

UNDT/2012/050, Kamanou

UNAT Held or UNDT Pronouncements

Administrative decision: A decision imposing to a staff member an obligation to report to work may not be said to be purely preparatory in nature, as it has effects on his or her terms of appointment. As such, it is a decision open to appeal before the Tribunal. Interim measures: The Tribunal may only grant suspension of action on a decision as an interim measure under articles 10.2 of the Statute and 14 of the Rules of procedure during the proceedings of a case, that is, when there is an application against the same decision pending before it. Management evaluation/receivability of suspension of action applications: A request for suspension of action pending management evaluation under art. 2.2 of the Statute which was irreceivable at the time of its filing, because no request for management evaluation had been made against the decision in question, may become receivable if such a request is submitted before the Tribunal renders its ruling. Medical examinations: The Organization may conduct medical examinations/assessments concerning a staff member not only in order to protect the concerned staff member, but also in the interest of the Organization.

Decision Contested or Judgment/Order Appealed

After a period on sick leave, the Applicant was cleared by the Medical Services Division on 31 May 2011 to resume her duties as of 1 June 2011 albeit in a different location and supervisory arrangement. The Applicant had numerous exchanges with her department on the modalities of her return to active duty but never actually reported to work. On 6 March 2012, the Medical Services Division communicated to her that, further to a new evaluation, she had been cleared to fully resume her functions and that this clearance superseded the previous one. After she received several requests to report to duty, the Applicant was informed that her failure to do so by 17 April 2012 would be considered as abandonment of post and would lead to a recommendation for her separation. The Applicant held that she had been prevented from resuming work due to the Organization's failure to make

arrangements to comply with the medical recommendation of 31 May 2011. The Tribunal found that the contested decision was based on the medical assessment dated 6 March 2012, which cleared the Applicant fully to resume her functions. This clearance was properly issued and it superseded the previous one. Hence, the contested decision was not prima facie unlawful.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Kamanou

Entity

DESA

Case Number(s)

UNDT/GVA/2012/028

Tribunal

UNDT

Registry

Geneva

Date of Judgement

16 Apr 2012

Duty Judge

Judge Cousin

Language of Judgment

French

English

Issuance Type

Judgment

Categories/Subcategories

Separation from service

Suspension of action / interim measures

Receivability

Applicable Law

Administrative Instructions

- ST/AI/2005/12
- ST/AI/2005/5
- ST/AI/400

Staff Rules

- Rule 1.2(a)
- Rule 6.2(g)

UNDT RoP

- Article 14

UNDT Statute

- Article 10.2

- Article 2.2

Related Judgments and Orders

UNDT/2011/187