



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

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Judgment No. 2022-UNAT-1238

**Carmelo Franco  
(Appellant/Respondent)**

**v.**

**Secretary-General of the United Nations  
(Respondent/Appellant)**

**JUDGMENT**

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Before:	Judge Dimitrios Raikos, Presiding Judge John Raymond Murphy Judge Martha Halfeld
Case Nos.:	2021-1578 & 1580
Date of Decision:	1 July 2022
Date of Publication:	12 July 2022
Registrar:	Weicheng Lin

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Counsel for Mr. Franco: Robbie Leighton, OSLA

Counsel for Secretary-General: Amanda Stoltz/Rupa Mitra

**JUDGE DIMITRIOS RAIKOS, PRESIDING.**

1. Mr. Franco, who holds a continuing appointment as a Finance and Budget Assistant with the United Nations Global Service Centre (UNGSC), challenged the decision of the Administration not to grant him a Special Post Allowance (SPA) for higher-level functions performed since 1 May 2015. In its Judgment No. UNDT/2021/054, the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) granted his application in part and ordered the Administration to pay SPA to Mr. Franco for the period from 21 December 2017 to 31 January 2018, while it rejected all his other claims. Both the staff member and the Secretary-General appeal the Judgment.
2. For the reasons set out below, we grant the Secretary-General's appeal and dismiss the appeal by Mr. Franco.

**Facts and Procedure**

3. Mr. Franco joined the UNGSC, the United Nations Logistics Base (UNLB) in Brindisi, Italy, on 1 November 2005 as Personnel-Registry Clerk (GS-3), and he was promoted to the position of Finance and Budget Assistant (GS-4) on 1 November 2008.
4. In June 2013, following the restructuring of the Finance Section, Mr. Franco was assigned to the Cashier's Unit and reported to a Finance and Budget Assistant at the GS-6 level as his First Reporting Officer (FRO). He and the FRO were the only staff in the Cashier's Unit.
5. As of 1 May 2015, after his FRO retired, Mr. Franco was assigned additional cashier-related duties. On 5 May 2015, Mr. Franco was appointed as a bank signatory.
6. In May 2015, the UNGSC advertised Mr. Franco's former FRO's GS-6 position. On 1 November 2015, the UNGSC selected a staff member for the GS-6 position, though it is not clear who was selected and whether the selected candidate immediately began to perform the functions of the GS-6 post in question. But from May 2015 to December 2017, Mr. Franco reported to the Chief Finance and Budget Officer (CFBO) as both his FRO and Second Reporting Officer (SRO).
7. In 2016, Mr. Franco was assigned to the Operations Unit, after the Finance and Budget Section had been restructured from six units to three units.

8. In January 2018, the UNGSC appointed a new Finance and Budget Assistant (GS-6). The New Finance and Budget Assistant became Mr. Franco's FRO while the CFBO continued to act as Mr. Franco's SRO.

*Reclassification of post*

9. On 6 September 2016, following an entity wide classification exercise, the UNGSC notified Mr. Franco of the decision to maintain the classification of his post at the GS-4 level.

10. By e-mail dated 4 November 2016 addressed to UNGCS-HR, "To Whom It May Concern", Mr. Franco stated:<sup>1</sup>

In line with Section[s] 5 and 6 of ST/AI/1998/9, please consider this e-mail to constitute a formal appeal of the classification decision dated 6 September 2016 as position of Finance and Budget Assistant, GS-4 (Post #NLB911614-FRANCO Carmelo). I am kindly requesting a review of the said classification decision on the ground of the following reasons. ...

11. On 21 December 2018, Mr. Franco submitted an appeal, in which he i) appealed the reclassification decision to maintain his post at the GS-4 level; and ii) requested a review of the grade level assigned to his GS-4 post.

12. By report dated 22 January 2019, the New York General Service Classification Appeals and Review Committee (Classification Appeals Committee) rejected Mr. Franco's appeal of 21 December 2018, finding that the post he encumbered had been correctly classified at the GS-4 level. Nonetheless, the Classification Appeals Committee acknowledged that Mr. Franco had performed higher level functions not associated with his G-4 post, as reflected in his e-PAS for the 2015/2016 and 2016/2017 performance cycles.

13. On 4 February 2019, the Assistant Secretary-General for Human Resources notified Mr. Franco of her decision to accept the recommendation of the Classification Appeals Committee that his post was accurately classified at the GS-4 level.

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<sup>1</sup> ST/AI/1998/9 that Mr. Franco referred to here is an administrative instruction titled "System for the classification of posts".

*Request for a Special Post Allowance (SPA)*

14. As noted above, Mr. Franco submitted an appeal on 21 December 2018, in which he, *inter alia*, requested a review of the grade level assigned to his GS-4 post in order to “ascertain whether the classification standards [had] been correctly applied in [his] case [and] whether an SPA at the GS-6 level should be granted retroactively for the period of time during which [he has] been performing duties at a higher level”.

15. By e-mail dated 22 January 2019 in response to Mr. Franco’s SPA request of 21 December 2018, the Chief Human Resources Officer (CHRO), UNGSC, clarified that the UNGSC had not been involved in the decision to maintain his post at the GS-4 level. Regarding the request for a retroactive SPA at the GS-6 level, the CHRO asked Mr. Franco to provide additional information as to the start time and the level for the retroactive SPA, the availability of a vacant post, a detailed description of functions he had performed during that time and any documentation in support of his SPA request.

16. On 24 January 2019, Mr. Franco responded to the CHRO by specifying that the effective date of his retroactive SPA should be 1 May 2015 onwards and at the GS-6 level.

17. By e-mail dated 6 June 2019, the CHRO rejected Mr. Franco’s request for retroactive payment of SPA on the ground that he did not fulfil the full duties and responsibilities of a higher-level post. Specifically, he noted that the cashier-related duties and responsibilities did not comprise the full duties and responsibilities of either his GS-4 post or the GS-6 post. Additionally, he noted that assuming the role of a bank signatory did not automatically relate to higher-level functions.

18. On 16 July 2019, Mr. Franco requested management evaluation of the contested decision to not accept his SPA request.

19. By letter dated 26 September 2019, the Under-Secretary-General for Management Strategy, Policy and Compliance decided to uphold the contested decision while expressly reserving the right to raise the issue of receivability in subsequent proceedings.

20. On 19 December 2019, Mr. Franco lodged with the Dispute Tribunal an application to contest the decision to not grant him an SPA for higher-level functions performed since 1 May 2015.

*The UNDT Judgment*

21. On 17 May 2021, the UNDT issued Judgment No. UNDT/2021/054, partially finding for Mr. Franco. The UNDT first found that Mr. Franco's application was receivable because the contested decision fulfilled the test of *Andronov*.<sup>2</sup>

22. In the view of the UNDT, the administrative instruction applicable to the present case was ST/AI/2003/3 (Special post allowance for field mission staff), and not ST/AI/1999/17 (Special post allowance) while noting that the eligibility requirements contained in those two administrative instructions were "largely the same".<sup>3</sup>

23. The Dispute Tribunal found that the requirements for granting an SPA had been met in Mr. Franco's case for the period from 1 August 2015 to 31 January 2018, because he "performed all the cashier-related GS-6 level functions, took over all the responsibilities of the Cashier Unit from May 2015 until the GS-6 post was filled, being called upon to perform the functions of his own post together with the core functions of the vacant GS-6 post, and directly reporting to the CFBO, UNGSC".<sup>4</sup> Essentially, the UNDT found that Mr. Franco had performed the higher level duties and all the activities of the previous Cashier's Unit.<sup>5</sup> In that regard, the Dispute Tribunal clarified that it had picked 31 January 2018 as the ending date for the SPA because according to Mr. Franco the GS-6 post was filled in January 2018, when the selected candidate undertook the functions at the GS-6 level and became Mr. Franco's FRO, and also because the Administration had failed to provide the specific date on which the selected GS-6 Finance and Budget Assistant assumed the new functions within the Finance and Budget Section.

