UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1557

Thomas John Caldin & Michael John Langelaar
(Appellants)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Katharine Mary Savage Judge Kanwaldeep Sandhu
Case No.:	2024-1950
Date of Decision:	27 June 2025
Date of Publication:	29 July 2025
Registrar:	Juliet E. Johnson

Counsel for Appellants:	George G. Irving
Counsel for Respondent:	Phyllis Hwang & Francisca Lagos Pola

JUDGE GRAEME COLGAN, PRESIDING.

1. United Nations staff members Thomas Caldin and Michael Langelaar (the Appellants) are, respectively, a Reviser with the Department for General Assembly and Conference Management (DGACM) and a Corrections Officer with the United Nations Assistance Mission in Somalia (UNSOM). The Appellants, as unrelated parents of children born in 2022, 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 (contested decisions).

2. On 30 August 2024, by Judgment No. UNDT/2024/053 (impugned Judgment),[1] the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed the Appellants' applications. The Appellants now appeal to the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) against the impugned Judgment.

3. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

4. With some minor and inconsequential exceptions, the Appellants do not dispute the UNDT's factual findings set out between paragraphs 4 and 17 of its Judgment. Supporting that Judgment, the Secretary-General does not contest these findings. We will therefore set out verbatim the relevant findings of the impugned Judgment as follows:[2]

> … On 30 December 2022, the United Nations General Assembly adopted its resolution 77/256 A-B (United Nations common system) confirming the establishment of the new parental leave framework and requesting the Secretary-General to implement the framework in the Secretariat of the United Nations within existing resources, on an exceptional basis, for the year 2023.
>
> …. On 1 January 2023, the Secretary-General promulgated ST/SGB/2023/1 (Staff Regulations and Staff Rules, including provisional Staff Rules, of the United Nations).
>
> … Provisional staff rule 6.3 (Parental leave) reflects a change in the parental leave entitlement under General Assembly resolution 77/256 A-B. It replaces the former maternity, paternity and adoption leave provisions with a unified 16 weeks of parental leave

[1] *Caldin and Langelaar v. Secretary-General of the United Nations*, Judgment No. UNDT/2024/053.
[2] *Ibid*., paras. 4-17.

for all parents and provides an additional period of 10 weeks for the parent who gives birth. Previously, former staff rule 6.3 granted 16 weeks for maternity leave and four weeks (or eight weeks if serving in a non-family duty station) of paternity leave.

... On 27 February 2023, the Secretary-General promulgated ST/AI/2023/2 (Parental and family leave) which entered into force as of 1 January 2023.

... On 8 March 2023, the Assistant Secretary-General for the Office of Human Resources ("ASG/OHR") in the Department of Management Strategy, Policy and Compliance ("DMSPC") informed the Heads of Entities of the Secretariat of the Secretary-General's approval of a transitional measure which aims to facilitate the transition from the previous parental leave scheme to the new one. Specifically, "birthing parents" of children born in 2022, who were still on maternity leave as of 1 January 2023, would be eligible for an additional ten weeks of special leave with full pay ("SLWFP").

Mr. Caldin's claim

... On 12 October 2022, Mr. Caldin's child was born.

... On 22 March 2023, Mr. Caldin requested 16 weeks of parental leave under the new parental leave scheme. On 23 March 2023, the Administration rejected Mr. Caldin's request.

... On 12 May 2023, Mr. Caldin submitted a request for management evaluation of the 23 March 2023 decision to deny his request for 16 weeks of parental leave.

... On 6 June 2023, the Under-Secretary-General for DMSPC ("USG/DMSPC") upheld the 23 March 2023 decision to deny Mr. Caldin's request for 16 weeks of parental leave.

Mr. Langelaar's claim

... On 2 December 2022, Mr. Langelaar's child was born.

... On 8 March 2023, Mr. Langelaar requested 16 weeks of parental leave under the new parental leave scheme.

... On 12 March 2023, the Administration rejected Mr. Langelaar's request.

... On 10 April 2023, Mr. Langelaar submitted a request for management evaluation of the 12 March 2023 decision to deny his request for 16 weeks of parental leave.

