

UNDT/2017/094/Corr.1, Harris

UNAT Held or UNDT Pronouncements

The Tribunal held that the managers concerned acted in accordance with the obligations placed on them by sections 9 and 10 of ST/AI/400. Given the fact that the Applicant absented himself from work in Sector East without proper authorization and failed to heed the advice and requests sent to him, the Organization did not act unlawfully in taking steps to place him on SLWOP. Moreover, it was lawful for the Organization to take steps to recover payments made in advance in respect of education grant and travel in circumstances where such advances were not utilised for the purpose for which they were granted. However, UNIFIL HRMS deemed the Applicant's unauthorized absence to be effective as of 16 November 2016 thus it was erroneous for his salary to be withheld from 8 October to 15 November 2016. The Tribunal concluded that the Applicant had adduced sufficient evidence to prove beyond a balance of probabilities the existence of factors causing him psychological and financial harm. The Tribunal held that the Respondent's erroneous recovery of salary payments made to the Applicant for the period 8 October to 15 November 2016 contributed to the extent and severity of the harm suffered and ordered USD3,000 as moral damages. The grant of moral damages was subsequently vacated by UNAT in Judgment No. 2019-UNAT-896. The Tribunal held that the Applicant was advised by HRMS/UNIFIL to take appropriate steps to reinstate his health insurance cover but he did not make the appropriate payments and allowed his health cover to lapse due to his own default and not because of any unlawful action by the Organization.

Decision Contested or Judgment/Order Appealed

Recovery of salary paid while on sick leave, recovery of an Education Grant advance and Travel, and cancellation of health insurance while undergoing medical treatment.

Legal Principle(s)

Leave may be taken only when authorized. If a staff member is absent from work without authorization, payment of salary and allowances shall cease for the period of unauthorized absence. Premiums in respect of health-insurance are paid by deductions from salary. The costs are borne by the Organization and staff members collectively through a cost-sharing arrangement approved by the General Assembly. Thus, in circumstances where the staff member is on SLWOP the onus is on the staff member who wishes to retain health insurance cover to pay the premiums required. The consequence of failure to do so will result in the policy lapsing but may, in certain circumstances be reinstated upon payment of the outstanding premiums.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal granted one claim while all other claims were dismissed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Harris

Entity

UNIFIL

Case Number(s)

UNDT/NBI/2017/070

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

15 Dec 2017

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Salary

Applicable Law

Administrative Instructions

- ST/AI/2011/4
- ST/AI/400

Information Circulars

- ST/IC/2016/13

Staff Rules

- Rule 5.1(e)(ii)

Related Judgments and Orders

2019-UNAT-896