

2018-UNAT-814, Lehia

UNAT Held or UNDT Pronouncements

The UNRWA Commissioner-General appealed. UNAT held that the decisions not to grant Mr Abu Lehia sick leave for the specific time periods (28 March to 3 April 2016, 4 April to 17 May 2016, and 18 May 2016 to 7 June 2016) were not reasonable, given the specific factual circumstances of the case at hand and that these decisions were not a valid exercise of the Agency's discretion. UNAT affirmed UNRWA DT's findings and conclusions about illegality. UNAT held that the Commissioner-General failed to demonstrate any error in the UNRWA DT's finding that the Agency's decision not to grant Mr Abu Lehia sick leave was not reasonable. UNAT dismissed the appeal and affirmed the UNRWA DT judgment.

Decision Contested or Judgment/Order Appealed

UNRWA DT judgment: Mr Abu Lehia contested the decision to consider his absence as annual leave instead of sick leave. UNRWA found that the Applicant did not provide medical evidence to support his claim for sick leave for the period of 21 March to 27 March 2016 and that the Agency was correct to refuse this as sick leave. As for the remaining period of 28 March through 7 June 2016, UNRWA DT found that Mr Abu Lehia provided medical certificates that were fully adequate and amply credible for granting him sick leave. UNRWA DT dismissed Mr Abu Lehia's claim for damages for suffering psychological pressure caused by the refusal of his sick leave requests on the ground that he did not submit any supporting evidence. UNRWA DT ordered the Agency to amend Mr Abu Lehia's leave file to reflect sick leave for the period of 28 March through 7 June 2016.

Legal Principle(s)

Pursuant to Area Staff Rule 106. 2(7) and (9) combined with Area Personnel Directive No. A/6/Part II/Amend. 2, paras. 3(B) and 3(C)(i), in order for a staff

member to be granted sick leave for a period of more than three consecutive working days, they are required, as a first step, when applying for sick leave, to produce to the Agency a medical certificate from a duly qualified medical practitioner, to the effect that they are unable to perform their duties and stating the nature of the illness, and the probable duration of the incapacity. The Commissioner-General has an obligation to act in good faith and comply with applicable laws. Mutual trust and confidence between the employer and the employee are implied in every contract of employment. The first instance tribunal may consider whether relevant matters were ignored, and irrelevant matters considered, and examine whether the decision is absurd or perverse. It is not the role of the first instance tribunal to consider the correctness of the choice made by the Administration amongst the various courses of action open to it. Nor is it the role of the first instance tribunal to substitute its own decision for that of the Administration.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Lehia

Entity

UNRWA

Case Number(s)

2017-1102

Tribunal

UNAT

Registry

New York

Date of Judgement

22 Mar 2018

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Annual leave

Sick leave

Standard of review (judicial)

Judicial review (general)

Applicable Law

UNAT Statute

- Article 2.1(e)

UNRWA Area Staff Rules

- Rule 106.2(7)
- Rule 106.2(9)

UNRWA Personnel Directives

- PD A/6/Part II/Amend.2