> ... On 6 May 2023, the USG/DMSPC upheld the 12 March 2023 decision to deny Mr. Langelaar's request for 16 weeks of parental leave.

Submissions

The Appellants' Appeal

5. The Appellants request the Appeals Tribunal, to rescind the contested decisions, reverse the impugned Judgment and award them damages in the amount of two years' net base salary.

6. The Appellants submit that the UNDT erred in concluding that the transitional measure of granting 10 weeks of special leave with full pay to birth mothers who were still on maternity leave on 1 January 2023 was not discriminatory. The Appellants argue that the transitional measure violated higher norms, Article 8 of the United Nations Charter and Staff Regulation 1.2(a). They further argue that the transitional measure disregarded the spirit of the Report of the International Civil Service Commission (ICSC) for the year 2022 (A/77/30) (ICSC Report), which emphasises that all parents should be equally entitled to appropriate parental leave to achieve gender equality and parity. The Appellants assert that the reliance by both the UNDT and the Secretary-General on the World Health Organization's (WHO's) recommendations is misplaced, as there is "no rational connection between that goal and the transitional measure that was promulgated". With respect to the differential treatment created by the transitional measure, the Appellants argue that the "only distinction" it made was based on the gender of the parents. They further assert that their specific "circumstances and concerns were not taken into account in the discretionary decision to limit the scope of the transitional measure to staff on maternity leave".

7. The Appellants contend that the UNDT erred in concluding that the Secretary-General's decision to limit the new parental leave policy to parents whose children were "born or adopted on or after 1 January 2023" was lawful.[3] They argue that Administrative Instruction ST/AI/2023/2 (Parental leave and family leave) directly contradicts the "clear meaning" of Staff Rule 6.3, noting that neither this Staff Rule nor General Assembly resolution 77/256 A-B restricts the application of the new parental leave policy solely to parents whose children were born or adopted on or after 1 January 2023.

8. Finally, Mr. Langelaar submits that the UNDT erred in concluding that the Administration's decision to deny his request for special leave with full pay (SLWFP) was lawful.

[3] Section 1.2 of Administrative Instruction ST/AI/2023/2 (Parental leave and family leave).

He contends that the "reasoning behind that decision was never articulated" and that the decision appears to be "completely contrary to the announced intention of the new parental leave policy". He further argues that the Administration's suggestion that he instead take special leave without pay (SLWOP) demonstrates that the "only interest" considered by the Administration was "saving money".

The Secretary-General's Answer

9. The Secretary-General requests the Appeals Tribunal to affirm the impugned Judgment and dismiss the appeal in its entirety.

10. The Secretary-General submits that the UNDT concluded correctly that the transitional measure of granting special leave to birth mothers was not discriminatory. He argues that the Appellants have failed to demonstrate any error in the UNDT's conclusion that would warrant a reversal of the impugned Judgment. He asserts that they merely disagree with the impugned Judgment and are attempting to reargue their case. He maintains that this part of the appeal should be dismissed on that ground alone.

11. Even if the Appeals Tribunal were to consider the Appellants' arguments, he contends that they should be dismissed as lacking merit. The Secretary-General submits that, contrary to the Appellants' contention, the Administration did not condition eligibility for the transitional measure on gender but rather distinguished between mothers who give birth and parents who did not, in order to facilitate breastfeeding and address the post-natal needs of birth mothers. He highlights that these needs were extensively discussed in the development of the parental leave policy, citing, among other things, paragraph 75 b) of the Report of the International Civil Service Commission (ISCS) for the year of 2022 (A/77/30), which recommended that "[t]he specific pre- and post-delivery needs of birth mothers should be covered with additional leave, in line with the WHO recommendation to provide six months of leave to allow for breastfeeding and bonding with the child".

12. The Secretary-General submits that the UNDT correctly concluded that the Appellants' rights under Staff Rule 6.3 were not restricted simply because they did not benefit from the new parental leave policy. He argues that the Appellants' contrary position merely repeats arguments raised before the UNDT and should be dismissed on that basis alone.

