because the Applicant was exceeding performance expectations and taking upon her higher functions and roles that UN Women was refusing to reclassify her post in the Jordan country office and simply saving money.

19. The Applicant submits that the Admin

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23.





a. *Ex gratia* payment shall mean a payment made where there is no legal liability but the moral obligation is such to make payment justifiable (see the definition in Financial Regulations and Rules

b. The Under-Secretary General/Executive Director may make such *ex gratia* payments, not exceeding \$75,000 per year, as she or he deems necessary in the interest of UN Women (see Regulation 20.6 (a));

c. *Ex gratia* payments may be made in cases where, in the opinion of the legal adviser to UN Women, there is no clear legal liability on the part of UN Women and where such payments are in the interest of UN Women (Financial Rule 2008 (a)).

27. The Respondent submits that *ex gratia* payments are intended to address exceptional humanitarian or emergency cases, where there is a justifiable moral obligation, and further refers to staff rule 3.10(a) which states that if members shall be expected to assume temporarily, as a normal part of their customary work, a normal part of their



Applicant states that she was performing her functions so well that it was convenient for the Administration to delay reclassification of the post and benefit from her cheap labour . The Applicant submits that equal pay for equal work is a moral and legal obligation and that to artificially distinguish such a principle and only equate it to a legal right undermines the very principles that the notion espouses.

32. The Tribunal notes that the Appeals Tribunal has, in several cases, endorsed the doctrine of equal pay for equal work by reference to art. 23.2 of the Universal Declaration of Human Rights (see, for instance, *Tabari* 2011-UNAT-177 and *Chen* 2011-UNAT-107). In relation to the specific situation where a staff member undertakes functions at a higher level than her/his grade, in *Elmi* 2016-UNAT-704, the Appeals Tribunal has, however, held that the doctrine would not apply as thi221.33 636.22 Tm0 g



36. However, the Respondent has in fact reflected recognition and appreciation for the Applicant's sterling efforts in her positive performance evaluations and by waiving certain qualification requirements for her initial application to be selected for the new Operations Manager position.

37. This recognition by the Respondent of the valuable contribution made by staff members like the Applicant is to be encouraged in fostering the relationship of mutual trust and confidence between the Administration and staff members. Yet there is no basis within the regulatory framework for further reward by way of *ex gratia* payment. The Applicant is not entitled to the relief claimed.

### **Conclusion**

38. The application is rejected.

*(Signed)*

Judge Eleanor Donaldson-Honeywell

Dated this 23<sup>rd</sup> day of January 2020

Entered in the Register on this 23<sup>rd</sup> day of January 2020

*(Signed)*

Nerea Suero Fontecha, Registrar, New York