



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

Chen

**(Respondent/Applicant and
Appellant on Cross-Appeal)**

v.

Secretary-General of the United Nations

**(Appellant/Respondent and
Respondent on Cross-Appeal)**

JUDGMENT

Panel:	Judge Mark P. Painter, Presiding Judge Jean Courtial Judge Inés Weinberg de Roca
Case No.:	2011-UNAT-107
Date:	11 March 2011
Registrar:	Weicheng Lin

JUDGE MARK P. PAINTER, Presiding.

Synopsis

1. As stated in Article 23(2) of the Universal Declaration of Human Rights, “[e]veryone, without any discrimination, has the right to equal pay for equal work”. Of course this principle applies to the United Nations staff.¹ “Budgetary considerations” may not trump the

situation regarding the Chinese and Russian Chiefs of Unit by creating two new P-4 posts for them, citing General Assembly resolution 42/207C and the principle of equal pay for equal work.

7. On 25 May 2007, the Assistant Secretary-General, Controller, Office of Programme Planning and Accounts, Department of Management, responded that flexibility in managing resources could address the issues; that the six official languages had varying specifications and therefore varying workloads; and that the budget had been finalized and submitted. He essentially rejected the USG/DGACM's request. The USG/DGACM replied on 11 June 2007 reiterating the uniformity of treatment of the six official languages to reflect the quality of the duties and responsibilities of the posts of the Chiefs of Unit and denied that the problem could be addressed by an internal solution.

8. On 6 October 2008, DGACM advised Chen that her request could not be granted. Chen requested an administrative review of the decision not to reclassify her post at the P-4 level on 7 October 2008. On 17 November 2008, the Administrative Law Unit of the Office of Human Resources Management (OHRM) informed Chen that the decision had been properly made.

9. Chen appealed to the Joint Appeals Board (JAB) in December 2008. After the abolition of the JAB on 30 June 2009, Chen's appeal was transferred to the United Nations Dispute Tribunal (UNDT or Dispute Tribunal).

Trial Court Judgment

10. The UNDT issued Judgment No. UNDT/2010/068 on 22 April 2010. The UNDT found that the decision not to reclassify Chen's post to the P-4 level was a breach of her rights under Staff Regulation 2.1, as well as her right to "equal pay for equal work". Judge Shaw wrote that "[t]he Secretary-General is obliged to make appropriate provision for classification". In Chen's case, "[t]he budgetary considerations effectively supplanted the proper considerations that should have been brought to bear on the applicant's application to have her post classification implemented at a P-4 level". The UNDT ordered the payment of compensation to Chen calculated by the difference in salary, allowances, and other entitlements between her current level of P-3 and P-4 level, for the period from 17 August 2006 (date of Chen's request) until December 2010 (date of her retirement),

including the equivalent of the loss in pension rights. The UNDT also awarded compensation in the amount of six months' net base salary at the P-4 level for the non-material damage of frustration and humiliation compounded by the delays she was subject to. Finally, the UNDT ordered the payments to be made within 60 days, after which interest of eight per cent would accrue until payment.

11. The Secretary-General filed an appeal of the Judgment on 7 June 2010, alleging that the UNDT had exceeded its competence in finding for Chen and awarding any damages. Chen filed a reply to the appeal on 26 July 2010. A cross-appeal was submitted with the reply. In the cross-appeal, Chen sought further damages. The Secretary-General submitted an answer to the cross-appeal on 20 September 2010.

Submissions

12. The Administration basically argues that when deciding whether the post should have been reclassified, the trial court should have looked only to the internal rules and procedures of the United Nations, not the Universal Declaration of Human Rights.

42/207C and the principle of equal pay for equal work. As all previous requests, this was either ignored or denied because of lack of money.

21. The Administration's allegation that the UNDT has usurped the Secretary-General's discretion is misplaced. The Secretary-General has wide discretion in the reclassification of posts. But like any discretion, it may not be exercised in an arbitrary, capricious, or illegal manner. There is no discretion to violate the principle of equal pay for equal work. Of course, most decisions about post classifications would not implicate such mandates.

22. The Administration's arguments, which we have no doubt are put forward in good faith, ask this Court to construe the Staff Regulations and Rules into allowing a violation of

we only have enough money to pay you respectively at the P-4 and P-3 levels' is incompatible with the principle of equal pay for equal work."⁶ We confirm that 2003 decision.

25. And the Administration is really appealing on the facts—whether Chen was doing “equal work”. If Judge Shaw’s finding that Chen was doing equal work as four of her colleagues who were paid more is correct, then no amount of regulations, rules, or argument can undo that. And we believe that Judge Shaw’s finding was not only correct—it was the

Judgment

29. We affirm the UNDT Judgment in all respects.

Original and Authoritative Version: English

Dated this 11th day of March 2011 in New York, United States.

(Signed)

Judge Painter, Presiding

(Signed)

Judge Courtial

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 19th day of April 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar