

UNDT/2020/140, Hassan

UNAT Held or UNDT Pronouncements

The Tribunal found that the Respondent had shown and the Applicant had not disputed through clear and convincing evidence that all relevant regulations, rules, administrative issuances and policies were complied with in considering the Applicant's medical entitlements. There was no administrative decision carrying direct legal consequences on the Applicant's terms of appointment or contract of appointment to adjudicate on, since subsequent to filing the application on 24 September 2018, the Applicant's claim were fully satisfied in November 2019. The Respondent having rescinded its decision not to pay the Applicant's entitlements, the application was rendered moot. The Applicant had not, even after much probing from the Tribunal, produced any authorized medical entitlements which remained unpaid.

Decision Contested or Judgment/Order Appealed

The Applicant, was contesting UNFPA's decisions: (a) to pay her daily subsistence award ("DSA") for 23 – 29 November 2016 only, although she took several trips to Nairobi, Kenya, from Hargeisa, Somalia, for medical reasons between November 2016 and March 2017 and (b) not to consider the periods from 29 November 2016 to 12 February 2017 and 10 March to 29 April 2017 as a medical evacuation/sick leave.

Legal Principle(s)

Staff rule 6.2 and the UNDP Sick Leave Policy state that it is the staff member's obligation to inform his or her supervisors as soon as possible of absences due to illness or injury and promptly submit any medical certificate or medical report required. Under art. 2.1(a) of its Statute it is "competent to hear and pass judgment on an application filed by an individual against the Secretary-General to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of employment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of the alleged non-compliance". It follows that, the Tribunal must determine, that there is an appealable administrative decision. An administrative decision is a unilateral decision taken by administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

Outcome

Dismissed on merits

Outcome Extra Text

The Tribunal found that the Applicant's claims had been rendered moot and dismissed them in their entirety.

Full judgment

[Full judgment](#)

Applicants/Appellants

Hassan

Entity

UNFPA

Case Number(s)
UNDT/NBI/2018/090
Tribunal
UNDT
Registry
Nairobi
Date of Judgement
22 Jul 2020
Duty Judge
Judge Sikwese
Language of Judgment
English
French
Issuance Type
Judgment
Categories/Subcategories
TEST -Rename- Benefits and entitlements-45
Daily Subsistence Allowance (DSA)
Applicable Law
Other UN issuances (guidelines, policies etc.)

- UNDP Medical Evacuation Policy and related procedures

Staff Rules

- Rule 6.2