24. However, the UNDT held that Mr. Franco was entitled to SPA only for a month and 11 days from 21 December 2017 through 31 January 2018 because, under Staff Rule 3.17(ii), he was entitled to allowances accrued in the year before his SPA request first made on 21 December 2018. According to the UNDT, Staff Rule 3.17(ii) excluded any rights for the SPA allowances accrued before the year preceding the deadline, but it did not "prevent the staff member from requesting compensation for the last year and the following period. Indeed, after the third month, the right to the allowance arises day by day in relation to the performance of

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<sup>2</sup> The United Nations Administrative Tribunal Judgment No. 1157 *Andronov* (2003).

<sup>3</sup> Impugned Judgment, para. 34.

<sup>4</sup> *Ibid.*, para. 41.

<sup>5</sup> *Ibid.*, para. 49.

the higher-level functions, so the deadline is not fixed but mobile in nature: it continuously shifts with the performance of the higher-level functions.”<sup>6</sup>

25. As remedies, the Dispute Tribunal ordered that Mr. Franco be paid an SPA for the period from 21 December 2017 to 31 January 2018. The UNDT rejected his request for compensation for harm suffered in the absence of any evidence of the alleged harm.

#### *Procedure before the Appeals Tribunal*

26. On 16 July 2021, Mr. Franco appealed Judgment No. UNDT/2021/054 to the Appeals Tribunal, and the Secretary-General submitted an answer on 17 September 2021. The case was registered as 2021-1578. Also on 16 July 2021, the Secretary-General filed an appeal against the same UNDT Judgment, to which Mr. Franco filed an answer on 1 June 2022, as per Order No. 460 (2022) dated 26 May 2022.<sup>7</sup> This case was registered as 2021-1580.

### **Submissions**

#### **Case No. 2021-1578**

##### **Mr. Franco’s Appeal**

27. Mr. Franco requests that the Appeals Tribunal revise the UNDT’s award and order that he be paid an SPA from 4 November 2015 to 31 January 2018. He also requests that the Appeals Tribunal order payment of moral damages for the harm caused by the contested decision on the strength of the medical evidence that he had provided to the UNDT.

28. Mr. Franco submits that the UNDT erred in fact and law in concluding that he had made his first written SPA request on 21 December 2018 and that he could only receive an SPA from 21 December 2017 to 31 January 2018. He stresses that he “plainly” made his first SPA request on 4 November 2016 because his 4 November 2016 SPA request and his 21 December 2018 SPA request contained nearly identical language, and both were addressed to the UNGSC HR office. His 21 December 2018 SPA request was “clearly” a reiteration of his

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<sup>6</sup> *Ibid.*, para. 56.

<sup>7</sup> In Order No. 460 (2022), the Appeals Tribunal granted Mr. Franco’s motion for a waiver of the time limit for him to file an answer to the Secretary-General’s appeal. Mr. Franco had based his motion on the ground of lack of access to the recently-introduced new Court Case Management System (CCMS) and lack of knowledge about the Secretary-General’s appeal of the same UNDT Judgment until receipt of UNAT’s Consolidation Order No. 458 (2022) issued on 23 May 2022.

earlier 4 November 2016 SPA request. He should not be disadvantaged due to the Administration's inaction to his 4 November 2016 SPA request. Thus, applying Staff Rule 3.17(ii) to the present case, he was entitled to an SPA from 4 November 2015 to 31 January 2018.

29. Mr. Franco contends that he was twice found to have been performing higher level functions during the period between 1 May 2015 and 31 January 2018. As he acted promptly to seek equal pay for equal work, no legal basis existed to deny him an SPA from a year prior to his first SPA request of 4 November 2016.

