

# 2022-UNAT-1225, Sarah Coleman

## UNAT Held or UNDT Pronouncements

Ms. Coleman appealed. UNAT dismissed the appeal and affirmed the UNDT Judgment. UNAT noted that in reaching its conclusion that it was reasonable for the Administration to decide that it was not in the interest of the Organization to keep Ms. Coleman on pay status whilst not performing work until the expiry of her fixed-term appointment, the UNDT considered, inter alia, that: i) she had placed herself in a situation in which she could no longer perform her duties in Pakistan; ii) she had rejected the temporary assignment offered to her in South Sudan; and iii) she was not interested in working in UNICEF beyond the expiry of her appointment. The UNDT did not err in any of its factual findings and did not err in its legal conclusion that the decision of the Administration to place Ms. Coleman on SLWOP was both lawful and reasonable. UNAT was satisfied that the UNDT correctly held that while the renewal of a visa or accreditation card was a shared responsibility between the Administration and the staff member and the Administration fulfilled its obligation by contacting Ms. Coleman prior to the expiration of her accreditation card, she only provided the requested documentation for the renewal almost a year after the expiry of her card. Consequently, it was her own failure to timely submit the required documents that prevented the Administration from completing the renewal request process and obtaining the timely renewal of her accreditation card. UNAT found no error in the UNDT's holding that Ms. Coleman's request to work remotely until the expiration of her contract was considered by the Administration, however the nature of her functions was not compatible with working remotely; as well as that UNICEF was under no obligation to find her another assignment once she had refused a temporary reassignment to a P-4 post of Child Protection Specialist in South Sudan with remuneration at the P-5 level, not only because the circumstances of her departure from Pakistan were self-created, but also because she had advised that she was not interested in continuing working with UNICEF beyond the expiration of her fixed-term appointment. UNAT also found no error in the UNDT's conclusion that the Administration acted lawfully and reasonably, because Ms. Coleman had to leave Pakistan at the explicit request of the host country and therefore, she was not able to perform her duties, thus, leaving to the Organization no other solution but to consider alternative arrangements, such as placing her on SLWFP and then on SLWOP. UNAT held that the UNDT appropriately deferred to the discretionary authority of the Administration in work arrangement matters and made no appealable error. Finally, UNAT found that the UNDT rightly rejected Ms. Coleman's claims of being retaliated against and harassed and that the contested administrative decision was a veiled or disguised disciplinary measure on the grounds that the allegations made were wholly unsupported by any evidence. In fact, Ms. Coleman has not convinced the UNDT, nor the Appeals Tribunal, that the Administration violated her rights in any way in that respect.

## Decision Contested or Judgment/Order Appealed

The UNDT rejected Ms. Coleman's claim that the decision to place her on SLWOP was unlawful because UNICEF had failed in its responsibility to ensure the renewal of her visa and accreditation card, which could have prevented her expulsion from Pakistan. The UNDT found that it was Ms. Coleman's own failure to timely submit the required documents that prevented the Administration from completing the renewal request process and obtaining the timely renewal of her accreditation card. While the Administration contacted Ms. Coleman prior to the expiration of her accreditation card in September 2016, she only provided the requested documentation for the renewal in July 2017, almost a year after the expiry of her accreditation card. Moreover, following her return to Islamabad in October 2017, the Organization made good faith efforts and took at least 11 separate actions to secure the renewal of her visa and accreditation card, unfortunately without success. The UNDT also found no merit in Ms. Coleman's claim that UNICEF had failed to send a formal apology to the Government of Pakistan, which, she alleged, negatively impacted her chances to have her accreditation card

renewed. The UNDT noted that while Ms. Coleman took the initiative to draft a letter of apology on behalf of UNICEF to the Government of Pakistan for her protocol breaches, UNICEF was not obliged to send said formal apology to the Government of Pakistan. Further, the evidence showed that Ms. Coleman sent later on to the MOFA, on her own volition and apparently without prior consultation with UNICEF, a letter personally apologizing for “affecting several [MOFA] protocol breaches in the recent past” and admitting to “personal failings” with regard to her accreditation card and visa renewal. The UNDT found that the Organization bore no responsibility on this initiative and, therefore, could not be held accountable for the outcome of her actions. The UNDT found that, as an international staff member working in UNICEF PCO, Ms. Coleman should have known that a valid visa and accreditation card were conditions sine qua non for her to stay in Pakistan and be able to perform her professional duties. Since these conditions were not met and she had to leave Pakistan at the explicit request of the Government, the Organization had no other solution but to consider alternative administrative arrangements, such as placing her on SLWFP or SLWOP. The UNDT dismissed Ms. Coleman’s contention that her request to work remotely until the expiration of her contract had been unfairly denied. The nature of her functions was not compatible with working remotely and, therefore, the Organization was not in a position to grant her request. The UNDT also dismissed Ms. Coleman’s claim that UNICEF had failed to properly reassign her to a position commensurate with her P-5 grade, competence, skills and experience. UNICEF was under no obligation to reassign Ms. Coleman, who by her own admission had caused her expulsion from the host country. Nevertheless, the Organization did offer her a temporary reassignment which Ms. Coleman rejected. The Organization had no obligation to find Ms. Coleman another assignment once she refused the position in South Sudan not only because the circumstances of her departure from Pakistan were self-created, but also because she had informed the then Deputy Representative UNICEF PCO that she was not interested in continuing working with UNICEF beyond the expiration of her fixed-term appointment. The UNDT found that, in view of the particular circumstances of the present case, namely that Ms. Coleman placed herself in a situation in which she could no longer perform her duties in Pakistan; she rejected the temporary assignment offered to her in South Sudan; and she was not interested in working in UNICEF beyond the expiry of her appointment, the decision to place her on SLWOP was a proper exercise of discretion. Finally, the UNDT found that Ms. Coleman had failed to substantiate her allegations that the contested decision was the result of abuse of authority, bias, prejudice and harassment against her following a complaint she had filed in March 2018 against her former supervisor, the then Deputy Representative, UNICEF PCO. The UNDT found that Ms. Coleman had failed to prove that a causal link existed between her complaint and the contested decision. In fact, the decision to place her on SLWOP was not taken by her former supervisor but by the UNICEF Director, DHR at Headquarters in New York, who was not the subject of her complaint. Similarly, Ms. Coleman had not provided any evidence to substantiate her allegations that the contested decision was a veiled or disguised disciplinary measure. The UNDT dismissed Ms. Coleman's application.

### Legal Principle(s)

The appeals procedure is of a corrective nature and is therefore not an opportunity for a party to simply reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed before the UNDT. An appellant must demonstrate that the judgment is defective. When judging the validity of the Administration’s exercise of discretion in administrative matters, as in the present case, the first instance tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The first instance tribunal may consider whether relevant matters were ignored, and irrelevant matters considered, and also 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. The Dispute Tribunal has broad discretion under Article 10(1) of its Rules of Procedure to determine the admissibility of any evidence and the weight to be attached to such evidence. The findings of fact made by the UNDT can only be disturbed under Article 2(1)(e) of the Appeals Tribunal Statute when there is an error of fact resulting in a manifestly unreasonable decision.

### Outcome

Dismissed on merits  
Full judgment  
[Full judgment](#)  
Applicants/Appellants  
Sarah Coleman

Entity

UN Secretariat

Case Number(s)

2021-1544

Tribunal

UNAT

Registry

New York

Date of Judgement

18 Mar 2022

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Sick leave

TEST -Rename- Benefits and entitlements-45

Applicable Law

Staff Rules

- Rule 5.3

UNAT Statute

- Article 2.1

UNDT RoP

- Article 10.1

Related Judgments and Orders

2020-UNAT-1054

2018-UNAT-870

2018-UNAT-849

2019-UNAT-927

2018-UNAT-814