

2025-UNAT-1557, Thomas John Caldin & Michael John Langelaar

UNAT Held or UNDT Pronouncements

The UNAT held that the UNDT did not err in concluding that the transitional measure – granting 10 weeks of special leave with full pay (SLWFP) only to mothers who were still on maternity leave on 1 January 2023 – was not unlawfully discriminatory.

It found that, while it might be argued that preferring birth mothers over fathers in the transitional arrangements between the old and new parental leave regimes was discriminatory, it was not unlawfully discriminatory for two reasons: i) the desirability of breastfeeding in circumstances that are inconsistent with their mothers also working full time for the United Nations; and ii) the fact that birth mothers experience their own pre- and post-natal health and welfare needs not experienced by fathers or other non-birthing parents. Accordingly, the transitional measure was found to be consistent with the World Health Organizations' recommendations.

The UNAT also found that the UNDT properly concluded that the Secretary-General's decision to limit the application of the new parental leave policy, Administrative Instruction ST/AI/2023/2 (Parental and family leave), to parents whose children were born or adopted on or after 1 January 2023 was a lawful exercise of his discretion. It emphasized that, as expressly stated in Staff Rule 6.3, and consistent with the General Assembly's Resolution 77/256 A-B, it was within the Secretary-General's authority to set these conditions for the grant of parental leave.

Finally, the UNAT held that the Administration's decision to deny the request for SLWFP made by one of the two staff members was lawful and appropriately considered all relevant circumstances.

Decision Contested or Judgment/Order Appealed

Two staff members contested the decisions of the Administration to reject their requests to be granted 16 weeks of parental leave according to the then recently created staff parental leave arrangements.

In its Judgment No. UNDT/2024/053, the UNDT dismissed the staff members' applications, finding that the contested decisions were lawful.

Staff members appealed.

Legal Principle(s)

A difference in treatment is discriminatory when it affects negatively the rights of certain staff members or categories of them, due to unlawful reasons. However, when the approach is generally applied by categories, there is no discrimination if the difference is motivated by general goals and policies not designed to treat individuals or categories of them unequally.

To determine if discrimination exists, it must first be established whether a difference in treatment or differentiation between people or categories of people occurred. If such differentiation is shown, then there must be a rational connection between the differentiation in question and the lawful or legitimate purpose it is designed to achieve. If a rational connection exists and the differentiation is found to be justified and fair, then no unlawful discrimination will have been shown to have occurred.

The Tribunals cannot review the validity of legislation and substitute their views for what the General Assembly has directed as the relevant policy or practice. Proceedings are limited to the lawfulness of individual administrative decisions affecting staff members adversely. The Tribunals are not constitutional courts determining the validity or correctness of legislation.

Under the new parental leave regime, parents of children born before 1 January 2023 remain subject to the former rules, while those with children born on or after that date are subject to the new regime. As a result, from 1 January 2023, mothers of children born on or after that date receive an additional 10 weeks of parental leave, while fathers receive an additional 8 or 12 weeks, depending on their duty station.

Outcome

Appeal dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Thomas John Caldin & Michael John Langelaar

Entity

DGACM

Case Number(s)

2024-1950

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Jul 2025

President Judge

Colgan

Judge Sandhu

Judge Savage

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Benefits and entitlements

Special leave (with or without pay)

Applicable Law

Administrative Instructions

- ST/AI/2023/2

GA Resolutions

- A/RES/77/256 A-B

Secretary-General's bulletins

- ST/SGB/2008/5
- ST/SGB/2023/1

Staff Regulations

- Regulation 1.2(a)

Staff Rules

- Rule 6.3

UNDT Statute

- Article 8

Related Judgments and Orders

UNDT/2024/053

2022-UNAT-1252

2022-UNAT-1248

2011-UNAT-177

2016-UNAT-704

2018-UNAT-840