

# **2021-UNAT-1081, Da Silveira**

## **UNAT Held or UNDT Pronouncements**

UNAT agreed with UNDT and found that the evidence on the record supports the UNDT finding that the staff member's absence from 18 January 2017 to 26 July 2018 was unauthorized, as she did not provide a duly authorized medical certificate or other justification for her failure to report to work. UNAT also found that the refusal of the Medical Services Division (MSD) to certify the staff member's sick leave request after 18 January 2017 was reasonable and that the MSD was the competent technical body to evaluate medical certifications. UNAT further agreed with UNDT that the staff member had the option to refer her case to an independent practitioner or medical board, after the MSD refusal to certify her sick leave request, but that the Administration was not obligated to inform the staff member of this option since staff members have to ensure that they are aware of the applicable Regulations and Rules. Finally, UNAT also highlighted that the "clear and convincing" standard is to be applied only in cases of termination of appointment due to misconduct, not in abandonment of post cases. UNAT concluded that the facts underpinning the challenged administrative action satisfied more than the preponderance of evidence standard, and as such the separation was lawful.

## **Decision Contested or Judgment/Order Appealed**

A staff member was absent from duty from 18 October 2016 until 26 July 2018. She provided a valid sick leave certificate only for the period of 18 October 2016 until 17 January 2017. From 18 January 2017 until 26 July 2018, her absence was unauthorized, and as such, she was separated from service for abandonment of post. The staff member challenged the administrative action at UNDT, which found that neither the requirement of a detailed medical report pursuant to Administrative Instruction ST/AI/2005/3/Amend.1 (Sick leave) nor the requirement that said medical report adhere to a provided template were overly onerous or otherwise unreasonable. Because the staff member had failed to furnish the required medical reports, the administrative decision to separate her from service for abandonment of

post was lawful.

## Legal Principle(s)

The absence of a staff member from his or her work, unless properly authorized, may create a reasonable presumption of intent to separate from the Secretariat. The Medical Services Division (MSD) is the competent technical body to evaluate medical certifications. After MSD's refusal to certify a sick leave request, a staff member may refer her case to an independent practitioner or medical board, but the Administration is not obligated to inform a staff member of this option. Staff members have to ensure that they are aware of the applicable Staff Regulations and Rules. The "clear and convincing" standard is applied in cases of termination of appointment due to misconduct, not in abandonment of post cases.

## Outcome

Appeal dismissed on merits

## Outcome Extra Text

UNAT dismissed the appeal and affirmed the UNDT judgment.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Da Silveira

## Entity

MONUSCO

## Case Number(s)

2020-1397

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

19 Mar 2021

## President Judge

Judge Raikos

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Benefits and entitlements

Evidence

Medical evidence

Separation from service

Abandonment of post

Standard of proof

## Applicable Law

Administrative Instructions

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

## Staff Rules

- Rule 6.2(a)
- Rule 6.2(f)