



Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

AEM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Ludovica Moro

Counsel for Respondent:

Halil Göksan, AS/ALD/OHR/UN Secretariat
Tamal Mandal, AS/ALD/OHR/UN Secretariat

Introduction

1. By application filed on 4 September 2024, the Applicant, a former staff member at the United Nations Economic and Social Commission for Western Asia (“ESCWA”), contests a 29 February 2024 decision denying her request for remote work and the decision to reassign her to Amman, Jordan.
2. The Respondent’s reply was filed on 9 October 2024.
3. Via Order No. 14 (NBI/2024), the parties were informed, *inter alia*, that the Tribunal would determine the case without holding a hearing. In the same Order, the Applicant’s motion requesting anonymity was granted.
4. The parties filed their closing submissions on 21 February 2025.

Consideration

Receivability

5. The Respondent argues that this application is not receivable *ratione materiae* for failure to request management evaluation timely. The premise of this argument is that “the Applicant was first informed of ESCWA’s decision to deny her request for telecommuting on 9 August 2023, that the same decision was reiterated to the Applicant again on 9 November 2023 and on 29 February 2024.” Accordingly, the Respondent argues that the deadline for the Applicant to request management evaluation was 9 October 2023 but the Applicant’s request was not made until 19 March 2024.
6. Evaluating this claim requires an understanding of the Applicant’s history with the Organization. She served with ESCWA from 2013 in Beirut, Lebanon and on 4 August 2020 was injured in an immense explosion that killed more than 200 people and injured about 7,000 others.¹ According to her application, the Applicant was evacuated to Germany to undergo initial medical treatment and then underwent

¹ United Nations Sustainable Development Group, “Human rights experts call for international investigation into 2020 Beirut explosion”, <https://unsdg.un.org/latest/stories/human-rights-experts-call-international-investigation-2020-beirut-explosion>.

multiple follow-up surgeries, along with treatment for post-traumatic stress syndrome (“PTSD”).

7. Due to these treatment obligations, the Applicant moved to the United States where she was a citizen and had lived prior to her recruitment to the Organization. ESCWA permitted her to telecommute to facilitate her rehabilitation until mid-2023.

8. Thereafter, on 2 August 2023, ESCWA informed the Applicant that the Division of Healthcare Management and Occupational Safety and Health (“DHMOSH”) had confirmed that she was medically cleared to work in Amman, Jordan from 10 August 2023. Accordingly, the Applicant was directed to report to Amman for work.

9. The Applicant requested another two months of telecommuting, but this was denied on 9 August 2023. On the same day, the Applicant sent an email to the Under-Secretary-General and Executive Secretary of ESCWA (“ES/ESCWA”) stating that her doctor was not comfortable with the DHMOSH decision clearing her to work in Amman and asking the ES/ESCWA to reconsider her request to telecommute for an extra two months. The ES/ESCWA promptly refused the Applicant’s request on the grounds that DHMOSH had done the Applicant’s medical/travel clearance to Jordan and that the clearance stood despite “the recent medical report [the Applicant] submitted to them”.

10. Instead of traveling to Amman against her physician’s advice, the Applicant chose to take Special Leave Without Pay (“SLWOP”) for two months.

11. Then, on 21 October 2023, due to the declining security situation in the region, ESCWA authorized all its staff members to telecommute from Amman from 24 October until 7 November 2023. ESCWA authorized further extensions until 21 November 2023, and eventually until 1 January 2024.

12. On 2 November 2023, the Applicant requested authorization to telecommute from the United States beginning November 2023, partly because she was scheduled to have a medical procedure on 9 November 2023.

13. The ESCWA Director, Resource Management and Service Development Division (“RMSDD”) responded to the Applicant on 9 November 2023, implicitly refusing her request and informing her that,

On your case, [Applicant], we are trying to be as accommodating as possible given your need to continue your health insurance coverage at least during this period of treatment. In terms of your functions, the situation has not changed from before as I understand from the internal discussion I have had. We will have to close this issue, but would first like to see how to best do that taking into consideration your needs and also those of the organization.

I understand that there was a stage where you were considering an agreed termination package, which then took a different turn. This may be a good way to go in my view, if you were still open to this. Given that a return is unlikely, I would like to suggest that we start exploring the idea of an [Agreed Termination Package] ATP, and that until then, we exceptionally extend your SLWOP beyond the regular duration until the end of the year.

... Please let me have your thoughts on this. Meanwhile we will go ahead and extend the SLWOP until 31 December 2023.

14. On 4 February 2024, the Applicant’s treating doctor issued a medical report which, *inter alia*, recommended against temporary assignments outside the United States to allow the Applicant to continue with her established medical care and access to social supports.

15. On 14 February 2024, ESCWA’s Chief Medical Officer required the Applicant’s treating doctor to provide medical evidence related to the adequacy of duty station H versus duty station A for the Applicant’s reassignment. (Amman is an A duty station.)

16. On 28 February 2024, the Applicant emailed the Director/RMSDD seeking authorization to telecommute from the United States from 1 March 2024. In her email, the Applicant stated that she had continued to work (during her SLWOP) while receiving care from the medical team in the United States.

As you’ve gathered from our email exchange last week regarding my participation at [a] conference, I’ve maintained a productive research agenda while receiving care from the medical team in the US. I am kindly seeking your help in requesting from the ES to authorize remote work. According to the doctors following my

treatment, I need to be monitored by them and to continue treatment for work-related injuries in the US. They've encouraged resuming work remotely without restrictions. I've forwarded updated reports to [ESCWA's Chief Medical Officer in Beirut]. It's important that I get back to work on March 1st and I'd really appreciate your help.

17. The Director/RMSDD responded to the Applicant on 29 February 2024, informing her,

From our side, we are still waiting to hear from you on the feasible solution provided to you, as per my emails of last month and since it was first sent to you in August last year [apparently a reference to the agreed termination option]. My understanding is that you have been medically cleared, and we are waiting to hear from you. The expected starting date for the Amman solution is tomorrow, 1 March and we have not heard from you that you have accepted or declined this. I understand you may have been in touch with the SG's office, has there been any developments on that front?

Again, the Organization's response did not explicitly address the Applicant's request to work remotely from 1 March 2024, but it is quite clear that the Organization did not consider the Applicant's request for telecommuting to be a viable option. This implicit denial is the contested decision.

18. On 19 March 2024, the Applicant requested management evaluation of what she described as

two inter-related decisions; first the decision to persistently and to repeatedly deny remote work on medical grounds for a staff member with work related injuries most recently communicated to me by Chief of Administration on February 29, 2024; and second the decision to reassign me to an inappropriate duty station against the medical advice of doctors as most recently communicated to me by Chief of Administration on March 12, 2024.

19. On 11 April 2024, the Applicant updated the 19 March 2024 request for management evaluation by submitting more information for the assessment of her request.

20. On 7 June 2024, the Management Advice and Evaluation Section ("MAES") issued its determination regarding the Applicant's requests for management evaluation, dated 19 March 2024 and 11 April 2024. Concerning the decision not

to let the Applicant work remotely, MAES determined that the request was not receivable and that the decision to reassign her to Amman had been rendered moot in light of the medical reassessment of DHMOSH dated 25 April 2024, finding that the Applicant was no longer cleared for duty in Amman.

21. 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. See, for example, *Qasem Abdelilah Mohammed Qasem 2024-UNAT-1467*, para. 62, (citing *Lee 2014-UNAT-481*, para. 49). The date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine. *Said 2018-UNAT-813*, para. 14.

22. In *Said*, the Appeals Tribunal observed that it had

consistently held that 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. For this reason, a staff member cannot reset the time for management evaluation by asking for a confirmation of an administration decision that has been communicated to him earlier. Neither can a staff member unilaterally determine the date of an administrative decision. (Paragraph 15).

23. Following the ES/ESCWA's refusal of the Applicant's 9 August 2023 request to telecommute, the Applicant took SLWOP for two months. Between that date and 2 November 2023, when the Applicant again requested to telecommute from the United States, there was a change of circumstance affecting ESCWA staff generally and the Applicant in particular, being the 21 October 2023, ESCWA authorization for all its staff members to telecommute from 24 October until 7 November 2023 and, subsequently, until 1 January 2024.

24. On 2 November 2023, the Applicant requested authorization to telecommute from the United States from 13 November 2023, to facilitate her medical procedure on 9 November 2023 for injury to her back related to the Beirut explosion. This request was refused. The request constituted a new administrative decision considering the changed circumstances.

25. Another change of circumstances occurred on 4 February 2024 when the Applicant's treating doctor issued a medical report which, *inter alia*, recommended against temporary assignments outside the United States to allow the Applicant to continue with her established medical care and access to social supports. Taking into account these changed circumstances, the Applicant again, on 28 February 2024, requested to telecommute from 1 March 2024.

26. The Director/RMSDD in his response to the Applicant on 29 February 2024 did not address the new circumstances raised by the Applicant but instead simply alluded to the 9 August 2023 decision, ignoring the intervening events described above. The Tribunal finds 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.

27. Indeed, the record is clear that the Organization persisted in reiterating the earlier decision and ignoring the dramatic changes in circumstances between the requests. 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.²

28. The Appeals Tribunal has repeatedly ruled that 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. *Auda* 2017-UNAT-746, para. 31, citing *Krioutchkov* 2016-UNAT-691, para. 21. In this case, the Applicant was notified of the contested decision on 29 February 2024. The Applicant challenged this decision by requesting management evaluation on 17 March 2024, well within the staff rule 11.2(c) deadline of requesting management evaluation of "60 calendar days from the date on which the staff member received notification of the administrative decision to be contested". The application is therefore receivable by MAES, and

² By analogy, imagine a staff member who is denied a promotion in August and the following February applies for a new promotion opportunity. The Organization may not ignore the new application and simply say "we told you back in August that you would not be promoted, so our February denial is merely reiteration of that decision."

when she timely sought review in her subsequent application, it remained receivable.

Merits

29. The substantive issue in this case is whether the Administration properly exercised its discretion in not granting the Applicant telecommuting arrangements. 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. That seems not to have occurred in this case.

30. The Organization has a duty to exercise reasonable care to ensure the safety and security of staff members. Staff regulation 1.2(c) provides that:

Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations. In exercising this authority, the Secretary-General shall seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them;

31. ST/SGB/2019/3 (Flexible working arrangements) sets out the legal framework applicable to telecommuting. The relevant parts are outlined below:

Section 2

Guiding principles

2.1. Flexible working arrangements [“FWA”] may be authorized subject to the following guiding principles:

- (a) While there is no right to flexible working arrangements, such arrangements are in line with the efforts of the Organization to be responsive and inclusive and achieve gender parity, and therefore should be viewed favourably as a useful tool by staff and managers alike, where exigencies of service allow;
- (b) Flexible working arrangements are voluntary arrangements agreed between staff and managers, such as first reporting officers;
- (c) Managers should discuss the appropriate possibilities for staff members to avail themselves of flexible working arrangements. It is recognized that

flexible working arrangement options may not be possible for some jobs and/or at certain periods of time;

(d) Staff members should seek written approval from their managers to avail themselves of the flexible working arrangements. **When denying such requests, managers shall provide the basis for the non-approval in writing.** Managers may suspend or cancel previously approved flexible working arrangements at any time due to exigencies of service or unsatisfactory performance. Staff members shall be informed of the basis for suspension or cancellation in writing. The Office of Human Resources shall monitor the implementation of the present bulletin and report on a regular basis to the Secretary-General on the Organization's usage of the different flexible working arrangements options; (emphasis added).

(e) Approved flexible working arrangements shall be incorporated into an agreement between the staff member and manager. The agreement shall specify the duration and specifics related to the flexible working arrangement. A combination of one or more flexible working arrangements modalities may be authorized. One-time, ad hoc arrangements do not require the establishment of an agreement;

(f) It is the responsibility of all parties to the agreement to optimize the benefits of flexibility while minimizing potential problems. When staff members avail themselves of flexible working arrangements, their productivity and quality of output must be maintained at a satisfactory level, as assessed by their managers. First reporting officers should clearly communicate to staff their responsibilities and agreed deliverables. First reporting officers and staff are reminded of their performance management obligations, outlined in administrative instruction ST/AI/2010/5;

(g) No extra costs may be incurred by the Organization as a result of any of the flexible working arrangements;

(h) The use of flexible working arrangements requires careful planning and preparation on the part of all concerned. The relevant administrative office, with overall guidance from the Office of Human

Resources, shall provide assistance to managers and staff, as required.

2.2. Certain components of the flexible working arrangements may be advised by the Medical Director or a duly authorized Medical Officer as being suitable to accommodate medical restrictions or limitations as part of a time-limited return-to-work programme. In line with the general principles of reasonable accommodations for short-term disability, if that advice is rejected, the manager would be required to establish that the requested accommodations represent a disproportionate or undue burden on the workplace.

...

Working away from the office (telecommuting)

3.5. Staff members may be authorized, upon written request, to work from an alternative work site at their official duty station when such an arrangement is consistent with the nature of the work involved. Care should be taken to ensure that telecommuting does not result in additional demands on other colleagues.

3.6. Authorization for staff members to work from an alternative work site at their official duty station may be given if the relevant staff members shall be reachable by telephone or email during the core working hours set for their duty station, and if they have, or obtain at their own expense, the necessary office equipment to discharge their official functions. Such equipment shall normally include a computer, access to the internet and a telephone.

...

3.10. In cases where there are compelling personal circumstances, consideration may be given to allowing staff members to telecommute from outside the staff member's official duty station for an appropriate duration not exceeding six months. Managers may, in exceptional circumstances, consider an extension of the authorization to remotely telecommute for an additional period not exceeding three months. Remote telecommuting does not constitute a change of official duty station within the meaning of staff rule 4.8 (a).

32. As follows from the above, a staff member is not entitled as of right to enjoy FWA and must seek written approval from their manager to work on such basis. A manager may allow a staff member to telecommute for an appropriate period not exceeding six months, which in exceptional circumstances may be extended for an additional period not exceeding three months. Where a request to telecommute is refused, reasons for that refusal are to be given by the manager.

33. 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. *Sanwidi* 2010-UNAT-084, para. 42. The Tribunal may consider whether relevant matters have been ignored and irrelevant matters considered and also examine whether the decision is absurd or perverse, *Id.*, para. 40. If the Administration acts irrationally or unreasonably in reaching its decision, the Tribunal is obliged to strike it down. *Belkhabbaz* 2018-UNAT-873, para. 80.

34. However, it is a quintessential abuse of discretion to ignore the factual circumstances upon which a request to telecommute is based. The record in this case reveals that this is precisely what occurred in connection with the 29 February 2024 decision when the Organization failed to consider the applicable circumstances in which the most recent request was made. As such that decision was unlawful.

35. In taking the contested decision on 29 February 2024, the Director/RMSDD insisted that the Applicant had been medically cleared to commence working in Amman from 1 March 2024. This medical clearance was based on the factual circumstances as of 8 August 2023. On 29 February 2024, it is evident that the Director/RMSDD gave no regard to the Applicant's compelling personal and medical circumstances in refusing her request to work remotely from 1 March 2024. The Director/RMSDD also failed to take into consideration the changed circumstances in Amman during this period. Amman would have been the Applicant's new "duty station" as a result of combat in Lebanon. Working in another duty station other than Amman would be considered FWA - not telecommuting - as it would have been officially outside the new "duty station".

36. The Respondent's arguments that the ES/ESCWA reasonably exercised her discretion under ST/SGB/2019/3 in denying the Applicant's request for telecommuting are premised on events that preceded the 29 February 2024 decision, specifically:

- a. ESCWA's agreement in 2020 to medically evacuate the Applicant for treatment in Germany despite the availability of adequate medical care in Lebanon;
- b. ESCWA granting the Applicant authorization to telecommute in 2021, 2022 and 2023;
- c. ESCWA accepting the withdrawal of the Applicant's resignation, initially submitted effective March 2023;
- d. that it was essential to maintain a consistent and fair approach across the Organization, noting that the established telecommuting procedures ensure that every staff member is treated fairly and equitably; and
- e. that the Applicant's duties involved in-person meetings with stakeholders, including local departments, that required her presence at the duty station and that could not be carried out by telecommuting.

37. The events described in points (a) to (c) above all occurred prior to the August 2023 decision. At best they simply establish that the Organization had acted properly previously but they are irrelevant to the decision under review. Point (d) addresses the disparate treatment issue although it fails to recognise that the Applicant was not similarly situated to every other staff member who, at least on this record, had not been seriously injured in the explosion and still undergoing medical treatment. Point (e) is an appropriate issue for the Organization to consider, but there is no evidence that it did so in February 2024.

38. The Applicant also claims that the denial of her remote work request occurred after the issuance of an *ad hoc* telecommuting policy at ESCWA which authorized all staff members to work remotely as of October 2023, due to the worsening security situation in the region, and that this was a blatant and unjustified disparity in treatment constituting discrimination.

39. The Tribunal, however, has noted that the evidence on the record indicates that ESCWA authorized all its staff members to telecommute from 24 October until

1 January 2024. At the time of the contested decision, therefore, the *ad hoc* telecommuting arrangement had ceased. As such the Applicant was not treated differently from others and thus there was no discriminatory treatment in this regard.

40. Thus, the Tribunal finds that the 29 February 2024 implied decision not to grant the Applicant's request for remote work was unlawful, but was not discriminatory.

Damages

41. The Applicant sought the following relief in her application:

- a. Authorization to work remotely and reassignment to a suitable duty station;
- b. Compensation for the material damages suffered, i.e., salary for the 12 months that she was forced to remain on SLWOP, and reimbursement of the insurance premiums she had to pay out of pocket in the amount of USD14,463.96, or, at least, in the lower amount corresponding to the premium paid while she was forced to stay on SLWOP;
- c. Compensation for the moral damages suffered (including proven psychological damage) and damage caused by the undue delay in addressing her situation, in the amount of one year's salary; and
- d. Reimbursement of reasonable legal fees incurred in the submission of her case.

42. Articles 10.5 (a) and (b) of the UNDT Statute provide that the Tribunal may only order one or both of the following:

- (a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific

performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

43. The Tribunal takes judicial notice that the Applicant separated from the Organization on 15 January 2025.³ The Applicant acknowledges this and that specific performance does not appear practicable given this change of circumstances. The Tribunal will therefore consider compensation as an alternative.

44. In this regard, the Tribunal observes that on 25 April 2024, DHMOSH reassessed the Applicant's medical clearance, upon considering developments in the Middle East with combat activities affecting Jordan, and determined that the Applicant: was not cleared to work in Lebanon (all cities); was not cleared to work in Jordan (all cities); and that in case the Organization wished to assign her to any other duty station, DHMOSH would review the suitability of such duty station from the medical perspective in advance of those considerations. This reflects the expanding insecurity concerns across the Middle East region.

45. The Tribunal finds that the ESCWA Administration would have granted the Applicant's telecommuting request had her request been lawfully considered in February 2024. The Applicant therefore awards the Applicant compensation for material damages for the period 1 March 2024 to 1 December 2024.

Moral Damages

46. The Dispute Tribunal is authorized to order compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of an applicant. To determine whether a claim for moral damages is established and to calculate an appropriate award, much will depend on

³ *AEM* Order No. 61 (NBI/2025), para. 3, in Case No. UNDT/NBI/2025/018.

the circumstances of the situation at hand, as the existence of moral damages shall be assessed on a case-by-case basis. *Kebede* 2018-UNAT-874, para. 22.

47. Based on the evidence in this case, as specifically pleaded by the Applicant and corroborated in the letters and medical reports filed as part of her application, the Tribunal finds that the Applicant suffered harm to her mental health as a result of the contested decision. What is difficult to discern from the case record is the extent and severity of the psychological harm she suffered as a direct consequence of the 29 February 2024 contested decision denying her request to work remotely and to continually retain her on SLWOP until her separation on 17 December 2024.

48. The 4 February 2024 medical report from the Applicant's treating doctor stated in relevant part,

[The Applicant] has been under my care since 09/22/2022. I see [the Applicant] regularly in my office in San Francisco, CA for the treatment of anxiety initially diagnosed as PTSD and connected to injuries incurred during the Beirut explosion on Aug 4th 2020. She also sees a trauma specialist therapist weekly. I am writing this letter to provide a clinical update of [the Applicant's] psychiatric well being.

Due to chronic and unremitting work-related stressors, [the Applicant's] anxiety and now depressive symptoms are worsening. While [the Applicant] had been improving psychologically to the point she no longer formally meets criteria for PTSD (formally assessed July 2023) and she is capable of working at full-capacity, her anxiety and depressive symptoms have recently deteriorated due persistent challenges to resume her work and/or secure a reasonable alternative position within the UN organization. As her physical, professional, psychological, and financial security are all now threatened, [the Applicant] is decompensating psychologically. She now struggles with her sleep, low energy, and lack of motivation, in addition to having panic attacks with increasing frequency. She is now requiring psychiatric medication for the management in her symptoms, which was not previously necessary. She is currently being prescribed Lexapro 10 mg daily, Gabapentin 600-900 mg at night, and Xanax as needed for anxiety. She is also suffering from a back injury that requires ongoing medical evaluations, treatment, and an interventional procedure in November 2023.

[The Applicant's] primary psychiatric diagnosis is Adjustment disorder with mixed anxiety and depressed mood (F43.23). She is

able to work in her profession without restrictions, if given the option to work remotely. Given her history of chronic PTSD, it is important to prioritize both her physical and psychological well-being and ongoing treatment. I have recommended against temporary assignments outside the United States, in order for her to continue with her established medical care and access to social supports. Due to the risk of exacerbating [the Applicant's] PTSD symptoms, I advise she is not assigned to work in areas of high conflict. If it is decided to pursue a non-temporary position, she should not resume work in a war zone, or territory known to have a heightened level of violence and/or social conflict due to the risk of re-traumatization. In addition, I would advise she not resume work in Lebanon specifically due the risks of being re-traumatization. (Emphasis added).

49. After the contested decision was taken on 22 February 2024, the Applicant's treating doctor issued another medical report on 9 March 2024 which is also partly reproduced below.

Due to chronic and unremitting work-related stressors, [the Applicant's] anxiety and now depressive symptoms are worsening. [The Applicant] had been improving psychologically to the point she no longer formally met clinical criteria for the diagnosis of PTSD (as assessed in July 2023) and she is capable of working at full-capacity, but her anxiety and depressive symptoms have recently deteriorated due persistent challenges to resume her work and/or secure a reasonable alternative position within the UN organization. As her physical, psychological, professional, and financial security are all now threatened, [the Applicant's] is decompensating psychologically. She now struggles with her sleep, low energy, and lack of motivation, in addition to having panic attacks with increasing frequency. She is now requiring psychiatric medication for the management in her symptoms, which was not previously necessary. She is currently being prescribed Lexapro 10 mg daily, Gabapentin 600-900 mg at night, and Xanax 0.25 mg as needed for anxiety. She is also suffering from a back injury that requires ongoing medical evaluations, treatment, and an interventional procedure in November 2023.

[The Applicant's] primary psychiatric diagnosis is Adjustment disorder with mixed anxiety and depressed mood (F43.23). She is able to work in her profession without restrictions, if given the option to work remotely. Given her history of chronic PTSD, it is important to prioritize both her physical and psychological well-being and ongoing treatment. I have recommended against temporary assignments outside the United States, in order for her to continue with her established medical care and access to social supports. Due to the risk of exacerbating [the Applicant's] PTSD

symptoms, I advise she is not assigned to work in areas of high conflict. If it is decided to pursue a non-temporary position, she should not resume work in a war zone, or territory known to have a heightened level of violence and/or social conflict due to the risk of re-traumatization. In addition, I would advise she not resume work in Lebanon specifically due the risks of being re-traumatization (sic).

With regards to UNESCWA's request for my advice on [the Applicant's] reassignment options, considering my background as a physician I cannot attest to the suitability of duty stations. Certainly moving out of the country would be destabilizing and disruptive to [the Applicant's] care. Remaining in the US would at least allow her to continue working with her clinical team by remote means. However, due to licensing requirements, [the Applicant's] clinical team cannot work with her while she is living outside the US. Considering the complexity of her situation and the destabilizing effects of an international move that would require her full attention and the impossibility of creating a transition of care to a new clinical team that would understand the complexity of her situation, it is my firm recommendation that [the Applicant] remains under the care of her current providers. If remote work cannot be extended, a reassignment to New York, where [the Applicant] has access to family and social support, would be the least destabilizing option.

