

UNDT/2021/132, Applicant

UNAT Held or UNDT Pronouncements

In relation to the Applicant's first claim, the Tribunal held that pursuant to staff rule 6.2 the entitlement to sick leave does not follow a cycle calculated since the date of appointment as argued by the Applicant, but, rather, is calculated pursuant to its own cycle determined by the date of the sick leave. The Tribunal thus concluded that the method used by the administration to calculate the Applicant's sick leave days was consistent with staff rule 6.2, while the method advocated by the Applicant was not. Accordingly, the application failed on the score of sick leave. On the Applicant's second claim, the Tribunal observed that her claim was founded on the lengthiness of the process, and an allegation that in this process the administration was uncooperative, i.e., did not act *bonae fidei*. The record showed, however, that the Applicant did not submit any certificate of sick leave or explanation of her absence for four months after her home leave. No explanation has ever been provided for her inaction. She was clearly in breach of her obligations under staff rule 6.2(f). There was no lack of cooperation on the part of the administration in handling the Applicant's sick leave. To the contrary, the administration showed extraordinary tolerance and patience when she disappeared from the duty station and persistently ignored the requirements for sick leave certification. Accordingly, there were no circumstances warranting compensation for moral damages. The application was thus dismissed.

Decision Contested or Judgment/Order Appealed

The Applicant contested non-payment of an amount equivalent to 72 days of sick leave. She sought six months' net base salary as compensation for moral harm resulting from the administration's lack of cooperation in resolving the issue of her sick leave and entitlements for 14 months.

Legal Principle(s)

Staff rule 6.2 governs a staff member's maximum sick leave entitlement. Staff rule 6.2(b)(ii) provides that a staff member who holds a fixed-term appointment with less than three years of continuous service shall be granted up to three months, i.e. 65 days, on full salary and 3 months, i.e. 65 days, on half salary in any period of 12 consecutive months (65-day regime). Staff rule 6.2(b)(iii) provides that a staff member who has completed three years or more of continuous service shall be granted sick leave up to nine months, i.e. 195 days, of full salary and nine months, i.e. 195 days, on half salary in any period of four consecutive years (195-day regime). Pursuant to the settled jurisprudence of the Tribunal, in order to attribute responsibility for a moral harm, the impugned decision must be unlawful. Two elements may be of relevance: objective illegality, i.e., breach of a concrete rule, and subjective reprehensibility, i.e., improper motive, in the administrative action or inaction.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2019/115

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

17 Nov 2021

Duty Judge

Judge Milart

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Pension (see also, UNJSPF)

Sick leave

Applicable Law

Administrative Instructions

- ST/AI/2005/3
- ST/AI/2005/3/Amend.1
- ST/AI/400

Staff Regulations

Staff Rules

- Rule 6.2