

Introduction

1. On 13 December 2019, the Applicant filed an application in which she contests the methodology used when deciding to place her at step 1 at the P-2 level after being promoted from the G-6 level, step 11, arguing that post adjustment should not be part of the calculation of her net base salary.
2. On 8 January 2020, the Respondent filed his reply in which he submits that the application is without merit.
3. By Order No. 194 (NY/2020) dated 9 December 2020, the Tribunal noted that none of the parties had requested any further evidence to be produced and that the case file appeared to be fully informed. The Applicant was therefore ordered to file her closing statement by 14 January 2021, which she duly did.
4. In light of the reasons set out below, the Tribunal grants the application in full.

Facts

5. On 12 June 2019, the Applicant was selected for an Associate Human Resources Officer post at the P-2 level after having successfully passed the Young Professional Programme (“YPP”) exam in 2017. At the time, she was serving at the G-6 level, step 11.
6. In the subsequent offer of appointment dated 19 July 2019, it was indicated that she would serve at step 1 on the P-2 level in her new job.
7. On 22 July 2019, the Applicant requested Headquarters Client Services Service (“HQCSS”) to reconsider that she was assigned step 1. She noted that at step 1 of the P-2 level, the “net salary” per annum was USD47,322, while at the G-6 level, step 10, the “net salary” per annum was USD68,063.

12. The Respondent's contention may be summarized as follows:
 - a. The "purpose of Staff Rule 3.4 is to ensure that the net [remuneration] of a staff member does not decrease on promotion", and to "achieve this purpose, the Organization considers the differences between the salary scales of the General Service and the Professional categories when a staff member is promoted between the two categories";
 - b. The "salary scales of the Professional and General Service categories differ in how they account for the cost of living at a duty station". While the "General Service salary scales include a cost of living component", the "Professional category salary scales do not". In order to "account for the cost of living at a duty station, staff members in the Professional category receive a cost of living adjustment to their salary referred to as post adjustment". The importance of "reconciling this difference when calculating a salary on promotion between categories" was explained by the United Nations Administrative Tribunal in Judgment No. 175 *Garnett* (1973), in relation to staff rule 103.9, the predecessor to staff rule 3.4(b);
 - c. The Organization "correctly offered the Applicant an appointment" at step 1 on the P-2 level

and “the total exceeded the net [remuneration the Applicant would have earned,
if she had been granted two steps at the G

The meaning of “net base salary” in staff rule 3.4(b)

13. The Appeals Tribunal has consistently held that “first step of the interpretation of any kind of rules, worldwide, consists of paying attention to the literal terms of the norm” (see the Appeals Tribunal in *Scott* 2012-UNAT-225, as later affirmed in, among other judgments, *De Aguirre* 2016-UNAT-705, *Timothy* 2018-UNAT-847, and *Ozturk* 2018-UNAT-892). This principle is also known as “the plain meaning rule”.

14. In plain English, the term “net base salary”, however, does not have any meaning on its own, and the Tribunal will therefore instead look for an authoritative definition. When reviewing the statutory framework governing the Applicant’s employment contract, the Tribunal, however, notes that no legal definition of “net base salary” is provided anywhere. Also, the term, “net base salary”, is nowhere used in the Applicant’s contract, which under the heading, “Salary and Allowances” instead refers to: “[p]ensionable remuneration”, “[g]ross base salary”, “[n]et salary after deduction of Staff Assessment”, and “[p]ost adjustment”. This provide and

and (ii), and 13.11(a)). This clearly indicates that according to the Staff Regulations and Rules, post adjustment is not to be calculated as part of the net base salary but is instead a separate and distinctive amount.

18. In line herewith, in the offer of employment, “post adjustment” is listed separately from the “gross base salary” and the “net salary after deduction of Staff

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22. The Dispute Tribunal in *Valentine* UNDT/2018/050 (para. 9) reached a similar conclusion as it held that “net base salary ... refers to gross salary minus staff assessment [and] does not include a post adjustment component”. Unlike what is pleaded by the Respondent, the fact that *Valentine* concerned compensation for harm pursuant to art. 10.5(b) of the United Nations Dispute Tribunal Statute, and not promotion as in the present case, makes no difference whatsoever—the term must unquestionably be understood and applied uniformly in all relevant situations related to the employment contract.

23. Also, the Respondent’s submission regarding the non-applicability of the definition of “net base salary” in *Valentine* because it refers to *Lloret Alcaniz et al.* UNDT/2017/097, which was overturned by the Appeals Tribunal in *Lloret Alcaniz et al.* 2018-UNAT-840, is irrelevant. The case before the Appeals Tribunal did not address how the Dispute Tribunal had defined “net base salary” in the first instance case, and if anything, the Appeals Tribunal actually distinguished between “net base salary *and* post adjustment” in para. 9, last sentence (emphasis added). In effect, the Appeals Tribunal therefore did not overturn the Dispute Tribunal’s definition of “net base salary” in *Lloret Alcaniz et al.*, which provides that (para. 101),

... It is noted that the Applicants’ letters of appointment refer to the “net salary” as being the gross salary minus staff assessment. This is in line with the terminology used on the salary scale, which is an annex to the Staff Regulations and Rules. The expression “net base salary” is more generally used in the Staff Regulations and Rules, notably for the calculation of the dependency and transitional allowances. It is understood, however, that the two expressions bear the same meaning. The Tribunal will therefore use the terminology commonly used in the current edition of the Staff Regulations and Rules, and refer to “net base salary” as being the gross salary minus staff assessment.

24. Similarly, in *Kasyanov*, the Appeals Tribunal decided that the awarded compensation amount should be calculated on the basis of the net base salary rather than a lumpsum, because the lumpsum was “based on the difference in post adjustment” between two duty stations. In consequence, the Appeals Tribunal therefore also held that the post adjustment should not form basis of the net base salary.

Tribunal are binding on this Tribunal under the doctrine of *stare decisis* (see, for instance, *Igbinedion*).

29. Accordingly, in light of the above, the Tribunal finds that it was unlawful for HQCSS to take into account post adjustment when deciding the Applicant's step upon her promotion from G-6 step 11 to the P-2 level, because "net base salary" is correctly determined as "gross base salary", as per the offer of appointment, minus staff assessment.

Remedies

30. As relevant to the present case, the Applicant requests that "[t]he calculation of the Applicant's net base salary be corrected to reflect the correct gross base salary of \$100,000.00 (the Applicant's gross base salary as per the offer of appointment) minus the staff assessment of \$10,000.00 (the staff assessment as per the offer of appointment) to arrive at a net base salary of \$90,000.00 (the Applicant's net base salary as per the offer of appointment)."

Conclusion

33. The application is granted.

(Signed)

Judge Joelle Adda

Dated this 26th day of February 2021

Entered in the Register on this 26th day of February 2021

(Signed)