

UNDT/2024/098, Kabeel

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 entitlement under new staff rule 6.3 on parental leave is only effective as of 1 January 2023, and its application is subject to the “conditions established by the Secretary-General” as per staff rule 6.3(a). These conditions are set out in ST/AI/2023/2.

Section 1.2 of ST/AI/2023/2 provides that said administrative instruction governs the administration of parental leave in respect of a child born or adopted on or after 1 January 2023, provided that the staff member was in service at the time of the birth or adoption. Similarly, sec. 10.1 of ST/AI/2023/2 specifies that the new policy on parental leave entered into force effective 1 January 2023.

Equally clear is sec. 10.2 of ST/AI/2023/2, which excludes staff members who were “eligible” to “4 or 8 weeks of paternity leave or 8 weeks of adoption leave, on or before 31 December 2022” from the entitlement under the new policy on parental leave.

The fact that the Applicant requested paternity leave after 1 January 2023 is irrelevant to the applicability of new staff rule 6.3 and ST/AI/2023/2.

Therefore, the Applicant failed to demonstrate that he should have been eligible for the new parental leave benefit. As the parent of a child born on 29 December 2022, that is, two days before the entry into force of new staff rule 6.3 and almost two months before the issuance of 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/2023/2 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

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 finds that this is not discriminatory.

As DMSPC indicated (see para. 13 above), the transitional measure was approved “to facilitate the transition 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 fact that the Applicant’s situation does not fall within the scope of the transitional measure does not make it discriminatory against him.

The Tribunal recalled 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 for 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 rejects 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 Office on Drugs and Crime ("UNODC"), contests the decision not to grant him 16 weeks of parental leave in respect of his son, born on 29 December 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, para. 40; Belkhabbaz 2018-UNAT-873, para. 66).

The Tribunal recalls that it is bound by the law of the Organization and not mandated to legislate on its behalf.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Kabeel

Entity

UNODC

Case Number(s)

UNDT/GVA/2023/043

Tribunal

UNDT

Registry

Geneva

Date of Judgement

13 Nov 2024

Duty Judge

Judge Sun

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Parental Leave

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

2011-UNAT-177

UNDT/2024/070

UNDT/2024/088

UNDT/2024/053