

UNDT/2025/021, AEM

UNAT Held or UNDT Pronouncements

The Tribunal found that the 29 February 2024 decision constituted a fresh administrative decision and not a mere reiteration of the 9 August 2023 decision as argued by the Respondent.

Just as a staff member may not reset the clock by repeatedly questioning the original decision, the Organization may not freeze the clock and deprive a staff member of their right to a new decision based on new circumstances.

The substantive issue in this case was whether the Administration properly exercised its discretion in not granting the Applicant telecommuting arrangements. The Tribunal found that the exercise of discretion in this case was not proper.

Where a request to telecommute is refused, reasons for that refusal are to be given by the manager. It is a quintessential abuse of discretion to ignore the factual circumstances upon which a request to telecommute is based.

Based on the evidence in the case, as specifically pleaded by the Applicant and corroborated in the letters and medical reports filed as part of her application, the Tribunal found that the Applicant suffered harm to her mental health as a result of the contested decision.

The Tribunal assessed moral damages for psychological harm in the sum of 10 months' net pay reflecting the 10 months that she was denied telecommuting from the date of the contested decision until her separation in December.

The Tribunal found that the Secretary-General has not manifestly abused the appeals process to justify an award of legal costs. Also, the Applicant failed to adduce any evidence to show why OSLA would not have adequately/independently represented her in this case to justify her decision to prefer to retain external counsel.

Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member at the United Nations Economic and Social Commission for Western Asia (“ESCWA”), contested a 29 February 2024 decision denying her request for remote work and the decision to reassign her to Amman, Jordan.

Legal Principle(s)

To be reviewable, a decision must be a final decision having a direct impact on the terms and conditions of the individual’s employment contract.

The date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine.

The reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to statutory timelines; rather time starts to run from the date on which the original decision was made.

The decisive moment of notification for purposes of staff rule 11.2(c) is when all relevant facts were known or should have reasonably been known.

In general, the exercise of discretion involves the comparison and the evaluation of possible courses of conduct, then making a decision after the various possibilities have been considered.

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The Organization has a duty to exercise reasonable care to ensure the safety and security of staff members.

The role of the Dispute Tribunal in exercising judicial review is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate. The Tribunal may consider whether relevant matters have been ignored and irrelevant matters considered and also examine

whether the decision is absurd or perverse. If the Administration acts irrationally or unreasonably in reaching its decision, the Tribunal is obliged to strike it down.

To determine whether a claim for moral damages is established and to calculate an appropriate award, much will depend on the circumstances of the situation at hand, as the existence of moral damages shall be assessed on a case-by-case basis.

The Tribunal is required to make a finding that there has been a manifest abuse of the proceedings by a party to award legal costs pursuant to art. 10.6 of the UNDT Statute.

Where OSLA or an equivalent service is available to staff members, legal costs will not need to be incurred and will not be compensated. The onus is on the Applicant to adduce evidence to show why OSLA would not have adequately/independently represented her.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The contested decision was rescinded.

In lieu of specific performance, for the period between 1 March 2024 and 1 December 2024, the Organization was directed to regularize the Applicant's status as Special Leave With Full Pay ("SLWFP").

The Organization was ordered to pay the Applicant all the benefits and entitlements related to the regularized SLWFP.

The Applicant was awarded 10 months' net pay as compensation for moral damages.

Full judgment

[Full judgment](#)

Applicants/Appellants

AEM

Entity

ESCWA

Case Number(s)

UNDT/NBI/2024/060

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

9 May 2025

Duty Judge

Wallace

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Discretionary authority

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2019/3

Staff Regulations

- Regulation 1.2(c)

Staff Rules

- Rule 11.2(c)

UNDT Statute

- Article 10.5(a)
- Article 10.5(b)
- Article 10.6