

# UNDT/2024/046, Barbulescu

## UNAT Held or UNDT Pronouncements

The Tribunal finds that by the Applicant's explicit and direct reference to her previous case from 2021, which the Administration decided with reference to staff rule 12.3(b), she also, at least implicitly, requested an exception to the staff rules under staff rule 12.3(b) in her 18 July 2022 request.

Had the Administration had any doubts regarding the extent of the Applicant's request, which was indeed phrased in a not very clear manner, it could simply have reached out to the Applicant, who, in her 18 July 2022 request, stated that she was available for providing further information if necessary. In this regard, the Tribunal notes that when submitting the request regarding the second child, the Applicant was not represented by any Counsel, and the Appeals Tribunal has recognized that self-represented applicants should be given certain latitude, leeway, and/or generosity when interpreting their claims (see, for instance, *Ghusoub* 2019-UNAT-905, *Abdellaoui* 2019-UNAT-928, and *El Shaer* 2019-UNAT-942).

That the issue was indeed before the Administration follows—without any reservation—from the Applicant's request for management evaluation of 27 October 2022. Therein, under the heading "Administrative decision to be evaluated", her Counsel specifically stated that "the Administration failed to exercise their discretion to grant her 14 weeks of maternity leave or of special leave with full pay to take care of her newly born daughter pursuant to Staff Rule 12.3", in alternative to granting her request under former staff rule 6.3 and ST/AI/2005/2 Amend.2. The question was therefore, in accordance staff rule 11.2(a), explicitly before the Administration when it reviewed her management evaluation request in the present case, and no uncertainty whatsoever thereabout was any longer possible.

The Tribunal finds that by failing to respond to the Applicant's request for an exception to the staff rules under staff rule 12.3(b) in the present case, the Administration therefore failed to fulfill its duty to consider the request under *Hasting* and exercise its discretion as per *Benchebbak*.

In conclusion, the Tribunal therefore has no other choice than to reject the Respondent's submissions in their entirety and, in accordance with staff rule 12.3(b) and the cited jurisprudence of the Appeals Tribunal, the application therefore succeeds.

## Decision Contested or Judgment/Order Appealed

The decision, following the birth of her second child via gestational surrogacy on 18 September 2022, not to grant her (a) 14 weeks of maternity leave in accordance with former staff rule 6.3 and ST/AI/2005/2 Amend.2 (Family Leave, maternity leave and paternity leave), or (b) alternatively, 14 weeks of special leave with full pay ("SLWFP") on an exceptional basis as per staff rule 12.3(b).

## Legal Principle(s)

The Appeals Tribunal held in *Hastings* that a staff member has a right to have a request for an exception to the staff rules under staff rules 12.3(b) considered but not necessarily to have it granted. In this regard, as also follows from staff rule 12.3(b), the Administration has a certain level of discretion in considering a request for an exception to the staff rules, and "[w]hen judging the validity of the Secretary-General's exercise of discretion it is not the role of [the Dispute Tribunal] to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him", "[n]or is it the role of [the Dispute Tribunal] to substitute its own decision for that of the Secretary-General" (see the Appeals Tribunal in *Benchebbak* 2014-UNAT-438, para. 19, also quoting its seminal judgment in *Sanwidi*).

In *Wilson* 2016-UNAT-676 (para. 47), the Appeals Tribunal outlined the "three elements" of staff rule 12.3(b) as: "(a) Such an exception must be consistent with the Staff Regulations and other decisions of the General Assembly; (b) Such an exception must be agreed to by the staff member directly affected; and (c) Such an exception, in the opinion of the Secretary-General, must not be prejudicial to the interests of any other staff member or group of staff members".

## Outcome

Judgment for Applicant in full or part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Barbulescu

## Entity

UN Secretariat

## Case Number(s)

UNDT/NY/2023/002

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

29 Jul 2024

## Duty Judge

Judge Adda

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Benefits and entitlements

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

## Applicable Law

Administrative Instructions

- ST/AI/2005/2/Amend.2

Staff Rules

- Rule 12.3(b)

## Related Judgments and Orders

2017-UNAT-765

2018-UNAT-876

2014-UNAT-410

2015-UNAT-503

2016-UNAT-613

2019-UNAT-905

2019-UNAT-928

2019-UNAT-942

2014-UNAT-438

2011-UNAT-109

2010-UNAT-084