

# **UNDT/2024/082, Thomas-McPhee**

## **UNAT Held or UNDT Pronouncements**

The transitional measure under the new parental leave scheme grants an additional 10 weeks of special leave with full pay ("SLWFP") to staff members who were already on maternity leave on 1 January 2023. This measure was created to facilitate the transition from the previous parental leave scheme to the new one, and to enable equity and fairness in the treatment of staff members who became parents by giving birth.

The Tribunal found that the transitional measure was a fair, reasonable, and rational solution. Under it, all birthing parents that were still on maternity leave when the new policy entered into force were entitled to the same 26 weeks in total as the ones who gave birth after the entry into force of the new parental leave scheme. The claim that the transitional measure was arbitrary because it went against the *raison d'être* of the WHO guidelines on breastfeeding is unsustainable.

Transitional measures are required when a new policy changes previous law and/or entitlements. A transitional scheme requires a cutoff point, and its establishment is a reasonable exercise of administrative discretion.

With respect to SLWOP, the Tribunal clarified that parental leave as SLWOP under ST/AI/2005/2 is not to be confused with maternity leave under staff rule 6.3 of the 2018 Staff Rules, or with parental leave under staff rule 6.3 of the 2023 Staff Rules. The first entitlement is meant to grant SLWOP (maximum of two years) as parental leave to new parents who qualify for it. The second entitlement (maternity leave) granted leave with full pay (16 weeks) to the birthing parent. The current parental leave grants leave with full pay (16 weeks) to new parents in cases of birth or adoption of a child, plus an additional period of leave with full pay (10 weeks) to the birthing parent as prenatal and postnatal leave.

The Applicant exercised her entitlement to maternity leave and exhausted it before 1 January 2023. On 1 January 2023, the Applicant was on parental leave as SLWOP.

That the Applicant's intention behind her request for the latter was to extend her absence from work following the birth of her child is understandable. However, the Applicant's parental leave as SLWOP is not equivalent to maternity leave and as such, the Applicant was not entitled to the transitional measure.

Lastly, the Tribunal found that ST/AI/2023/2 is not inconsistent with staff rule 6.3, and did not violate the hierarchy of laws when it regulated the implementation of current staff rule 6.3.

## Decision Contested or Judgment/Order Appealed

The Applicant contests the decision finding her not eligible for the transitional measure on parental leave in the context of new maternity leave entitlements.

## Legal Principle(s)

In conducting a judicial review of the validity of the Secretary-General's exercise of discretion, the Tribunal reviews whether the decision was lawful and rational. It will not substitute its views for those of the Administration but will evaluate whether that decision was irrational or arbitrary.

It is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst various available courses of action.

It is a general principle of law the non-retroactive application of law, which prohibits its application to events that occurred before the law was introduced. While the Tribunal acknowledges that the principle of non-retroactive application of law is not absolute, exceptions are either stipulated in the law itself or justified on exceptional circumstances.

It is also generally accepted within the legal framework of the United Nations that administrative instructions regulate the implementation of new law established by the Secretary-General through its bulletins.

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Thomas-McPhee

## Entity

OHCHR

## Case Number(s)

UNDT/GVA/2023/050

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

23 Oct 2024

## Duty Judge

Judge Sun

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Benefits and entitlements

## Applicable Law

Administrative Instructions

- ST/AI/2005/2
- ST/AI/2023/2

Secretary-General's bulletins

- ST/SGB/2023/1
- ST/SGB/2018/1/Rev.2

Staff Rules

- Rule 6.3

## Related Judgments and Orders

2010-UNAT-084

2019-UNAT-973

2023-UNAT-1330

2018-UNAT-873

UNDT/2024/053

UNDT/2024/070