13. Alternatively, even if the Appeals Tribunal were to consider the Appellants' arguments, the Secretary-General contends that they lack merit. He submits that, by limiting the application of the new parental leave policy to parents whose children were born or adopted on or after 1 January 2023, as set out in ST/AI/2023/2 (promulgated to implement Staff Rule 6.3), he acted in accordance with Staff Rule 6.3, which explicitly states that the granting of parental leave was subject to the "conditions established by the Secretary-General".

14. The Secretary-General argues that the decision to expressly limit the application of the new parental leave policy to parents whose children were born or adopted on or after 1 January 2023 was a lawful exercise of its discretion. In this regard, he highlights that, pursuant to Sections 1.1(a) and 4.1 of Secretary-General's Bulletin ST/SGB/2009/4 (Procedures for the promulgation of administrative issuances), his discretion to regulate the conditions of service of staff members includes the authority to issue administrative instructions to implement the Staff Regulations and Rules.

15. The Secretary-General further submits that his discretionary decision to apply new parental leave solely to parents whose children were born or adopted on or after 1 January 2023 was consistent with the effective date of Staff Rule 6.3 (i.e., 1 January 2023) and in accordance with the general principle of statutory or regulatory non-retroactivity. He adds that this decision was also in line with the express request from the General Assembly that the new parental leave scheme be implemented "for the year 2023".[4] Furthermore, the Secretary-General submits that even if alternative approaches to implementation had been possible, such alternatives could have raised consistency concerns. In any event, he recalls that it is "not the role of the Dispute Tribunal to consider the correctness of the choice made by the Administration amongst the various courses of action open to it".[5]

16. Finally, the Secretary-General contends that the UNDT concluded correctly that the decision to deny Mr. Langelaar's request for SLWFP was lawful, rational, and procedurally correct. He asserts that Mr. Langelaar has failed to demonstrate that the Administration took into account irrelevant factors or that the decision was motivated by bias or bad faith.

[4] General Assembly resolution 77/256 A-B.
[5] *Boubacar Dieng v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1118, para. 47.

Considerations

17. This appeal relates to the lawfulness of the transitional provision covering the entitlements of non-birthing staff member parents[6] of children born in the year 2022. The case cannot otherwise be about the lawfulness of the United Nations' new parental leave regime affecting all staff member parents of children born during and after the year 2023. The Appellants' children (whose circumstances and those of their fathers who allege that the impugned decisions have affected them adversely) were born in 2022. The Appellants began to accrue parental leave rights in 2022 and their cases therefore necessarily address the transitional arrangement bridging the prior and new regimes. Nor do their cases raise any parental leave issues in respect of children born before the year 2022.

18. At the heart of this case is the meaning of an important word, "discrimination", and its grammatical variants. While commonly referred to in this case and otherwise as that word alone, what is at issue is unlawful or unfair treatment or discrimination. Not every unequal treatment is unlawful. Examples include what are sometimes called positive discriminations, disparate favours, inhibitions or prohibitions which, nevertheless, are justifiable objectively as serving a social good. The United Nations, as with most international bodies and many national legal systems, allows, and indeed, encourages such positive discriminations, for example to advance the participation of under-represented groups in a workforce by favouring them by sex, geographic origin and other equitable considerations. However, if discrimination or unequal treatment is based on a prohibited characteristic without reasonable justification or a *bona fide* occupational or other requirement, it will be unlawful.[7]

19. Such so-called positive discriminations have been recognised by the UNAT as both not unlawful and indeed beneficial to previously disadvantaged groups, including in cases such as *Canova*, *Krioutchkov* and, going back to 2011, *Tabari*.[8]

[6] Predominantly fathers but also potentially adoptive mothers and mothers by surrogacy.
[7] Pursuant to Section 1.1 of Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority), discrimination is "any unfair treatment or arbitrary distinction based on a person's race, sex, religion, nationality, ethnic origin, sexual orientation, disability, age, language, social origin or other status".
[8] *Alejandro Frederico Izurieta Canova v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1252, para. 39; *Vladislav Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1248, para. 32; *Tabari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2011-UNAT-177, para. 26.

20. In 2011, this Tribunal stated in *Tabari* that difference in treatment is "discriminatory when it affects negatively the rights of certain staff members or categories of them, due to unlawful reasons. But when the approach is general by categories, there is no discrimination, when the difference is motivated in the pursuit of general goals and policies and when it is not designed to treat individuals or categories of them unequally".[9]

21. In *Elmi*,[10] we noted that there is no prohibition on every form of differential treatment between staff members. Different treatment constitutes discrimination only when there is no lawful and convincing reason for it, such as when based on an *a priori* unlawful criterion such as gender or race, or when there are no significant differences between the categories of staff members being treated differently.

22. It follows that to decide if discrimination exists or not, it must be determined first whether or not there has been a difference in treatment or differentiation between people or categories of people. If differentiation is shown to exist, 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.

23. In this case it is argued by the Secretary-General that a discriminatory consideration favouring birthing parents justifies and legitimises what might, in a strict and completely egalitarian and non-contextual interpretation and application of a staff rule, be held to be discriminatory against non-birthing parents. There is a valid distinction between birthing and non-birthing parents in relation to the gestation, birth, and early post-natal development of such children. While that is exhibited in most cases by reference to the former being female and the latter male, the discrimination is not essentially on that basis but reflects the reality of human reproduction and may even be said to be a bias in favour of the newborn.

24. The transitional measure at issue in this case was based on an e-mail dated 8 March 2023 from the Assistant Secretary-General for the Office of Human Resources (ASG/OHR), issued to the Heads of Entities of the Secretariat to guide their responses to applications for parental leave such as those at issue in this case. This was to ensure consistency and universality of approach to such issues. ST/AI/2023/2, issued on 27 February 2023 but with retroactive effect to

[9] *Tabari* Judgment, *op. cit.*
[10] *Elmi v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-704, paras. 32-33.

1 January 2023, followed the Secretary-General's Bulletin ST/SGB/2023/1 (Staff Regulations and Staff Rules, including provisional Staff Rules of the United Nations), which became effective on 1 January 2023, two days after General Assembly resolution 77/256 A-B, directing the implementation of the new parental leave regime, was adopted on 30 December 2022.

25. It is notable that the General Assembly was both concerned to have the new regime implemented for the year 2023 but that it did not direct the Secretary-General to make any part of this new regime retroactive. It could have given the Secretary-General such a direction, but it did not do so. The Secretary-General interpreted the General Assembly's directions correctly and created the detail of the regime (ST/SGB/2023/1 and then ST/AI/2023/2) accordingly. So interpreted, General Assembly resolution 77/256 A-B, ST/SGB/2023/1 and ST/AI/2023/2 conform and must be applied irrespective of subjective considerations of fairness or equity that staff members may genuinely hold.

26. While ST/SGB/2023/1 recorded changes to be made to relevant Staff Regulations and Rules to accord with the new regime, and which changes were deemed to have come into effect from 1 January 2023, the transitional measure was not formalised in the same way. Rather, it was an interpretative and applicatory memorandum. It advised the Heads of Entities of the Secretariat how to apply ST/SGB/2023/1 and associated Staff Regulations and Rules regarding changes to issues that might arise for parents of children born to staff during 2022 who were still on, or entitled to further, parental leave (then called maternal, paternal and adoption leave).

27. ST/SGB/2023/1 provided for new provisional Staff Rules and, in particular, provisional Staff Rule 6.3 (Parental leave) addressing "a change in the parental leave entitlement pursuant to General Assembly resolution 77/256 A-B to replace the current maternity, paternity and adoption leave provisions with a parental leave provision of 16 weeks for all parents; and to provide an additional period of 10 weeks for the parent who gives birth".

