

UNDT/2019/012, Bezziccheri

UNAT Held or UNDT Pronouncements

Receivability The Tribunal found the application receivable *ratione temporis*. **Merits** The Tribunal considered that while the Administration has a duty of care vis-à-vis its staff members in the management of the social security system and relevant entitlements, the system is based on certification and reporting, with the main responsibility for providing the Administration with the required medical certificates and reports lying on the staff member. Staff members must strictly comply with the legal requirements and provide complete material that contains sufficient precision, including the length of periods during which the staff member is not able to work (“unfit”). If a staff member does not follow the instructions given and does not provide the reports and certificates claimed by the Administration under the relevant rules, it may be difficult for the Administration to take an informed decision and this may, at times, turn against the staff member, who may see his or her entitlements refused for failure to provide the required documentation in due time.; In the case at hand, the Applicant was requested repeatedly to provide the Administration with a detailed medical report by her treating specialist regarding the various diagnostic tests that she underwent and therapy she received. However, she did not provide the required documentation and when she did, in December 2013, the reports did not contain detailed information about her medical condition and did not specify a date as of which the Applicant would again be fit to work.; The Tribunal noted that it was made clear to the Applicant that any conversion from annual leave to sick leave, if any, could only be made on the basis of the documentation available at the time, that is, medical certificates and reports that had been provided by the Applicant. The record showed that the UNOV Administration acted in good faith with the Applicant at that time and followed up many times with her to provide her with all opportunities to submit the required documentation.; The Applicant’s failure to fully present the relevant medical documentation and reports in a timely manner made it very difficult for the Administration to determine her sick leave status. The complication stemmed, *inter alia*, from the fact that the Applicant filed many different medical certificates from a variety of doctors, and that the diagnosis

appeared to be changing.; The Tribunal was of the view that in light of the open ended medical certificates of; December 2013, it was indeed the Administration's duty to further look into the matter of the Applicant's sick leave status at the time of her separation from service and, ultimately, whether her medical situation was such that she was entitled to further use and, in the end, exhaust her sick leave entitlements, if applicable. Once that determination had been made, the Administration had to consider, if applicable, the Applicant's incapacity for the purpose of a disability benefit from the UNJSPF.; The Administration, in an effort of good faith, decided to have an independent medical evaluation by Dr. P. However, for the reasons outlined in Order No. 24 (GVA/2016), the terms of reference of Dr. P. were deficient and the procedure followed was illegal. Thus, the Administration could not rely on Dr. P.'s report to take the contested decision. Remedies The Tribunal decided to rescind the primary decision notified to the Applicant on 29 December 2014 that was found illegal.; The Tribunal exceptionally granted the Applicant costs in the amount of USD5,000 as, in the context, the entirely deficient regulatory regime provided had resulted in a long and abusive proceeding, in both an equitable and legal sense, which was entirely avoidable.; Order No. 24 (GVA/2016) of 19 January 2016 was appended to the judgment for completeness. In it, the Tribunal found inter alia that all procedures leading to the decision with respect to the Applicant's sick leave status, and ultimately to the decision not to submit her case to the UNSPC, needed to be repeated. Therefore, the Tribunal remanded the Applicant's case for institution of the required procedure.

Decision Contested or Judgment/Order Appealed

The Tribunal determined that what the Applicant contested is the decision not to recommend her for consideration for a disability benefit by the United Nations Staff Pension Committee ("UNSPC").

Legal Principle(s)

While the Administration has a duty of care vis-à-vis its staff members in the management of the social security system and relevant entitlements, the system is based on certification and reporting, with the main responsibility for providing the Administration with the required medical certificates and reports lying on the staff member. Staff members must strictly comply with the legal requirements and

provide complete material that contains sufficient precision, including the length of periods during which the staff member is not able to work (“unfit”).

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Order No. 24 (GVA/2016) was appended to the judgment for completeness.

Full judgment

[Full judgment](#)

Applicants/Appellants

Bezziccheri

Entity

UNODC

Case Number(s)

UNDT/GVA/2015/121

Tribunal

UNDT

Registry

Geneva

Date of Judgement

29 Jan 2019

Duty Judge

Judge Downing

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Applicable Law

Administrative Instructions

- ST/AI/1999/16
- ST/AI/2005/3/Amend.1

Laws of other entities (rules, regulations etc.)

- Administrative Rules of UNJSPF

Staff Rules

- Rule 11.2(b)
- Rule 6.2

UNDT RoP

- Article 7.5

UNDT Statute

- Article 8(d)(ii)
- Article 8.3

UNJSPF Regulations

- Article 33

Related Judgments and Orders

2012-UNAT-238