### **The Secretary-General's Answer**

30. The Secretary-General requests that the Appeals Tribunal dismiss Mr. Franco's appeal in its entirety.

31. The Secretary-General submits that the UNDT correctly considered that Mr. Franco's 4 November 2016 communication constituted only an appeal against the September 2016 classification decision, and not a request for an SPA. Mr. Franco has made an extremely tortured set of references to his submission to the UNDT that ultimately undermined his arguments. The Secretary-General notes that, in the letter dated 22 January 2019, the Classification Appeals Committee characterized Mr. Franco's 4 November 2016 communication as his appeal of a classification decision, and not as a request for retroactive payment of an SPA. The Secretary-General also notes that Mr. Franco never actually attached his 4 November 2016 communication to his UNDT application, and he still does not cite to that communication directly on appeal. The Secretary-General further notes that, in his communication of 21 December 2018, Mr. Franco did not mention that it was a reiteration of his 4 November 2016 communication. The Secretary-General again notes that in both his UNDT application and his request for management evaluation, Mr. Franco consistently referred to his 4 November 2016 communication as an appeal against the classification decision in accordance with Administrative Instruction ST/AI/1998/9. The Secretary-General was of the view that the 4 November 2016 communication was not intended as, was not treated as, and did not constitute, a request for an SPA. Consequently, there simply was no appealable administrative decision, implied or otherwise, made in response to that communication. The CHRO's 22 January 2019 message was clearly a response to Mr. Franco's 21 December 2018 e-mail; it did not purport to be a response to Mr. Franco's 4 November 2016 communication.

32. The Secretary-General also submits that Mr. Franco violates the applicable legal framework when he claims to be entitled to an SPA for more than 27 months from 4 November 2015 to 31 January 2018. Such a claim was not even envisioned by the administrative framework and would not be legally possible. Sections 7.2 and 7.3 of ST/AI/1999/17 provide for an SPA to be granted for an initial period of up to one year only and to be extended to cover a total period of up to two years including the initial period, if certain conditions are met.

**Case No. 2021-1580**

**The Secretary-General's Appeal**

33. The Secretary-General requests that the Appeals Tribunal vacate the UNDT Judgment, except for paragraph 60 (dismissing Mr. Franco's request for compensation for harm suffered), and dismiss Mr. Franco's UNDT application in its entirety.

34. The Secretary-General submits that the Dispute Tribunal erred in law in finding that Mr. Franco's claim was receivable, despite his failure to submit a written claim seeking an SPA payment in a timely manner, and that Staff Rule 3.17(ii) allowed for a mobile deadline that "continuously shifts" "day by day".<sup>8</sup> Contrary to the UNDT's interpretation, Staff Rule 3.17(ii) is drafted in clear and unambiguous terms and the wording "within one year following the date on which the staff member would have been entitled to the initial payment" should properly be interpreted as setting a fixed deadline. Mr. Franco did not request an SPA within the deadline required under Staff Rule 3.17(ii) and his UNDT application was therefore not receivable.

35. The Secretary-General also submits that the UNDT erred in finding that Mr. Franco was entitled to an SPA. The Dispute Tribunal disregarded the legal requirement and plain language of ST/AI/1997/17 and essentially rewrote the terms as it saw fit. In this regard, the Secretary-General points out that the UNDT erred in applying ST/AI/2003/3, and not ST/AI/1997/17, to the present case, as the UNGSC is not an "established mission", a peacekeeping or special political mission, or a field presence, though the legal requirements in both Administrative Instructions are identical. It is not contested that the post of the Finance and Budget Assistant at the GS-6 level was vacant for six months between 30 April 2015 and 1 November 2015, and but that Mr. Franco was not temporarily assigned to

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<sup>8</sup> Impugned Judgment, para. 56.



it. There is no language in the legal framework that allows for any equivalent to such temporary assignment or the substitution of the word “full functions” with “core” functions.

36. The Secretary-General contends that the UNDT’s conclusion that compensation of SPA was required after a staff member has performed duties and responsibilities of a higher-level position for more than three months is inconsistent with Staff Rule 3.10(b) and Section 2.2 of ST/AI/1997/17. The UNAT Judgment in *Frehiwot Yaborowork*<sup>9</sup> that the Dispute Tribunal cited actually supports a different position. The Dispute Tribunal failed to apply the proper legal standard when reviewing the validity of the Administration’s exercise of discretion in administrative matters and improperly stepped into the shoes of the Administration in deciding that Mr. Franco was entitled to an SPA payment.

