

UNDT/2024/070, McMillan

UNAT Held or UNDT Pronouncements

The transitional measure under the new parental leave scheme grants an additional 10 weeks of 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 Applicant, however, had exhausted her maternity leave entitlements and was instead on annual leave on 1 January 2023.

The Tribunal found no merit in her argument that she should be considered as still on maternity leave during her annual leave because the reason for taking the latter was precisely the one behind the new policy. While it is true that the Applicant took annual leave immediately after the end of her maternity leave, that does not result in said leave being considered an extension of her maternity leave.

Therefore, the Applicant failed to demonstrate that she should have been considered eligible for the transitional measure.

Likewise, the Applicant failed to demonstrate that the decision to limit eligibility for the transitional measure was arbitrary. The Tribunal found that the transitional measure was a fair, reasonable, and rational solution. Under it, all birthing parents who 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 Tribunal noted that 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.

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 staff rule 6.3.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision finding her not eligible for transitional measures 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 it reviews whether the decision was lawful and rational, and 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

McMillan

Entity

OHCHR

Case Number(s)

UNDT/GVA/2023/049

Tribunal

UNDT

Registry

Geneva

Date of Judgement

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

Staff Rules

- Rule 6.3

Related Judgments and Orders

2010-UNAT-084
2019-UNAT-973
2023-UNAT-1330
2018-UNAT-873
UNDT/2024/053