



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/020
Judgment No.: UNDT/2025/064/Corr.1
Date: 17 September 2025
Original: English

Before: Judge Margaret Tibulya

Registry: Geneva

Registrar: Liliana López Bello

IACOVINO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Jérôme Blanchard, HRLU, UNOG

Notice: This judgment has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. The Applicant, a former staff member of the International Trade Center (“ITC”), filed an application contesting the decision “not to extend [his] employment to cover [his] sick leave and instead to terminate [his] appointment and separate [him] while on certified sick leave”.
2. For the reasons stated below, the Tribunal grants the application in part.

Facts

3. The Applicant joined ITC in March 2013. He last served as a G-4 Documents Management Assistant under a continuing appointment that was due to expire on 31 August 2028.
4. On 4 September 2023, the ITC Senior Management Committee decided to abolish the Applicant’s post as part of its formal review of the ITC Print Shop’s business operations.
5. On 18 September 2023, the Chief of Human Resources, ITC, informed the Applicant of the decision to abolish the post he encumbered, effective 1 January 2024, and, as a result, to terminate his continuing appointment, effective 31 December 2023.
6. On 19 September 2023, the Applicant informed his supervisor that he would be absent due to “illness”. Subsequently, he went on continuous periods of certified sick leave from 19 September 2023 to 29 December 2023, which were both approved by the UN Medical Services and recorded on UMOJA.
7. On 16 November 2023, the Applicant requested management evaluation of the decision to “separate him [from service] by termination of his continuing appointment”.
8. On 21 December 2023, the Applicant submitted a request for certified sick leave to the UN Medical Services for the period from 1 January to 31 January 2024.

9. On 22 December 2023, the Applicant received an email indicating that the Medical Service had approved his certified sick leave from 2 to 31 January 2024. It is noteworthy that, while the medical certificate indicated that the sick leave should start on 1 January 2024, the approved starting date was 2 January 2024.

10. On 28 December 2023, the Applicant received the outcome of his 16 November 2023 request for management evaluation. The Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC) upheld the decision to abolish the Applicant's post and to terminate his continuing appointment effective 31 December 2023.

11. On 31 December 2023, the Applicant was separated from service.

12. On 30 January 2024, the Applicant submitted a new medical certificate to the UN Medical Service, whereby his treating physician recommended additional sick leave until the end of February 2024.

13. On 31 January 2024, the UN Medical Service informed the Applicant that the Administration had confirmed his separation on 31 December 2023 and that, as a result, it was no longer necessary to submit certificates for sick leave.

14. On 8 February 2024, the Applicant requested management evaluation of the decision "not to extend his employment to cover certified sick leave".

15. On 12 March 2024, the Applicant received the outcome of his 8 February 2024 request for management evaluation. The USG/DMSPC upheld the decision "not to reinstate [the Applicant] for the purpose of using the sick leave entitlement upon termination of his continuing appointment effective 31 December 2023 due to the abolition of [his] post".

16. On 10 June 2024, the Applicant filed the present application contesting the decision "not to extend [his] employment to cover [his] sick leave and instead to terminate [his] appointment and separate [him] while on certified sick leave".

17. On 11 July 2024, the Respondent filed his reply, *inter alia*, contesting in part the receivability of the application.

18. By Order No. 105 (GVA/2024), the Tribunal instructed the Applicant to file a rejoinder and encouraged the parties to explore resolving their dispute amicably.

19. On 24 September 2024, the Applicant filed his rejoinder.

20. On 1 October 2024, the parties filed a joint motion informing the Tribunal that an informal settlement in this matter was not possible.

21. On 1 April 2025, the present case was assigned to the undersigned Judge.

22. On 7 April 2025, the Tribunal held a Case Management Discussion (“CMD”) via MS Teams with both parties.

23. By Order No. 35 (GVA/2025) of 16 April 2025, the Tribunal, *inter alia*, directed the parties to file their respective closing submission by 23 April 2025.

24. On the same day, Counsel for the Applicant filed a motion requesting an extension of time to file closing submissions. The Tribunal granted this motion by Order No. 36 (GVA/2025) of 17 April 2025, and the parties filed their closing submissions on 5 May 2025.

Consideration

Receivability

25. In his reply, the Respondent asserts that the decision to abolish the Applicant’s post and to terminate his continuing appointment was reviewed by the then Management Evaluation Unit and upheld by the USG/DMSPC on 28 December 2023. He then claims that the Applicant did not challenge that decision before the Tribunal within the prescribed time-limits and that, as a consequence, any claim in this respect is not receivable.

26. Having considered the evidence on record, the Tribunal agrees with the Respondent. Therefore, the Tribunal finds that the only matter for adjudication before it is the decision “not to extend [the Applicant’s] employment to cover [his] sick leave and instead to terminate [his] appointment and separate [him] while on certified sick leave”.

Merits

27. To assess the lawfulness of the contested decision, the Tribunal must determine two issues:

- a. Whether the Applicant was on certified sick leave on 31 December 2023, when he was separated from service; and
- b. Whether his termination under those circumstances was lawful.

Whether the Applicant was on certified sick leave when he was separated from service

28. The Applicant advances the following two arguments in support of the assertion that he was on sick leave when his contract was terminated on 31 December 2023:

- a. 31 December 2023 fell within the sick leave period, which his treating physician had recommended for sick leave; and,
- b. Under staff rule 6.2, sick leave only covers “working days”. Since 31 December 2023 was a Sunday, and Monday, 1 January 2024 was a UN official holiday, it was not required for the certification of sick leave in Umoja to cover the weekend (30 and 31 December 2023), as they were not “working days”.

29. It follows that the termination of the Applicant’s contract occurred on Tuesday, 2 January 2024; when he was on certified sick leave.

30. The foregoing arguments are anchored on the fact that the Applicant had obtained sick leave certification from his treating physician until 18 March 2024. Under those certificates, the Applicant argues that he was granted continuous sick leave from 1 December 2023 until 18 March 2024.

31. The Respondent maintains that the leave which the Applicant alludes to was not certified by the Medical Service. While the Applicant acknowledges that certification by the Medical Service was required, he asserts that the only reason the Medical Service failed to consider his latest request for certification of the sick

leave was that he had been separated on 31 December 2023. The Applicant argues that since the separation caused the non-certification of his sick leave, it would be manifestly unreasonable to rely on the non-certification to justify the separation.

32. Staff rule 6.2 on sick leave provides as follows:

(a) Staff members who are unable to perform their duties for reasons of health, including illness or injury, or whose attendance at work is prevented by public health requirements may be granted certified or uncertified sick leave.

(b) Under conditions established by the Secretary-General, sick leave shall be granted as:

(i) Certified sick leave upon approval by the Secretary-General of a medical certificate or medical report or when, in accordance with staff rule 6.2 (i), the staff member is required by the United Nations Medical Director not to attend the workplace;

(ii) Uncertified sick leave[.]

33. Under the above provisions, all sick leave must be approved on behalf of, and under conditions established by the Secretary-General.

34. The Applicant argues that since 31 December 2023 was a Sunday and Monday, 1 January 2024, was a holiday in the United Nations, it was not required for the certification of sick leave to cover those days, as they were not “working days”. He cites *Applicant* UNDT/2012/091, para. 84, to support his argument that a staff member’s separation is not implemented until the working day after their last day of employment. To him, this means that he was separated on 2 January 2024. Relying on his treating physician’s certification of leave, he argues that he was on “unbroken” certified sick leave from 1 December 2023 until 18 March 2024.

35. The Respondent alleges that the Applicant was not on certified sick leave on his last day of appointment on 31 December 2023. He asserts that the Applicant’s sick leave was certified until 29 December 2023 and that the fact that he provided a medical certificate for 1 to 31 January 2024 is irrelevant, as he was no longer a staff member on 1 January 2024.

36. According to the evidence on record, the Applicant was on continuous periods of certified sick leave from 19 September 2023 to 29 December 2023. On 22 December 2023, the Medical Service approved another period of certified sick leave from 2 to 31 January 2024. It bears noting that the medical certificate from the Applicant's physician recommended that the Applicant be placed on sick leave from 1 to 31 January 2024. One can only assume that the Medical Service certified the Applicant's sick leave in Umoja starting on 2 January 2024 because 1 January 2024 was a UN Official Holiday.

37. Under the presumption of regularity, it is for the Respondent to minimally demonstrate the lawfulness of the contested decision. In the present case, the Respondent has failed to provide a proper explanation or justification as to why the Applicant's sick leave was not certified for the weekend and holiday between Saturday, 30 December 2023, and Monday, 1 January 2024, while having certified the Applicant's sick leave from 2 to 31 January 2024.

38. It is unrealistic to believe that the Applicant was fit to work or had resumed duties on those three *non-working* days.

39. It is thus logical to conclude that the lack of certification over the weekend and holiday period might have been a mistake by the Medical Service, which could have considered that there was no need to include those non-working days in UMOJA. Or, it might have been the result of a technical issue with UMOJA, as alleged by the Applicant.

40. By failing to provide a reasonable explanation for terminating the Applicant's contract on a non-working day that fell in the interval between two periods of *approved and certified* sick leave, the Tribunal is concerned that the Organization may have sought to take advantage of a potential system error or oversight to circumvent the fact that the Applicant was, indeed, on certified sick leave when his continuous appointment was terminated.

41. It follows that the Applicant's certified sick leave should be regarded as continuous until 31 January 2024.

42. Regarding the sick leave requests submitted for the period between 1 February 2024 and 18 March 2024, it is undisputed that these were neither reviewed nor certified by the Medical Service prior to 31 January 2024. The Tribunal notes that the Medical Service was instructed to cease assessing the Applicant's sick leave requests following his separation from service. However, in the absence of certification, any conclusion as to whether the Applicant would have been deemed on certified sick leave during that period remains speculative and cannot be considered.

43. Therefore, regardless of the reason for the Medical Service's failure to consider the Applicant's request for sick leave between 1 February 2024 and 18 March 2024, the fact remains that this period was not certified, as is legally required. As it follows, the Applicant's argument that he was on unbroken and continuous sick leave until 18 March 2024 is unsupported.

44. Based on the facts and on the law, the Tribunal determines that the Applicant was on certified sick leave until 31 January 2024, when his appointment was terminated on 31 December 2023.

Whether the Applicant's termination under those circumstances was unlawful

45. The Applicant grounds his challenge of the decision to separate him on the proposition that he was on continuous sick leave when he was separated. He argues that it is arbitrary for the Organization to extend the protections under section 3.9 of ST/AI/2005/3 on sick leave to some open-ended appointment holders but not to him; a staff member on a continuing appointment.

46. The Applicant further argues that permitting the separation of open-ended appointment holders while on sick leave, while protecting the rights of fixed-term appointment holders to either recover their health or exhaust sick leave with potential for disability, constitutes an arbitrary application of ST/AI/2005/3 by the Respondent.

47. ST/AI/2005/3, in which the Applicant relies, provides as follows in its relevant part:

3.9 When a staff member **on a fixed-term appointment** is incapacitated for service by reason of an illness that continues beyond the date of expiration of the appointment, he or she shall be granted an extension of the appointment, after consultation with the Medical Director or designated medical officer, for the continuous period of certified illness up to the maximum entitlement to sick leave at full pay and half pay under staff rules 106.2 or 206.3 [emphasis added].

48. Clearly, section 3.9 of the ST/AI/2005/3 applies exclusively to non-renewal of fixed-term appointments, and not to other types of appointments or other modalities of separations, such as termination or resignation. Therefore, even if the Applicant was on certified sick leave, he cannot rely on section 3.9 of ST/AI/2005/3 to argue that his employment should have been extended to cover such leave.

49. Moreover, the Applicant's argument about the alleged arbitrary application of section 3.9 of ST/AI/2005/3 may be only sustained as a constitutional challenge. The Tribunal, not being a constitutional court and whose jurisdictional mandate is outlined in article 2.1 of its Statute, does not have the power to review legislative decisions.

50. The Applicant's argument about the alleged practice to delay separation in cases where the staff member is on sick leave at the proposed moment of termination must also fail because the existence of a practice, if at all, does not create an entitlement for the Applicant to be reinstated for purposes of utilizing sick leave, given the clear terms of section 3.9 of ST/AI/2005/3.

51. In *Guenfoudi* UNDT/2022/076, para. 34 and 35, this Tribunal held that:

[The] Applicant had no right to continue working in the Organization after a termination decision had been lawfully made simply because he had not yet exhausted his sick leave quota. Under staff rule 9.11(a)(v), a termination is effective on the date specified in the letter of termination and entitlement to sick leave ceases on the same date. **There is no requirement under the applicable rules to extend a terminated continuing appointment for the purpose of sick leave.**

The Tribunal therefore finds that the process adopted and ending in termination was lawful, and that there was no good reason to delay it to accommodate the remaining of the Applicant's sick leave entitlement.

52. The Appeals Tribunal in *Guenfoudi* 2023-UNAT-1364 upheld the findings in *Guenfoudi*. However, it appears from the facts in *Guenfoudi* that his sick leave was certified up until the date of termination, but not beyond. By contrast, the Applicant's sick leave had been certified until 31 January 2024, that is, beyond the termination of his appointment on 31 December 2023.

53. While it appears to be a legal *lacuna* to deal with these kinds of situations for staff members on continuing appointment, the Tribunal recalls that, as per staff regulation 1.2(c), the Organization has a duty of care towards its staff members, which is considered part of their terms of appointment.

54. Such duty of care is an implicit obligation crystallized in staff regulation 1.2(c), which 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.

55. It is also established in the jurisprudence of the Tribunal that the Organization has a duty of care vis-à-vis its staff members (see *Applicant* UNDT/2021/043, para. 177; *Kusuma* UNDT/2014/143, para. 33; *McKay* UNDT/2012/018, paras. 41 and 42; confirmed in *Mc Kay* 2013-UNAT-287; *Edwards* UNDT/2011/022/Corr.1, para. 59; *Cahn* 2023-UNAT-1329, para 58-60).

56. In *Cahn*, the Appeals Tribunal stated:

38. [...] the Administration of the Organization has a duty of care to ensure a harmonious work environment and protect staff members from harm by way of, *inter alia*, taking appropriate preventive and remedial measures in each specific case. This duty is an inherent part of the employment relationship and a fundamental condition of

service and must be fulfilled by the Administration with due diligence and without delay (footnotes omitted).

57. The Organization's actions under the duty of care are measured by whether they are reasonable or appropriate given the circumstances (see *Awwad* UNDT/2018/074 paras. 86-95).

58. In the present case, it is not contested that the Applicant had been on certified sick leave on and off long before the termination of his appointment due to his working conditions in the ITC Print Shop and that the ITC Administration was well aware of this. It thus follows that the Administration should have at least afforded the Applicant the sick leave that had already been certified by the Medical Service on 22 December 2023; that is, before the termination of his appointment. By failing to do so, the Administration breached its duty of care towards the Applicant.

59. Under the circumstances, the Tribunal finds that the decision to terminate the Applicant's appointment on 31 December 2023 while he was on *pre-approved* certified sick leave is unlawful.

Remedies

60. The Applicant seeks the following remedies:

- a. Rescission of the termination decision; and
- b. In the alternative, compensation in the amount of his full pay, including pension contributions, for the period from 1 January 2024 until 18 March 2024.

61. Under art. 10.5 of the Tribunal Statute, the Tribunal may award the following remedies:

- (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.

62. Since the Tribunal has found that the decision to terminate the Applicant's appointment on 31 December 2023, while he was on certified sick leave, was unlawful, it finds it appropriate to rescind it and to determine that the Applicant be reinstated under art. 10.5(a) of its Statute.

63. In line with art. 10.5(b) of its Statute, the Tribunal shall also set an amount of compensation that the Respondent may elect to pay as an alternative to the rescission of the contested decision. In this respect, the Tribunal notes that the Applicant's appointment was terminated on 31 December 2023 while his sick leave had been certified until 31 January 2024. However, since the rest of his request for certified sick leave remained unapproved, it is irrelevant for the calculation of the compensation *in lieu*.

64. Consequently, the Tribunal sets, as compensation *in lieu* of reinstatement, an amount equivalent to one month of the Applicant's full salary, including pension contributions.

Conclusion

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

- a. The application succeeds in part;
- b. The contested decision is hereby rescinded;
- c. The Applicant is to be reinstated, with all his benefits and entitlements, from the date of separation;
- d. Should the Respondent elect to pay financial compensation instead of effectively rescinding the decision, the Applicant shall be paid a sum

equivalent to one month of the Applicant's full salary, including pension contributions, based on his salary at the time of his separation;

e. The aforementioned compensation amount 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.

(Signed)

Judge Margaret Tibulya

Dated this 17th day of September 2025

Entered in the Register on this 17th day of September 2025

(Signed)

Liliana López Bello, Registrar, Geneva