37. The Secretary-General also contends that the UNDT erred in law by taking into consideration irrelevant issues and improperly shifting the burden of proof to him, when it criticized him for not identifying the name of the person selected for the GS-6 post of Finance and Budget Assistant, and for not providing evidence as to the specific moment of the year when the new GS-6 had been assigned to Mr. Franco’s unit, performed the functions at stake or supervised Mr. Franco’s activity in any way.

### **Mr. Franco’s Answer**

38. Mr. Franco requests that the Appeals Tribunal maintain the reasoning in the UNDT Judgment, except for the UNDT’s pronouncement on the retroactivity of payments that he already sets out in his appeal in Case No. 2021-1578.

39. Mr. Franco submits that the UNDT did not err in law by applying Staff Rule 3.17(ii) as a limitation on relief rather than a time bar. It should be noted that the Administration did not respond to his 4 November 2016 request for reclassification and/or SPA until two years and three months later on 4 February 2019. For each day he was required to carry out higher level

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<sup>9</sup> *Frehiwot Yaborowork v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1037. Paragraph 35 reads in full: “These requirements [as set forth in Staff Rule 3.10 and Sections 2, 3, 4, 7, 8 and 10 of ST/AI/1997/17] were established in order to prevent, as much as possible, the placement of staff members against higher-level unencumbered posts for periods longer than three months, this being the minimum threshold to receive the allowance. It also responds to the needs of the Organization to ensure that priority be given to fill higher-level vacant posts under the established procedures by means of a competitive recruitment exercise, rather than temporary assignments.”

functions without recourse to reclassification of his post or remuneration for the work carried out, he continued to suffer an assault on his reputation and his career prospects.

40. Mr. Franco also submits that the Dispute Tribunal did not err in law by finding that he was entitled to be paid an SPA, as he had assumed the full functions of the GS-6 post with a satisfactory performance. He had been *de facto* assigned to a higher-level post and in effect assumed and performed the full functions of the Cashier's Unit including those previously performed by her former FRO. The Administration was fully aware that he had been performing higher level functions but took advantage of this performance for a significant period of time. It is the Administration, through the Classification Appeals Committee, that informed him that his higher functions related to another post rendering reclassification impossible but at the same time advised him that his non-assignment to the GS-6 post prevented the Administration from paying him a commensurate compensation for the higher-level work that he had carried out. That was the reasonable inference that the Dispute Tribunal drew from the Administration's failure to identify, with specificity, those functions that he did not perform or who did perform them.

41. Mr. Franco further submits that, contrary to the Secretary-General's assertion, the Dispute Tribunal did not ignore any discretionary element to the payment of an SPA, nor did it consider irrelevant factors or shift the burden of proof. Nothing in the contested decision suggests a discretionary reason for the non-payment of an SPA to him. Instead, the decision-maker relied on the assertion that Mr. Franco had not performed all the functions of the GS-6 post. At no point before the UNDT was it argued that, had Mr. Franco met the procedural requirements for an SPA, some discretionary reason would have precluded the grant of such. The evidence that the UNDT instructed the Administration to produce related to the identity of the individual selected for the GS-6 post and the comparison between the new GS-6's functions and those previously performed was relevant to the issue as to whether he had assumed the full functions previously performed by his former FRO. The Administration's failure to provide such evidence with specificity effectively robbed him of the opportunity to respond, contrary to the principle of *audi alteram partem*.

### **Considerations**

42. In considering an appeal, the Appeals Tribunal determines whether the Dispute Tribunal exceeded its jurisdiction or competence, or failed to exercise the jurisdiction vested in it, or committed an error of law, procedure or fact that resulted in a manifestly unreasonable decision (see Article 2(1) of the Statute of the Appeals Tribunal).

43. The main issue for consideration and determination in this case is whether the UNDT erred on a matter of law or of fact leading to a manifestly unreasonable decision, when it found that Mr. Franco was entitled to an SPA for performing certain higher-level functions at the GS-6 level while encumbering a GS-4 Finance and Budget Assistant post with the UNGSC in Brindisi.

### **Legal framework**

44. Staff rule 3.10 provides in its relevant part:

#### **Special post allowance**

(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.

(c) In the case of a staff member holding a fixed-term or continuing appointment who is assigned to serve in a mission, or when a staff member in the General Service category is required to serve in a higher level post in the Professional category, or when a staff member in any category holding a fixed-term or continuing appointment is required to serve in a post which is classified more than one level above his or her level, the allowance may be paid immediately when the staff member assumes the higher duties and responsibilities.

(d) The amount of the special post allowance shall be equivalent to the salary increase (including post adjustment and dependency allowances, if any) which the staff member would have received had the staff member been promoted to the next higher level.

45. In the present case, the UNDT found that the requirements for granting an SPA had been met in Mr. Franco's case for the period from 1 August 2015 to 31 January 2018.<sup>10</sup> However, due to the timing of Mr. Franco's 21 December 2018 request for SPA, the UNDT ruled that he was entitled to payment of an SPA only from 21 December 2017 to 31 January 2018.

46. Notably, the UNDT ruled that:<sup>11</sup>

... pursuant to staff rule 3.17(ii), [Mr. Franco] is required to request SPA within one year following the date on which he would have been entitled to an initial payment. The [Dispute] Tribunal notes that [Mr. Franco] submitted his first written request on 21 December 2018, when for the first time he asked for "a review of the grade level assigned to [his] post ... in order to ascertain whether an SPA at the GS-6 level should be granted retroactively for the period of time during which [he has] been performing duties at a higher level". This request by email, indeed, cannot be considered as a mere enquiry about whether he was entitled to any SPA, and is instead a polite and unequivocal claim for a reclassification of the post and a compensation for the higher-level functions performed.

... The elapse of the year set out in the recalled rule since the date [Mr. Franco] was entitled to an initial payment excludes any rights for the allowances accrued before the year preceding the deadline, but does not prevent the staff member from requesting compensation for the last year and the following period. Indeed, after the third month, the right to the allowance arises day by day in relation to the performance of the higher-level functions, so the deadline is not fixed but mobile in nature: it continuously shifts with the performance of the higher-level functions.

47. The UNDT went on to find that,<sup>12</sup> given the time-limit set forth for any claim for the allowance, the staff member was entitled only to allowances accrued in the year before the first request and, thus, Mr. Franco was entitled to an SPA from 21 December 2017 onward, as his first request had only been made on 21 December 2018.

48. Further, the UNDT rejected Mr. Franco's request for compensation for alleged harm suffered on the ground that he had not furnished any evidence to that effect as required under Art. 10.5(b) of its Statute.

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<sup>10</sup> Impugned Judgment, paras. 35-54.

<sup>11</sup> *Ibid*, paras. 55-56.

<sup>12</sup> *Ibid*, para. 57.

49. On appeal, while Mr. Franco agrees in principle with the UNDT's finding that he was performing higher level functions for the period from 1 May 2015 to January 2018, and that he was qualified for an SPA from 1 August 2015 onwards, he then asserts that the UNDT erred in concluding that his first written request for an SPA was made in December 2018. Mr. Franco claims that the UNDT should have considered the 4 November 2016 communication to have constituted his first request for an SPA when he had "plainly" put this issue to the Administration for consideration. On this basis, Mr. Franco puts forward that an SPA should have been awarded from 4 November 2015 for a period of 27 months. He further seeks moral damages for the harm he allegedly suffered because of the contested administrative decision.

50. Conversely, in his appeal, the Secretary-General contends that the UNDT erred in law, *inter alia*, by finding that Mr. Franco's claims were receivable, despite his failure to submit a written claim seeking payment of an SPA in a timely manner. The Secretary-General argues that Mr. Franco requested retroactive payment of an SPA as from August 2015; even assuming *arguendo* that he would have been eligible to be considered for an SPA, the deadline for submitting any written request for such an SPA would have expired in August 2016, while Mr. Franco's first written communication had been submitted on 21 December 2018, well beyond this time-limit.

51. The Appeals Tribunal agrees with the Secretary-General and finds that, under its jurisprudence, Mr. Franco's claim for retroactive payment of SPA could not succeed as this claim was made several years after his alleged entitlement to the "initial payment" came into play on 1 August 2015. The UNDT's interpretative approach of Staff rule 3.17, cited above, was erroneous as this provision does not allow for a "mobile" "deadline" that "continuously shifts" from "day to day".

52. In terms of retroactive payments, Staff Rule 3.17(ii) provides 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 a 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.

53. To this effect, in *Fitsum*, where the UNDT had dismissed the application as not receivable, the Appeals Tribunal held:<sup>13</sup>

... we note that there is a clerical mistake in paragraph 22 of the impugned Judgment. Ms. Fitsum made her claim for SPA for the period in question, namely 1 December 2009 to 10 May 2011, for the first time on 5 September 2011. In accordance with Staff Rule 3.17(ii), her written claim was due within one year following the date on which she would have been entitled to the initial payment, which means her claim was due by 1 December 2010. Paragraph 22 of the impugned Judgment erroneously indicates that Ms. Fitsum filed her claim more than 20 months after the date “when she ought to have requested for SPA as per the provisions of [S]taff [R]ule 3.17(ii)”. Ms. Fitsum’s claim was actually filed nine months, not 20 months, after the deadline. This clerical slip, however, does not have any bearing on the outcome, insofar as the initial administrative claim was time-barred in any event.

54. Mr. Franco’s claim for an SPA was time-barred because he did not raise it within one year following the date on which he would have (allegedly) been entitled to the initial payment. As Mr. Franco requested payment starting from 1 August 2015, namely from the beginning of the fourth month of the alleged service at the higher level in May 2015, the time limit ran out in August 2016. However, Mr. Franco only brought his claim before the Administration on 21 December 2018 when he submitted his first written request for it. As a result, Mr. Franco cannot succeed on a claim for retroactive payment of SPA where that claim was made several years after he had been entitled to the “initial payment”.

55. Even assuming *arguendo* that Mr. Franco had submitted such a request on 4 November 2016, per his relevant allegation on appeal, this would be of no avail to him because even then his claim would have been submitted beyond the time-limit set forth in Staff Rule 3.17(ii). Therefore, Mr. Franco’s application was clearly without any success because his litigated claim was time-barred. The Secretary-General’s appeal succeeds on this ground.

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<sup>13</sup> *Fitsum v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-804, para. 18; see also *Testargachew Zewdie Kebede v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1101, paras. 36-37; *comp. Mizerska-Dyba v. Registrar of the International Tribunal for the Law of the Sea*, Judgment No. 2018-UNAT-831, paras. 34-36.

56. Next, Mr. Franco's claim for compensation for moral damage for the harm he allegedly suffered from the challenged administrative decision falls to be rejected as this claim is connected to his claim for retroactive payment of SPA for having performed higher-level tasks, and, thus, it must remain without success for the same reasons.

57. These conclusions render it unnecessary to examine the other grounds of appeal advanced by the Secretary-General that the UNDT erred in law, *inter alia*, by applying the wrong legal framework, i.e., the provisions of ST/AI/2003/3 instead of ST/AI/1999/17, by taking into consideration irrelevant issues and improperly shifting the burden of proof to the Administration, and by finding that Mr. Franco fulfilled the criteria for SPA. They concern the merits of the litigated claim for retroactive payment of SPA and are not decisive for the outcome of the present case.

58. For the foregoing reasons, we dismiss Mr. Franco's appeal. We further grant the Secretary-General's appeal and vacate Judgment No. UNDT/2021/054 to the extent that it ordered the Administration to pay an SPA to Mr. Franco from 21 December 2017 to 31 January 2018.

**Judgment**

59. The Secretary-General's appeal is allowed and Judgment No. UNDT/2021/054 is reversed to the extent that it ordered the Administration to pay an SPA to Mr. Franco from 21 December 2017 to 31 January 2018. Mr. Franco's appeal is dismissed in its entirety.

Original and Authoritative Version: English

Decision dated this 1<sup>st</sup> day of July 2022 in New York, United States.

*(Signed)*

Judge Raikos, Presiding

*(Signed)*

Judge Murphy

*(Signed)*

Judge Halfeld

Judgment published and entered into the Registry on this 12<sup>th</sup> day of July 2022 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar