

UNDT/2024/111, Adundo

UNAT Held or UNDT Pronouncements

In the context of the present case, the Tribunal finds that the electronic UMOJA notifications regarding the Applicant's time and attendance records, which were automatically sent to him on a monthly basis during the relevant four-year time period, were nothing but status updates on his leave records. None of the status updates therefore constituted separate and individual administrative decisions in accordance with art. 2.1(a) of the Dispute Tribunal's Statute against which the Applicant must file a request for management evaluation in accordance staff rule 11.2.

Applying either evidentiary standard of the preponderance of the evidence or the presumption of regularity, in the absence of the Applicant providing any submissions and/or evidence to support his claim that the figures used by DSS were incorrect, the Tribunal finds that the Respondent has appropriately established that the information provided by the Respondent was an accurate record of the Applicant's sick leave balance on full pay from his recruitment in 2011 and until the end of 2022.

Decision Contested or Judgment/Order Appealed

The decision to place the applicant on sick leave with half-day pay combined with a half-day annual leave in order for him to remain at full pay until his entitlement to sick leave at full pay was revived.

Legal Principle(s)

It is "the well-established jurisprudence" of the Appeals Tribunal that "the burden of proving any allegations of ill-motivation rests with the applicant" (see, para. 38 of

Kisia 2020-UNAT-1049).

It is debatable under the jurisprudence of the Appeals Tribunal what the applicable evidentiary standard is for a decision such as the contested decision: whether it is the preponderance of the evidence or the presumption of regularity (see, for instance, *Applicant* 2022-UNAT-1187, paras. 60 to 66, as well as *Toson* 2022-UNAT-1249, para. 29, *Noberasco* 2020-UNAT-1063, para. 42, *Ngokeng* 2017-UNAT-747, para. 33, *Soliman* 2017-UNAT-788, para. 33, *Nastase* 2023-UNAT-136, para. 24, and *Mirella* 2023-UNAT-1334, para. 61—the case-law is not consistent in terms of whether the evidentiary standard of presumption of regularity is only applicable to primarily non-selection and non-renewal cases or also applies to other types of appealable decisions under art 2.1(a) of the Dispute Tribunal’s Statute).

Outcome

Dismissed on merits

Outcome Extra Text

The Tribunal notes that it follows from the consistent jurisprudence of the Appeals Tribunal that “when a justification is given by the Administration for the exercise of its discretion it must be supported by the facts” (see para. 29 of *Islam* 2011-UNAT-115 as, for instance, affirmed in *Wathanafa* 2023-UNAT-1389, para. 36). As follows from the Appeals Tribunal’s seminal judgment in *Sanwidi* 2010-UNAT-084, as part of the judicial review, the Tribunal can appraise “whether relevant matters have been ignored and irrelevant matters considered” and therefore also whether the facts underpinning the contested decision were correct (see para. 40).

Hearsay evidence is, in principle, admissible before the Dispute Tribunal but its “probative value depends largely on the credibility ... of the person giving such evidence” (see, paras. 72 and 73 of *Applicant* 2022-UNAT-1187).

Full judgment

[Full judgment](#)

Applicants/Appellants

Adundo

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2022/053

Tribunal

UNDT

Registry

New York

Date of Judgement

16 Dec 2024

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Applicable Law

Administrative Instructions

- ST/AI/1999/13

Staff Rules

- Rule 11.2
- Rule 6.2

Related Judgments and Orders

2011-UNAT-115

2023-UNAT-1389

2010-UNAT-084

2020-UNAT-1049

2022-UNAT-1249

2022-UNAT-1187

2020-UNAT-1063

2017-UNAT-747

2017-UNAT-788

2023-UNAT-1366

2023-UNAT-1334