

UNDT/2024/088, Trossarelli

UNAT Held or UNDT Pronouncements

Having examined the evidence on record, the Tribunal identifies the following issues for determination:

Whether the Applicant is entitled to parental leave under staff rule 6.3

The Tribunal found that the Applicant, whose child was born on 2 May 2022, was entitled to four weeks of paternity leave or eight weeks of adoption leave under the 2018 Staff Rules and ST/AI/2005/2, which he exercised. He was not, as he contends, “placed in a no-man’s land between two [Administrative Instructions]”.

The fact that the Applicant requested and was exceptionally granted additional leave after 1 January 2023 is irrelevant to the applicability of new staff rule 6.3 and ST/AI/2023/2. The determining factor for the eligibility of the parental leave entitlement is the date of the child’s birth for whom parental leave is requested and not the date on which the request was made or the benefit was granted.

Therefore, the Tribunal concluded that the Applicant had failed to demonstrate that he should have been considered eligible for the new parental leave benefit. As the parent of a child born in 2022 and whose parental leave entitlement ended well before the entry into force of new staff rule 6.3 and ST/AI/2023/2, which set a cut-off date of 1 January 2023, the Applicant was indeed not entitled to 16 weeks of paternity leave.

Whether ST/AI/2003/2 is inconsistent with staff rule 6.3

The Tribunal found that ST/AI/2023/2 is consistent with new staff rule 6.3.

Whether ST/AI/2023/2 is discriminatory or violated staff rule 8.1(f)

While the new parental leave policy includes a transitional measure only for staff members who were on maternity leave on 1 January 2023, the Tribunal found that this is not discriminatory.

As indicated by DMSPC, the transitional measure was approved to facilitate the change from the previous maternity leave scheme to the new parental leave scheme, and to enable greater equity and fairness in the treatment of similarly situated staff members (i.e., those becoming parents by giving birth), while also being in line with the recommendation of the World Health Organization of six months minimum of breastfeeding.

The Tribunal also found that the UN Secretariat is not bound by decisions made by other UN entities who are not part of the UN Secretariat concerning how they implement new policies, including whether they adopt transitional measures to other categories of staff. Each entity exercises its discretion when applying policies, and the fact that an entity exercises its discretion differently concerning the adoption of transitional measures does not affect the legality of the decisions made.

Whether the Applicant is entitled to the remedies requested

The Tribunal rejected the Applicant’s request for remedies.

In view of the foregoing, the Tribunal decided to reject the application in its entirety.

Decision Contested or Judgment/Order Appealed

The Applicant, a staff member of the United Nations Interregional Crime and Justice Research Institute (“UNICRI”), contests the decision not to grant him 16 weeks of parental leave in respect of his daughter, born on 2 May 2022, under new staff rule 6.3.

Legal Principle(s)

The Tribunal recalls that 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 (Sanwidi 2010-UNAT-084, paras. 38-42), and will not substitute its views for those of the Administration but will evaluate whether that decision was irrational or arbitrary (Gisage 2019-UNAT-973, paras. 37-40; Millan 2023-UNAT-1330, paras. 107-110).

It is well-established that 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 (Sanwidi 2010-UNAT-084, para. 40; Belkhabbaz 2018-UNAT-873, para. 66).

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Trossarelli

Entity

UNICRI

Case Number(s)

UNDT/GVA/2023/040

Tribunal

UNDT

Registry

Geneva

Date of Judgement

31 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
- Rule 8.1(f)

Related Judgments and Orders

2010-UNAT-084

2019-UNAT-973

2023-UNAT-1330

2018-UNAT-873

UNDT/2024/070

UNDT/2024/053

2011-UNAT-177