Considering [the Applicant] is trying to recover from a significant work-related injury, it is not clear to me as to why she is being forced to decide between continuing her medical care or her job and professional livelihood within the UN. If she moves to Amman, Jordan, she will have a break in her medical care and risks not being able to find equivalent care for a delayed period as it inevitably takes time to find psychiatric and medical providers with high specializations whenever one moves internationally. If she prioritizes her medical and psychological care, because she is being told she cannot work remotely, then she is placed in the position of resigning from her job. And yet, she is not being given a reason as to why she cannot work remotely. Over the last several years, we have all learned how work can be attended to adequately and effectively by remote means. Under [the Applicant's] current circumstances, it seems working remotely would be an ideal alternative and solution which allows her to continue her medical and psychological treatment while fulfilling her professional obligations.

Lastly, [the Applicant] has made clear to me that the position proposed in Amman, Jordan is unrelated to her specialization and does not entail managing a portfolio of work comparable to her current role ... in Beirut. Hence, I think it will be counter-productive to her psychological well-being. Also, [the Applicant] has past history of medical mismanagement in Amman, Jordan. This has

undermined her confidence in the medical system and in turn leads me to discourage her reassignment there, especially as she is continuing to need medical care for work-related injuries, resulting from the explosion in Beirut. Finally, based on the news of the ongoing war in the Middle East region, I would not advise reassigning [the Applicant] to the heart of the region in Amman, Jordan. As a survivor of the Beirut explosion, a move to Amman increases risks of her re-traumatization, and can further complicate her recovery. This is particularly the case as, [the Applicant] is a single woman who does not have access to a family support system in Jordan. (Emphasis added).

50. In light of the foregoing, the Tribunal finds on the evidence that the unlawful decision contributed to the psychological distress that the Applicant suffered subsequent to the contested decision and is continuing to suffer. The Applicant seeks compensation for the moral damages suffered and caused by the unlawful decision, in the amount of one year's salary.

51. The Tribunal assesses 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 .⁴

Reimbursement of legal fees

52. The Applicant also seeks reimbursement for legal fees incurred in connection with this case because "Applicants face a major hurdle in the inability to seek reimbursement for legal fees, even when they win their case. This restriction is often justified by OSLA's [Office of Staff Legal Assistance] existence, yet many prefer independent legal representation over United Nations-employed lawyers. There is no clear reason for this limitation; successful applicants should be entitled to reimbursement of costs, regardless of their legal counsel. A change in this approach is long overdue".

53. The Respondent argues that the Applicant's request should be denied because the Appeals Tribunal has emphasized that granting such an order will be rare and only in the unusual circumstances of an applicant having no staff legal assistance.

⁴ See for example *Kebede op. cit.* award at the UNDT which was ultimately reversed.

Where OSLA or an equivalent service is available to staff members, as was the case here, the Respondent submits that such losses will not need to be incurred.

54. Article 10.6 of the UNDT Statute provides that where “the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party”. 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. *Hakam Shahwan* 2024-UNAT-1429, para. 72.

55. In particular circumstances, costs may be awarded under art. 10.5(b) as a form of compensatory damage for harm where loss is attributable to the Organization’s unlawful acts or omissions. However, such an award will only be made in rare circumstances having regard to the facts and where no staff legal assistance was available which caused the staff member to incur the cost of external legal advice. Where OSLA or an equivalent service is available to staff members, such losses will not need to be incurred and will not be compensated. *Id*, para. 74 citing to *Rolli* 2023-UNAT-1346, para. 62.

56. Applying these standards to the present case, The Tribunal finds that the Secretary-General has not manifestly abused the appeals process to justify an award of legal costs. Also, the Applicant has 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.

Conclusion

57. In view of the foregoing, the Tribunal DECIDES:

- a. The contested decision is rescinded;
- b. In lieu of specific performance, the period between 1 March 2024 and 1 December 2024 shall be regularized as Special Leave With Full Pay (“SLWFP”) for the Applicant;

- c. The Organization shall pay the Applicant all the benefits and entitlements related to the regularized SLWFP;
- d. The Applicant is awarded 10 months' net pay as compensation for moral damages;
- e. The above-mentioned payments shall bear interest at the United States of America prime rate with effect from the date this Judgment becomes executable until payment of said compensation. An additional five per cent shall be applied to the United States prime rate 60 days from the date this Judgment becomes executable; and
- f. All other claims are rejected.

(Signed)

Judge Sean Wallace

Dated this 9th day of May 2025

Entered in the Register on this 9th day of May 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi