



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

Judgment No. 2020-UNAT-1065

Mahasin Alquza

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge John Raymond Murphy Judge Dimitrios Raikos
Case No.:	2020-1377
Date:	30 October 2020
Registrar:	Weicheng Lin

Counsel for Appellant: Aleksandra Jurkiewicz, OSLA

Counsel for Respondent: Maryam Kamali

JUDGE SABINE KNIERIM, PRESIDING.

1. Ms. Mahasin Alquza filed an application with the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) contesting the Administration's refusal to grant her an *ex gratia* payment in lieu of Special Post Allowance (SPA) for assuming additional responsibilities starting in 2014. In Judgment No. UNDT/2020/010, the UNDT dismissed the application finding no legal basis for awarding an *ex gratia* payment. Ms. Alquza appeals to the United Nations Appeals Tribunal (Appeals Tribunal). We dismiss the appeal for the reasons set out below.

Facts and Procedure

2. In October 2013, Ms. Alquza joined the country office of the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) in Jordan as an Operations Associate at the G-7 level.

3. According to Ms. Alquza, starting from January 2014, she was increasingly assigned additional responsibilities, with which, on 21 January 2014, she assumed the full responsibilities of an Operations Manager at the National Officer level. According to Ms. Alquza, the increase in responsibilities was recorded in her performance reports of 2014, 2015 and 2016.

4. According to the Secretary-General, those responsibilities were undertaken within her substantive post of Operations Associate only. There was no concurrence by the Secretary-General with Ms. Alquza's claim that she assumed the full responsibilities of an Operations Manager at the National Officer level.

5. In March 2017, Ms. Alquza was informed that her post as Operations Associate would be abolished effective 31 December 2017. A month later, in April 2017, the post of Operations Manager at the National Officer level in the Jordan country office was advertised. On an exceptional basis, Ms. Alquza was allowed to apply for the position although she did not meet the educational requirements. Ms. Alquza applied for the position of Operations Manager but was not selected.

6. Ms. Alquza filed a request for the retroactive payment of SPA which was denied. On 28 April 2017, she requested management evaluation. By letter dated 9 June 2017, her request for management evaluation was denied on grounds that she was not eligible for SPA as her circumstances failed to meet the requisite criteria.

7. On 22 July 2017, Ms. Alquza wrote to the Human Resources Director at UN Women requesting an *ex gratia* payment in lieu of SPA to compensate her for having undertaken higher-level functions. She made her request under Staff Rule 12.3(b), which allows the Secretary-General to grant an exception to the Staff Rules under certain conditions. On 28 July 2017, UN Women rejected the request on grounds that Ms. Alquza did not meet the requirements for granting an SPA and that her request did not fall within the parameters for a request for grant of an *ex gratia* payment.

8. On 25 September 2017, Ms. Alquza filed a request for management evaluation. By letter dated 9 November 2017, the Management and Administrative Division of UN Women upheld the contested decision stating that UN Women had lawfully exercised its discretion when refusing to grant an *ex gratia* payment. The letter stated that using the discretion to make *ex gratia* payments as a substitute for SPA, in situations where a staff member feels that they had performed beyond expectations, would, firstly, undermine the unique purpose and exceptional nature of *ex gratia* payments, and, second, render the existing framework for granting SPA obsolete.

9. On 31 December 2017, Ms. Alquza's post as Operations Associate was abolished and she was separated from service.

10. On 22 January 2018, Ms. Alquza filed an application with the Dispute Tribunal contesting the Administration's refusal to grant her an *ex gratia* payment in lieu of SPA.

11. On 23 January 2020, the UNDT in New York issued Judgment No. UNDT/2020/010 dismissing the application finding no legal basis for awarding an *ex gratia* payment in lieu of SPA. The UNDT found that the requested *ex gratia* payment could not be treated as an exception to the Staff Rules, that UN Women had properly applied Staff Rule 12.3(b) and that under the UN Women's Financial Regulations and Rules, Ms. Alquza's request did not "fall within the parameters for an *ex gratia* payment".¹ In reaching its decision, the UNDT found that

¹ Impugned Judgment, para. 34.

Staff Rule 12.3(b), which Ms. Alquza referred to in her application as a basis for requesting an *ex gratia* payment, provided the Secretary-General with the discretionary authority to grant an exception to the Staff Rules if certain conditions were met and that Staff Rule 12.3(b) only gave a staff member the right to have a request for an exception considered, but not to have it granted. The UNDT further noted that while the Appeals Tribunal had previously endorsed the doctrine of equal pay for equal work, the Appeals Tribunal had held in *Elmi*² that the doctrine would not apply to the specific situation where a staff member undertook functions at a higher level than her/his grade, as this would otherwise render Staff Rule 3.10(a) and (b) unlawful. Finally, the UNDT found that the case of *Svedling*³ cited by Ms. Alquza as a precedent for granting an *ex gratia* payment did not substantively address that issue.

12. On 23 March 2020, Ms. Alquza filed an appeal with the Appeals Tribunal and on 27 May 2020, the Secretary-General filed a timely answer to the appeal.

Parties' Submissions

Ms. Alquza's Appeal

13. Ms. Alquza asks that the Appeals Tribunal vacate the impugned Judgment, rescind the contested decision and set an adequate amount of compensation. By concluding that the Administration lawfully rejected her request for an *ex gratia* payment, the UNDT erred in its interpretation of the exercise of the Administration's discretion in relation to the principle of equal pay for equal work and failed to take into consideration the specificities of her case

14. The UNDT erred in relying on *Elmi* to hold that the doctrine of equal pay for equal work did not apply to Ms. Alquza's situation. The cases are clearly distinguishable. While both cases involve staff members undertaking functions at a higher level, Mr. Elmi was not requesting an *ex gratia* payment in lieu of SPA. He had already received an SPA and was requesting a retroactive promotion under Staff Rule 12.3(b) "for pension purposes" only which was incompatible with the non-pensionable character of SPA and non-retroactive character of promotion. In contrast, in Ms. Alquza's case, the request for an *ex gratia* payment was not inconsistent with any Staff Regulation, decision of the General Assembly or prejudicial to the interest of any other staff member, pursuant to Staff Rule 12.3(b). As in

² *Elmi v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-704.

³ *Svedling v. Secretary-General of the United Nations*, Judgment No. UNDT/2016/054.

Chen, the reclassification of Ms. Alquza's post had been denied for years without any convincing reason and she had never received any additional compensation for her hard work. Ms. Chen never received SPA whereas Mr. Elmi received SPA for the whole length of the selection process in question.

15. The UNDT erred in law by failing to apply *Svedling* to her case. In *Svedling*, the staff member claimed that he performed higher-level functions and was contesting the administrative decision to refuse his application for an *ex gratia* payment in lieu of retroactive SPA. The Dispute Tribunal held that Mr. Svedling, having been denied his request for SPA, ought to have filed a request for an *ex gratia* payment. The fact that the Judgment in *Svedling* was limited to receivability did not mean that it could not have been relied on in the present case. To the contrary, it provided clear guidance for staff members on how to proceed in cases where they were performing higher-level functions but, for some reason, were not entitled to SPA.

16. The UNDT erred in holding that the Administration retained full discretion in not compensating her for almost four years of service at a higher level. Pursuant to ST/AI/1999/17, placement on SPA is subject to a number of specific pre-requirements. However, nowadays, the Administration often avoids its obligations to grant SPA to staff members performing higher-level functions by simply delaying reclassification of and vacancy announcements for the higher-level posts. The United Nations Secretariat and many United Nations agencies adopted corrective measures to redress this situation by way of awarding *ex gratia* payments to the affected staff members, in lieu of SPA. It appears that UN Women does not follow this practice, thereby incorrectly interpreting UN Women Financial Rule 2008(a). By finding that no moral consequences stemmed from the fact that UN Women had ignored Ms. Alquza's extended years of service at a higher level, the UNDT deprived the principle of equal pay for work of equal of its essential content.

The Secretary-General's Answer

17. The UNDT did not err in law in upholding UN Women's decision to reject Ms. Alquza's request for an *ex gratia* payment in lieu of SPA. Pursuant to the UN Women Financial Regulations and Rules, an *ex gratia* payment shall mean a payment made when there is no legal liability, but the moral obligation is such as to make payment justifiable. Such *ex gratia* payments, not exceeding USD 75,000 per year, may be made, if they are

deemed necessary in the interest of UN Women. The use of *ex gratia* payments is clearly available only when there is no legal obligation by the Secretary-General to make and, hence, no corresponding legal right for a staff member to receive such payment.

18. *Ex gratia* payments are discretionary and have been made in exceptional cases where there is a justifiable moral obligation to pay a staff member. In the case of UN Women, there was a sole case in which the exercise of discretion to make such payment was found to be justified, and that was a one-time rehabilitation grant after the earthquake in Nepal in 2015. Other instances of *ex gratia* payment in other entities of the United Nations have also been associated with exceptional emergency circumstances. These exceptional cases of *ex gratia* payment are different from Ms. Alquza's request for payment as a reward for performance or a substitute for SPA. An *ex gratia* payment is not meant to be a substitute for such cases. In fact, Ms. Alquza had already submitted a first management evaluation request, whereby she challenged the decision not to grant her SPA. She was found to be ineligible for SPA, as she did not meet the criteria. In addition, her performance of additional duties and responsibilities was consistent with Staff Rule 3.10(a) and her dedication and commitment were rewarded in her positive performance evaluations. Finally, UN Women showed good faith by allowing her to participate in the first selection process for the higher-level Operations Manager post by exceptionally waiving the educational requirements.

19. There is also no merit in Ms. Alquza's contention that the doctrine of equal pay for equal work applied to her case. The Appeals Tribunal has held that the doctrine of equal pay for equal work does not apply to cases, such as Ms. Alquza's, where a staff member undertakes functions at a higher level than her/his grade. Staff Rule 3.10(a) and 3.10(b) regulates the interests of staff members of lower grades exercising higher level functions in a consistent and reasonable way, and this lawfully embodies the principle of equal pay for equal work. However, an *ex gratia* payment is not a substitute for SPA. As has been demonstrated, *ex gratia* payments are granted in very exceptional cases where the Organization feels it has a moral obligation to compensate a staff member, even though legally it does not have an obligation to do so.

20. The Secretary-General requests that the Appeals Tribunal dismiss the appeal and affirm the UNDT Judgment.

Considerations

21. We find that the UNDT did not commit any errors in its Judgment and correctly dismissed Ms. Alquza's application.

22. There seems to be some confusion in this case about the meaning of the notion "ex gratia payment". While in *Svedling*, the word clearly was used by the UNDT as a synonym for any payment granted on the basis of Staff Rule 12.3(b) as an exception to the Staff Rules, according to the UN Women Financial Regulations and Rules, *ex gratia* payments mean payments where there is no legal liability but the moral obligation is such to make such a payment justifiable. The difference is significant because, while Staff Rule 12.3(b) might create a legal obligation for the Organization to make payments beyond the scope of the Staff Rules, the scope of an *ex gratia* payment under the UN Women Financial Regulations and Rules is limited to moral obligations.

Is Ms. Alquza entitled to receive an "ex gratia" payment as an exception under Staff Rule 12.3(b)?

23. Staff Rule 12.3(b) reads as follows:⁴

Amendments of and exceptions to the Staff Rules

...

(b) Exceptions to the Staff Rules may be made by the Secretary-General, provided that such exception is not inconsistent with any Staff Regulation or other decision of the General Assembly and provided further that it is agreed to by the staff member directly affected and is, in the opinion of the Secretary-General, not prejudicial to the interests of any other staff member or group of staff members.

24. Ms. Alquza contends that she is entitled to a payment because her situation is similar to staff members who are entitled to receive SPA. Like them, she performed higher-level functions for a long period of time. If she cannot claim SPA, she should (at least) receive an equivalent payment in applying Staff Rule 12.3(b).

25. We do not agree.

⁴ Original emphasis.

26. Staff Rule 3.10 on special post allowance reads, in part, as follows:

(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.

(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.

27. In particular, the conditions for SPA are laid down in Administrative Instruction ST/AI/1999/17 (Special Post Allowance) which provides in relevant part:⁵

Section 1

Scope and definitions

...

Definitions

...

1.2 For the purposes of the present instruction, the following definitions shall apply:

...

(b) “Vacant post” shall refer to a post approved for one year or longer which is not blocked for the return of a staff member under the conditions set out in subsection 1.2 (a) above and is to be filled under established procedures for recruitment or placement and promotion.

Section 2

General provisions

2.1 Under staff rule 103.11 [**currently sr 3.10**], staff members are expected to assume temporarily, as a normal part of their customary work and without extra compensation, the duties and responsibilities of higher-level posts. Nevertheless, payment of a non-pensionable SPA is authorized by the same rule in exceptional cases when a staff member is called upon to assume the full duties and responsibilities of a post which is clearly recognizable at a higher level than his or her own for a temporary period exceeding three months.

⁵ Original emphases.

2.2 Payment of an SPA is a discretionary grant, for which staff members may be considered when the conditions set out in staff rule 103.11 **[currently sr 3.10]** and section 4 below are met. Consideration for granting an SPA shall be given in accordance with the procedures set out in section 5 below.

2.3 An SPA may only be granted to one level higher than the personal level of the staff member assigned to higher-level functions in his or her own category, whether the higher-level functions are one or several levels higher than the personal level of the staff member. Staff in the General Service and related categories temporarily placed against a post at the Professional level may receive an SPA to the P-1 or P-2 level, in accordance with the provisions of section 10 below.

Section 3

Temporary assignments

Temporary assignments to temporarily vacant posts

3.1 Temporary assignment to a post that is temporarily vacant shall be made in accordance with section 2.4 of ST/AI/1999/8 (ST/AI/2006/3/Rev.1, effective 11 January 2010, **[abolished and replaced by ST/AI/2010/3 of 21 April 2010]**) on the placement and promotion system, and section 2.2 of ST/AI/1999/9 on special measures for the achievement of gender equality, which require that the department or office concerned inform its staff of temporary vacancies expected to last for three months or longer so as to give staff members the opportunity to express their interest in being considered.

Temporary assignments to vacant posts

3.2 In addition to the requirements set out in section 3.1 above and in order to implement paragraph 10 of section III.B of General Assembly resolution 51/226, in which the Assembly requests the Secretary-General “to take effective measures to prevent the placement of staff members against higher-level unencumbered posts for periods longer than three months”, temporary assignments to vacant posts shall require that the department or office concerned has already initiated the proper procedures for filling the post on a permanent basis. This may be demonstrated by requesting:

(a) Issuance of a vacancy announcement for the vacant post, unless the requirement of such issuance has been waived in accordance with section 3.4 of ST/AI/1999/8 (ST/AI/2006/3/Rev.1, effective 11 January 2010 **[abolished and replaced by section 4 of ST/AI/2010/3 of 21 April 2010]**);

or:

(b) Classification of the post, where this is a precondition for issuing a vacancy announcement in accordance with section 3.2 of ST/AI/1999/8 (ST/AI/2006/3/Rev.1, effective 11 January 2010 [**abolished and replaced by ST/AI/2010/3 of 21 April 2010**]);

or:

(c) Filling of the vacant post through the competitive examination process, where applicable.

The purpose of the present requirement is to ensure that assignments to higher-level vacant posts, as well as any SPAs granted on that basis, are limited to cases where vacant posts cannot be filled within three months under the established procedures for recruitment or placement and promotion, and where successful programme delivery requires temporary assignment to vacant posts for longer than three months.

Section 4

Eligibility

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:

(a) They have at least one year of continuous service under the 100 series of the Staff Rules or, in the case of staff members who have been reappointed from the 300 series to the 100 series, at least one year of continuous service under the 300 series and/or the 100 series of the Staff Rules;

(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. Such period may be part of the one year required by subsection 4 (a) above;

(c) They have demonstrated their ability to fully meet performance expectations in all the functions of the higher-level post.

28. It follows that SPA can only be granted if the conditions of ST/AI/1999/17 are met, *inter alia*, that staff members have been assigned to and have discharged the full functions of a post which has been both classified and budgeted at a higher level.

29. It is undisputed that the prerequisites for SPA were not met in the present case. At the relevant time, between 2014 and 2017, there was no “classified” and “budgeted” “higher level post” to the functions of which Ms. Alquza could have been “assigned”. The post of Operations Manager was only advertised in April 2017, and Ms. Alquza was never assigned to the functions of this post. When she filed her request for an *ex gratia* payment on

22 July 2017, Ms. Alquza explicitly stated that she requested it in lieu of SPA, in other words, she requested a payment equivalent to SPA although the conditions for SPA were not met.

30. In this situation the denial of an *ex gratia* payment was lawful. The Administration did not commit any errors in exercising the discretion bestowed under Staff Rule 12.3(b).

31. When judging the validity of the Organization's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.⁶

32. Applying these standards, we cannot find any fault with the decision to deny such exception and to refuse Ms. Alquza an *ex gratia* payment in replacement for SPA. It was legitimate to consider that such a payment would run counter to the whole concept of SPA under Staff Rule 3.10 and render it meaningless. The clear purpose of Staff Rule 3.10 and ST/AI/1999/17 is to restrict an award of SPA to situations where staff members have been assigned to the functions of a higher-level position which is both classified and budgeted. Conflicts like in the present situation where Ms. Alquza claims that she performed all the duties of a higher-level function, but the Secretary-General contends that Ms. Alquza merely exercised the functions of her post as Operations Associate, are avoided by the legal framework. Granting Ms. Alquza an *ex gratia* payment of an equivalent amount under Staff Rule 12.3(b) would not be in accord with the goals of those provisions.

33. The denial of an *ex gratia* payment does not violate the principle of "equal pay for work of equal value". This principle derives from Article 23(2) of the Universal Declaration of Human Rights, and the Administration is bound to it with regard to the relationship to its staff members. It means that no discrimination is allowed with regard to payments including pensions. In *Tabari*, we stated:⁷

⁶ *Elmi v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-704, para. 28; *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, paras. 40 and 42.

⁷ *Tabari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2011-UNAT-177, paras. 25 and 26.

... The general principle of “equal pay for equal work” enshrined as a right under Article 23(2) of the Universal Declaration of Human Rights does not prevent the legislative body or 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.

... There is no discrimination when the non-payment of a special compensation for working in hazardous duty stations comes from a *general* consideration of a category of staff members, in comparison to another category of staff members. The different treatment becomes discriminatory when it affects negatively the rights of certain staff members or categories of them, due to unlawful reasons. But when the approach is general by categories, there is no discrimination, when the difference is motivated in the pursuit of general goals and policies and when it is not designed to treat individuals or categories of them unequally. Since Aristotle, the principle of equality means equal treatment of equals; it also means unequal treatment of unequals.

34. The UNDT did not err in relying on our Judgment in *Elmi*. In that case, we upheld the jurisprudence laid down in *Tabari* and clarified that the principle of “equal pay for work of equal value” forbids discrimination but does not prohibit every form of different treatment of staff members. Such different treatment constitutes discrimination only when there is no lawful and convincing reason for the different treatment of staff members, e.g. when it is based on an *a priori* unlawful criterion such as gender or race, or when there are no significant differences between the categories of staff members or staff members being treated differently. We pointed out that, in administrative bodies like the United Nations, salary and pension generally follow status and grade, not function, and that the reason and justification for the different remuneration is the different status and grade of the staff members in question. We further held that Staff Rule 3.10(a) and (b) regulates the interests of staff members of lower grades exercising higher-level functions in a consistent and reasonable way and thus lawfully embodies the principle of “equal pay for work of equal value” into the United Nations’ system (we did not, however, state that the principle “would not apply” as the UNDT put it).

35. Applying this standard to the present case, the denial of an *ex gratia* payment does not constitute any discrimination against Ms. Alquza. She does not belong to the category of staff who is entitled to receive SPA. The different treatment is lawful because different categories of staff members are concerned. Under Staff Rule 3.10 and ST/AI/1999/17, only those staff members are entitled to receive SPA who have been assigned to a classified and budgeted higher-level post and have discharged the full functions of this post for a period of

time exceeding three months. Ms. Alquza was never assigned to any higher-level post; the position of Operations Manager did not exist between 2014 and 2017.

36. Staff Rule 3.10(a) makes clear that staff members are expected to perform higher-level duties without a financial remuneration. Only under the provisions of Staff Rule 3.10(b) and ST/AI/1999/17 will there be a remuneration in the form of SPA. In all other cases, the reward for the staff members are performance evaluations which will enable them to successfully apply for higher-level positions. We note that in the present case, the Administration exceptionally allowed Ms. Alquza to participate in the first selection process for the newly created higher-level position of Operations Manager although she did not meet the educational requirements.

37. Ms. Alquza cannot rely on the UNDT Judgment in *Svedling*. The suggestion of the Dispute Tribunal in that Judgment that Mr. Svedling should submit a request for exceptional grant of an *ex gratia* payment under Staff Rule 12.3(b) does not mean that the UNDT thought or wanted to allude that Mr. Svedling was entitled to receive such a payment. The UNDT's suggestion has to be read in its context of a judgment on receivability. Mr. Svedling had requested retroactive payment of SPA which had been denied and his request for management evaluation had been rejected. In this situation, Mr. Svedling filed an application to the UNDT in which he (did not appeal the adverse decision on SPA but) requested an *ex gratia* payment under Staff Rule 12.3(b). The UNDT found that this was a new and different legal matter and that the application was not receivable *ratione materiae* because Mr. Svedling had not submitted a request for such a payment nor had he requested management evaluation before filing his application to the UNDT. Suggesting to submit such a request meant to enable Mr. Svedling to file an application which could be held receivable by the UNDT, but did not have any implications as to the merits of the case. We note, further, that the facts in Mr. Svedling's case seem to differ substantially from Ms. Alquza's situation. According to paragraphs 6 and 7 of the UNDT Judgment in that case, Mr. Svedling had been "assigned" responsibilities of a higher-level post; additionally, he had been assured several times that he would receive SPA for exercising these functions.

38. Ms. Alquza cannot rely on our Judgment in *Chen*⁸ either. We agree with Ms. Alquza that the UNDT should have referred to this case in its Judgment because Ms. Alquza had explicitly mentioned it in her application. However, it does not follow from our Judgment in *Chen* that Ms. Alquza can claim an *ex gratia* payment under Staff Rule 12.3(b). *Chen* dealt with a completely different legal matter, namely, a claim for reclassification. After about 10 years of exercising higher-level duties, Ms. Chen had formally requested a reclassification of her post. After this request had been denied, she filed an appeal to the former Joint Appeals Board which was later transferred to the UNDT. This legal matter, reclassification, and not *ex gratia* payment in lieu of SPA, was before the Dispute Tribunal which thought the post should have been reclassified, and ordered compensation, and before the Appeals Tribunal which confirmed the first instance decision. Ms. Alquza's case is distinguishable from Ms. Chen's in several aspects: While Ms. Alquza claims to have exercised higher-level functions for three and a half years, Ms. Chen had performed such higher-level duties for 10 years. While Ms. Alquza never formally requested a reclassification of her post, Ms. Chen first informally and later formally requested the reclassification of her post. Reclassification of post, and not the payment of SPA or an equivalent amount, was the legal matter decided in *Chen*. The Appeals Tribunal never stated that a situation like Ms. Alquza's required the Administration to exceptionally make an *ex gratia* payment in the amount of SPA under Staff Rule 12.3(b).

Is Ms. Alquza entitled to receive an ex gratia payment under the UN Women Financial Regulations and Rules?

39. Rule 2008 of the UN Women Financial Regulations and Rules reads as follows:

(a) 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.

(b) All ex gratia payments require clearance by the Director, Division of Management and Administration, prior to consideration for approval by the Under-Secretary-General/Executive Director.

40. It is already doubtful whether a staff member can request such an *ex gratia* payment before the United Nations Tribunals. Rule 2008 does not constitute a legal but merely a moral obligation of the Administration. Any decision on *ex gratia* payments under Rule 2008,

⁸ *Chen v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-107.

therefore, might not produce any direct legal effects and thus cannot be regarded as an administrative decision.⁹

41. In any event, the Secretary-General correctly exercised his discretion by rejecting to pay an amount equivalent to SPA to Ms. Alquza as an *ex gratia* payment. UN Women has restricted the application of Rule 2008 to very exceptional circumstances and, up to now, have only once granted a one-time rehabilitation after the earthquake in Nepal in 2015. In other entities of the United Nations, *ex gratia* payments are also only made in exceptional emergency circumstances. Ms. Alquza's situation is not of such exceptional emergency.

⁹ *Haq and Kane v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-922, para. 36.

Judgment

42. Ms. Alquza's appeal is dismissed.

Original and Authoritative Version: English

Dated this 30th day of October 2020.

(Signed)

Judge Knierim, Presiding
Hamburg, Germany

(Signed)

Judge Murphy
Cape Town, South Africa

(Signed)

Judge Raikos
Athens, Greece

Entered in the Register on this 17th day of December 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar