

2024-UNAT-1444, Yelena Goldenberg

UNAT Held or UNDT Pronouncements

The UNAT held that the Administration did not act unreasonably or unlawfully in requiring the staff member to work from the office two days per week. It further held that relevant considerations, including the staff member's personal and medical circumstances, were taken into consideration, and irrelevant considerations were excluded. The UNAT also found that there was no obligation on the Administration to establish that the requested accommodations represented a disproportionate or undue burden on the workplace.

The UNAT also found no merit in the staff member's argument that the lack of consolidated reasons in a single letter impacted on her due process rights or rendered the contested decision unlawful on this basis alone. Indeed, even if the Administration's decision did not set out the reasons for it in a consolidated and detailed form, including both the medical and personal bases on which it was sought, the UNAT held that the correspondence on record demonstrated that the Administration considered both her medical and personal reasons and communicated the rationale for its decision on both grounds.

The UNAT held that there was no evidence that the Administration engaged in any differential or discriminatory treatment against the staff member, that the contested decision was biased or based on any improper motive, or that it was arbitrary, irrational, absurd, or perverse.

The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2023/055.

Decision Contested or Judgment/Order Appealed

A staff member of the Department for Safety and Security (DSS), contested the decision to deny her request to telecommute five days per week due to personal and medical circumstances.

In its Judgment No. UNDT/2023/055, the UNDT dismissed the staff member's application, concluding that the contested decision was lawful and that the Administration properly exercised its discretion by denying the staff member's request to work from home five days per week.

Staff member appealed.

Legal Principle(s)

An appellant must identify specific grounds of appeal and is required to demonstrate how the impugned judgment is defective. The appeals procedure aims to correct an error made by a first instance tribunal. A party cannot raise new arguments for the first time on appeal, as it would permit to bypass the UNDT and undermine the two-tier United Nations system for the administration of justice. However, there are circumstances in which the UNAT may consider an argument raised for the first time on appeal, such as when it is raised in relation to a question of law where it is apparent from the appeal record that it has been drawn from the clear facts placed before the UNDT.

When reviewing the validity of the Administration's exercise of discretion in administrative matters, the UNDT determines if the decision is legal, rational, procedurally correct, and proportionate. This means reviewing whether relevant matters have been ignored or irrelevant matters considered, and whether the decision is absurd or perverse. However, it is not the role of the UNDT to consider the correctness of the choice made by the Administration amongst the various courses of action open to it. Nor is it its role to substitute its own decision for that of the Secretary-General.

Pursuant to Secretary-General's Bulletin ST/SGB/2019/3 (Flexible working arrangements) (FWA), a staff member is not entitled as of right to enjoy FWA. While ST/SGB/2019/3 aims to promote healthier work-life balance and support staff, it does not permit telecommuting for more than three days per week, except for a limited period, even when "compelling personal circumstances" exist.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Yelena Goldenberg

Entity

DSS

Case Number(s)

2023-1842

Tribunal

UNAT

Registry

New York

Date of Judgement

10 Jul 2024

President Judge

Judge Savage

Judge Sandhu

Judge Sheha

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Discrimination and other improper motives

Oral hearings

Procedure (first instance and UNAT)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2019/3

UNAT RoP

- Article 18.1

UNAT Statute

- Article 2.1
- Article 8.3

Related Judgments and Orders

UNDT/2023/055

2024-UNAT-1409

2022-UNAT-1225

2010-UNAT-084

2022-UNAT-1294

2022-UNAT-1301

2015-UNAT-547

2010-UNAT-049

2023-UNAT-1342

2023-UNAT-1353

2021-UNAT-1082