

2022-UNAT-1188, Julieta Coca

UNAT Held or UNDT Pronouncements

UNAT agreed with the UNDT that the factual circumstances surrounding the staff member's transition from the temporary appointment to the FTA demonstrate that she was "re-employed" on 1 February 2016. The Organization did not treat her as being continuously employed and it proceeded with an actual separation from service and dealt with the effects that this entails, such as payment of her accrued annual leave while serving on the temporary appointment. The Tribunal further noted that the staff member was re-employed, and not reinstated. The Tribunal remarks that because the temporary appointment expired, she was indeed separated from service. The Tribunal also distinguished between continuous and consecutive service, noting in the present case, the service of the staff member appear to be consecutive rather than continuous. UNAT thus held that the UNDT did not err in concluding that the staff member was not eligible for the maximum sick leave entitlement of 9 months with full pay and 9 months on half pay because there was indeed a break in service between the two appointments. Accordingly, the Administration's referral of the staff member for disability benefits and the subsequent termination of her appointment for health reasons were lawful.

Decision Contested or Judgment/Order Appealed

A staff member who served on a temporary appointment prior to being offered a FTA challenged the Administration's determination of her sick leave entitlements. She served on a temporary appointment from 12 January 2015 until 31 January 2016 and then began her FTA on 1 February 2016. Although there was no gap between the two appointments, the Administration determined that her continuity of service was legally broken between the appointments. In July 2017, the staff member went on sick leave, and the Administration found that she was eligible only for 3 months of sick leave on full salary and 3 months on half salary in any period of 12 consecutive months, pursuant to Staff Rule 6.2 (b)(ii). The staff member argued that she was eligible for nine months of sick leave on full salary and nine months on half salary in

any period of four consecutive years, pursuant to Staff Rule 6.2 (b)(iii). This is because she counted the time she had served on the temporary appointment as well. If her temporary appointment was accounted for, that is from 12 January 2015 until 26 April 2018 (her last day), the staff member would indeed have been eligible for nine months of sick leave on full pay and nine months on half pay. However, the Administration determined that the time served on the temporary appointment could not count toward the “continuous service” requirement since she was “re-employed”, pursuant to Staff Rules 4.17(a) and (b). The UNDT agreed with the Administration that the staff member was employed under a temporary appointment for the period of 12 January 2015 to 31 January 2016, and that there was separation from service before she was re-employed under a FTA on 1 February 2016 until 26 April 2018. The tribunal reasoned that the staff member’s temporary appointment expired (31 January 2016) before she was granted a FTA on 1 February 2016. Because her temporary appointment expired, she was separated from service. Following her separation on 31 January 2016, the staff member was granted a new appointment on 1 February 2016. Additionally, the UNDT also noted that the staff member was paid her annual leave accrued during her temporary appointment in March 2016. Subject to Staff Rule 4.17(a), the staff member’s re-employment on a FTA constituted a new appointment, and accordingly under Staff Rule 4.17(b), the terms of such new appointment were fully applicable regardless of the period of former service, which cannot be considered as continuous. Thus, the tribunal found a break in service between the temporary appointment and the FTA, making her ineligible for the nine months of sick leave on full salary and nine months on half salary.

Legal Principle(s)

A staff member serving on a temporary appointment until the expiry of such contract and who starts on the next calendar date on a FTA is said to have break in service. The service of the staff member is not considered “continuous” because her employment with the Organization is deemed to be legally broken. This is even though there is no actual date gap between the two contracts, the staff member is considered to have legally separated from the Organization. As such, when calculating benefits such as sick leave entitlements, time of service will start anew from the beginning date of the FTA and will not count the time served under the temporary contract.

Outcome

Dismissed on merits

Outcome Extra Text

Appeal is dismissed, and the UNDT Judgment is affirmed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Julieta Coca

Entity

UNCTAD

Case Number(s)

2021-1536

Tribunal

UNAT

Registry

New York

Date of Judgement

18 Mar 2022

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Temporary appointment

Sick leave

Appointment (type)

Benefits and entitlements

Applicable Law

Staff Rules

- Rule 4.17
- Rule 4.18
- Rule 6.2
- Rule 9.1
- Rule 9.4

Related Judgments and Orders

2015-UNAT-574

2010-UNAT-037

2018-UNAT-891

2018-UNAT-829

2016-UNAT-669