28. Newly adopted Staff Rule 6.3, effective 1 January 2023, provides:

> Rule 6.3
> Parental leave
> (a) Under conditions established by the Secretary-General, staff members shall be granted:
> (i) Sixteen weeks of parental leave with full pay in the case of the birth or adoption of a child;
> (ii) An additional period of 10 weeks of prenatal and postnatal leave with full pay for the parent who gives birth, bringing the total duration of their parental leave to 26 weeks;

> (b) Staff members may avail of the 16 weeks of parental leave mentioned in paragraph (a) (i) above any time within a year following the date of their child's birth or adoption, provided that it is completed during that year.
> (c) Parental leave in the case of the birth or adoption of a child under paragraph (a) (i) above may not be granted more than once in any 12-month period to be counted from the date of birth or adoption of the child. This paragraph (c) shall not apply to a parent who gives birth.
> (d) Sick leave shall not normally be granted for maternity cases during the prenatal and postnatal leave mentioned in paragraph (a) (ii) above, except where serious complications arise.
> (e) Annual leave shall accrue during periods of parental leave.

29. ST/AI/2023/2 provides materially, at its Section 10, as follows:

> 10.1 The present administrative instruction shall enter into force on 1 January 2023.
>
> 10.2 The provisions of administrative instruction ST/AI/2005/2 ("Family leave, maternity leave and paternity leave") shall apply to those staff members who were eligible to 16 weeks of maternity leave, 4 or 8 weeks of paternity leave or 8 weeks of adoption leave, on or before 31 December 2022.
>
> 10.3 ST/AI/2005/2 shall be abolished as of 31 December 2022, without prejudice to the provisions of section 10.2 above.

30. While ST/SGB/2023/1 did not address at all the situations of the Appellants and potentially others, and can be read to provide the extended parental leave rights to all staff members having an entitlement to unfulfilled parental leave from 1 January 2023, Staff Rule 6.3 was prefaced and conditioned by the important words "[u]nder conditions established by the Secretary-General". ST/AI/2023/2 contained those conditions that the Secretary-General was empowered to impose, so long as they were not in conflict with the newly adopted Staff Rule 6.3, which we agree with the UNDT they were not.

31. The Administration elected to interpret and apply the new regime as affecting all cases from 1 January 2023, so that the parents of children born before that date were subject to the former parental leave rules, while those born on or after 1 January 2023 were subject to the new regime. The Appellants allege that these timing and scope decisions which were to be applied in all cases, were arbitrary and discriminatory based solely on the sex of the parent.

32. The Appellants rely for their arguments of unlawful discrimination on the United Nations Charter and another Staff Regulation of long standing. Article 8 of the United Nations Charter states simply:

> The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

33. Staff Regulation 1.2(a) requires staff to uphold and respect the principles set out in the Charter, including "the equal rights of men and women".

34. While the United Nations' founding principles exhibited in its Charter are not to be narrowly interpreted or read down, the requirements of its Article 8 (as applied through Staff Regulation 1.2(a)) do not accommodate easily or coherently the situation of staff member parents of newborns. Very arguably, not providing additional parental leave to birthing parents might restrict their ability to participate under conditions of equality in their employment with the United Nations, the broad objective of Article 8. Undiscerning and contextually blind equality may cause inequity.

35. It is important also to refer to the staff rule-making process of the United Nations affecting this case. The precise details of these events are set out earlier in this Judgment adopting the UNDT's account of them. The General Assembly received and considered the ICSC Report affecting parental leave for staff. The Report was recommendatory, in that it could be adopted, declined or modified by the General Assembly. The thrust of the ICSC's recommendations was that the then-current provisions for maternity, paternity and adoption leave for staff should be replaced by a single parental leave regime that began from a starting point of equal length for all parents. However, additional pre-and post-birth leave allowing for the uncertainties of birth, for breastfeeding and for maternal bonding should be the subject of additional leave meaning that the parent giving birth (the mother) could enjoy up to six months' leave, whereas the non-birthing parent would be restricted to a lesser period of leave. The result of this was that birthing parents could enjoy unequal (longer) periods of leave based on their unique maternal relationship with the child.

36. The General Assembly adopted resolution 77/256 A-B on 30 December 2022. It required the Secretary-General to promulgate a new Bulletin embodying the new parental leave provisions

adopted by the General Assembly, beginning with effect from 1 January 2023 – just two days later. The Organization clearly wished to move quickly to implement these new arrangements.

37. On 1 January 2023, the Secretary-General promulgated ST/SGB/2023/1, affecting the Staff Regulations and Rules in relation to parental leave and creating new rules. The newly adopted Staff Rule 6.3 provided for 16 weeks of leave for all parents of newborns and a further period of 10 weeks for the birthing parent. Previous Staff Rule 6.3, which it replaced (and the Staff Rule applicable when the children of the Appellants of this case were born), made provision for 16 weeks of maternity leave and either four or eight weeks of paternity leave. The consequences in practice, once the new scheme was operational from 1 January 2023, were that mothers would receive the additional 10 weeks of parental leave, while fathers would receive an additional 8 or 12 weeks, depending on whether they were serving at a non-family duty station. There is no challenge in this case to these provisions as they relate to children born after 1 January 2023.

38. There was clearly a need for transitional provisions to cater for cases, such as the Appellants', which straddled the two regimes. On 8 March 2023, the ASG/OHR informed the Heads of Entities of the Secretariat by e-mail of the transitional measure at issue. This provisional measure provided that children born in 2022 whose mothers were still on maternity leave under the previous Staff Rule 6.3 as of 1 January 2023 would be eligible for an additional 10 weeks of SLWFP in 2023. It is this transitional provision that is the subject of the Appellants' challenge. Non-birthing parents, such as the Appellants in this case, would not be entitled to any leave in addition to that for which they qualified under the previous regime.

39. The Appellants' cases face the difficulty that the impugned decisions they challenged were not administrative decisions taken in relation to them (as the Appeals Tribunal has defined justiciable administrative decisions) but were rather in the nature of the rule-setting or legislative declarations affecting all staff members. It was open to the Secretary-General, authorised by the General Assembly, to promulgate rules and regulations as he did. If those promulgated rules and regulations are within the scope of what the General Assembly has required of the Secretary-General and if the latter has applied them lawfully in an individual case, a staff member cannot assert successfully the rules' invalidity under the United Nations' staff employment dispute resolution system. The Tribunals cannot review the validity of legislation and substitute their views for what the General Assembly has directed be 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.[11]

40. While it may be said that to prefer birth mothers over fathers in the transitional arrangement between the full applications of parental leave regimes was discriminatory, it was not unlawfully discriminatory. It was lawfully discriminatory for two positive and evidentially supported reasons. The first is the desirability that young babies be breastfed in circumstances that are inconsistent with their mothers also working full time for the United Nations. That is also applicable in the case of birthing parents (mothers) for a period in addition to the equal periods of care and nurturing by either parent or both parents. The second situation that this apparently discriminatory difference addresses is that birth mothers experience their own pre- and post-natal health and welfare needs not experienced by fathers.

41. Further, the Appellants cannot challenge the application of the rule to them on the ground of inconsistency of the challenged provision with the ICSC Report on which the General Assembly acted (even if it could be said that there was such an inconsistency, which we do not accept). The General Assembly received recommendations from the ICSC, which it was at liberty to accept or reject, in whole or in part. That the General Assembly and the Secretary-General considered and adopted the WHO's recommendations about the desirability of early breastfeeding of newborns, was its reliance on a relevant and proper consideration. We disagree with the Appellants' argument that there was no rational connection between the WHO's goals and the transitional measure adopted. What was offered to birth mothers was the opportunity to begin breastfeeding their newborns without the pressure of either having to continue in paid work or of having no income while caring for their infants. It was considered that this important objective should be achieved immediately after the adoption of the ICSC's recommendations by the General Assembly.

42. We now address the Appellants' particularised grounds of appeal.

43. The Appellants argue that ST/AI/2023/2 contradicts Staff Rule 6.3 and that General Assembly resolution 77/256 A-B did not require that the new parental leave policy was to apply only to children born after 1 January 2023. That is so. We note, however, that transitional provisions between regimes covering a period when factual circumstances continue to occur and change, are always difficult. A rule-maker has sometimes to settle on the limits to a transitional

[11] *Lloret Alcañiz et al. v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-840, para. 98.

regime that may appear somewhat arbitrary and unfair to affected people. That is not the same, however, as the unlawfulness of a transitional measure.

44. The Appellants further argue that the transitional measure disregarded the spirit of the ICSC Report, which emphasises that all parents should be equally entitled to appropriate parental leave to achieve gender equality and parity. We disagree. The ICSC Report was recommendatory and was not dictatorial of the measures the General Assembly and the Secretary-General chose to adopt.

45. The Appellants assert that the reliance by both the UNDT and the Secretary-General on the WHO's recommendations is misplaced, as there is "no rational connection between that goal and the transitional measure that was promulgated". We disagree. The transitional measure allowed for the ICSC's recommendations about longer maternal leave periods for maternal and infant health and welfare reasons.

46. The Appellants assert that their specific "circumstances and concerns were not taken into account in the discretionary decision to limit the scope of the transitional measure to staff on maternity leave". It would have been both unreasonable and impractical to have taken into account all the individual circumstances of fathers of children born in 2022 in determining the nature and scope of the transitional provision.

47. Finally, as a joint submission, the Appellants contend that the UNDT erred in concluding that the Secretary-General's decision to limit the new parental leave policy to parents whose children were "born or adopted on or after 1 January 2023" was lawful.[12] They argue that Administrative Instruction ST/AI/2023/2 directly contradicts the "clear meaning" of Staff Rule 6.3, noting that neither this Staff Rule nor General Assembly resolution 77/256 A-B restricts the application of the new parental leave policy solely to parents whose children were born or adopted on or after 1 January 2023. We detect no error in the impugned Judgment on this point. Following the General Assembly adoption of its resolution 77/256 A-B, it was open to the Secretary-General to set conditions on the application in practice of Staff Rule 6.3.

48. Addressing the argument advanced by Mr. Langelaar that the decision to deny his application for SLWFP was unlawful in that it was made without reasons and was contrary to the spirit of the new parental leave regime, we conclude that although it would have been preferable to

[12] Section 1.2 of ST/AI/2023/2.

have provided justification for that decision, it has not been shown to have been contrary to the words of ST/AI/2023/2.

49. Mr. Langelaar's contention is that the Administration's recommendation that he take SLWOP demonstrated that the Secretary-General's sole interest was in saving money and not in the interests of his child's welfare. We conclude that the UNDT has not erred in deciding that Mr. Langelaar's request for SLWFP was treated properly. Whether he was granted SLWFP was a decision to be made by the Administration in the exercise of its discretion. Its reasons could have been stated more clearly and, as Mr. Langelaar believes, its decision may appear to some to favour an interpretation that it was only interested in saving the Organization's funds.

50. However, we agree with the UNDT that this exercise of its discretion required a balancing of relevant factors, which the Administration undertook. It considered the alternatives offered to Mr. Langelaar. These included taking what would have amounted, in effect (albeit not as advantageous to him financially), to some further parental leave to which he would have been entitled before 2023 and to which he remained entitled in 2023. They also included using significant accumulated annual leave; taking "family leave" without pay under Staff Rule 5.5(a)(iv); and accepting the opportunity offered to work remotely ("telecommute") from his home for eight weeks, a flexible working arrangement he had enjoyed previously. These considerations, while they may not have been preferred by him, would have allowed him to spend time with his partner and child and were thus in the spirit of the United Nations' parental leave arrangements. They were declined by Mr. Langelaar. The Administration and the UNDT took these relevant circumstances into account and the Tribunal's decision of them has not been shown to have been wrong.

51. In all the circumstances, and while acknowledging the Appellants' disappointment of their wishes to spend important time with their new children, the application to them of the transitional measure was not unlawful or otherwise erroneous. The impugned Judgment has likewise not been shown to have been in error of law or fact.

Judgment

52. The Appellants' appeal is dismissed, and Judgment No. UNDT/2024/053 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 27th day of June 2025 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Colgan, Presiding	Judge Savage	Judge Sandhu

Judgment published and entered into the Register on this 29th day of July 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar