



**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

---

Judgment No. 2021-UNAT-1173

**Archana Patkar**

**(Appellant)**

**v.**

**Secretary-General of the United Nations**

**(Respondent)**

**JUDGMENT**

---

Before:	Judge Kanwaldeep Sandhu, Presiding Judge John Raymond Murphy Judge Jean-François Neven
Case No.:	2020-1467
Date:	29 October 2021
Registrar:	Weicheng Lin

---

Counsel for Appellant: Robbie Leighton, OSLA

Counsel for Respondent: Noam Wiener

**JUDGE KANWALDEEP SANDHU, PRESIDING.**

1. The Appellant, the former Head of Policy P-5 on a fixed-term appointment with the Water Supply and Sanitation Collaborative Council (WSSCC or the Organization) contests the decision to terminate or retract her sick leave resulting in her separation while on sick leave.
2. In its 10 August 2020 Judgment No. UNDT/2020/141 (Impugned Judgment), the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed her application on the basis that there was no obligation on the Organization and the United Nations Office for Project Services (UNOPS) to extend a fixed-term appointment for the sole purpose of allowing a staff member to utilize his or her sick leave entitlement. The Appellant appeals and seeks the Judgment be vacated and that her separation be found unlawful. In the alternative, the Appellant seeks compensation for costs incurred because of her separation while on sick leave. The Secretary-General requests the appeal be dismissed.
3. For reasons set out below, we dismiss the appeal.

**Facts and Procedure**

4. The Appellant worked as the Head of Policy for the WSSCC, an organization hosted by UNOPS in Geneva. At the time of the contested decision, the Appellant was employed at the P-5 level on a fixed-term contract that expired on 31 March 2018.
5. On 24 November 2017, the Appellant was informed that because of a restructuring exercise, her appointment would not be renewed beyond 31 March 2018. On 7 February 2018, the Appellant requested management evaluation of this decision, which resulted in a separate case before the United Nations Appeals Tribunal (Appeals Tribunal).<sup>1</sup>
6. From 23 February 2018 to 3 March 2018, the Appellant went on sick leave.

---

<sup>1</sup> *Archana Patkar v. Secretary-General of the United Nations*, Case No. 2020-1422 (appeal of UNDT Judgment No. UNDT/2020/105). In Judgment No. 2021-UNAT-1102, the Appeals Tribunal dismissed Ms. Patkar's appeal of the decision not to renew her appointment beyond 31 March 2018.

7. The Appellant requested additional sick leave for the period of 4 March 2018 to 13 April 2018. On 1 March 2018, the Appellant received an automated e-mail from the United Nations Medical Services Division (MSD) (via the “EarthMed” system), which reported the approval of this sick leave request (MSD E-mail).

8. On 31 March 2018, the Appellant’s fixed-term contract expired, and she was separated from service.

9. From her home country of India on 5 April 2018, the Appellant e-mailed a UNOPS Human Resources Manager requesting an extension of the legitimation cards for her and her husband, so they could return to Geneva to take care of pending matters.

10. On the same day, the UNOPS Human Resources Manager replied and informed the Appellant that to extend her legitimation card, UNOPS would need to extend her contract, and doing so would jeopardize UNOPS’s position in the Appellant’s non-renewal case pending before the UNDT.

11. On 6 April 2018, the Appellant filed a request for a management evaluation of the decision to terminate or retract her sick leave. By letter dated that same day, the UNOPS General Counsel informed the Appellant of the outcome of the management evaluation. The General Counsel found that UNOPS was under no obligation to extend the Appellant’s appointment beyond its expiration date of 31 March 2018 so that she could use sick leave, and that UNOPS had not “terminated or retracted” her sick leave because she had never been entitled to sick leave beyond her contract’s expiration date.

12. On 5 July 2018, the Appellant filed an application with the UNDT, contesting the decision to terminate or retract her sick leave causing her separation.

13. On 9 April 2020, the UNDT issued Order No. 49 (GVA/2020), granting the Respondent’s 8 August 2018 motion requesting leave to include in the case file a 7 August 2018 e-mail from the MSD. On 18 July 2018, the Respondent’s counsel had requested advice about the Medical Service’s role in the process of sick leave requests to aid in his preparation of the case before the UNDT. In the 7 August 2018 e-mail, a Senior Medical Officer responded and advised the Respondent’s counsel that the purpose of e-mails like the MSD E-mail is to certify a staff member’s fitness to work, and that staff members should “share this answer with HR for the proper process of the related absence”.

14. In the Judgment, the UNDT found that contrary to the Appellant's claims, there was no sick leave to "terminate or retract". The UNDT determined that the purpose of the MSD E-mail was to certify the Appellant's fitness to work based on the medical report she had submitted, not to approve any related absence.<sup>2</sup> The UNOPS Administration would have had to approve her sick leave, and the UNDT found that there was no evidence of such approval.

15. The UNDT held that UNOPS is under no obligation to extend a fixed-term appointment solely for the purpose of allowing a staff member to utilize his or her sick leave entitlement.

16. The UNDT noted the Appellant's reliance on ST/AI/2005/3, an administrative instruction on sick leave, but found that it does not apply to UNOPS. According to the Secretary-General's Bulletin entitled "Procedures for the promulgation of administrative issuances" (ST/SGB/2009/4), administrative issuances do not apply to separately administered organs unless otherwise stated in the issuance or expressly accepted by the organ. The UNDT found no evidence of either method of applicability.

17. The UNDT lastly noted that former UNOPS Administrative Instruction (AI/HRPG/2013/02) contained a provision allowing for the postponement of separation for staff members on fixed-term appointments to enable the utilization of a sick leave entitlement. However, this Administrative Instruction was abolished and replaced by UNOPS Operational Directive OD.PCG.2017.01 entitled "Human Resources, Ethics and Culture", effective 15 August 2017, before the Appellant went on sick leave. The Operational Directive contains no such provision.

## **Submissions**

### **The Appellant's Appeal**

18. The Appellant submits that the UNDT erred in concluding that she had not been granted sick leave past the expiration of her fixed-term appointment; the UNDT failed to exercise its jurisdiction by ignoring evidence and not considering her arguments; and the UNDT's conclusion that the Appellant's sick leave was not terminated or retracted is without basis and resulted in a manifestly unreasonable decision.

---

<sup>2</sup> At paragraph 20 of the Impugned Judgment, the UNDT mistakenly refers to the 7 August 2018 e-mail from a Senior Medical Officer with the MSD instead of the 1 March 2018 MSD E-mail.

19. The Appellant submits that she followed the same procedure for requesting sick leave from 4 March to 13 April 2018 (past the expiry of her appointment) that she had used previously without issue: she received an e-mail from the MSD indicating the approval of her sick leave request and forwarded the e-mail to UNOPS Human Resources personnel, with no subsequent communication on the matter. The Appellant says that there was nothing to indicate that the request had not been approved, and it was reasonable for her to rely on the MSD E-mail.

20. The Appellant argues that the UNDT erred in fact when it stated that “the record shows that [the Appellant] was granted sick leave from 23 February 2018 to the end of her contract”,<sup>3</sup> when no document in the record before the UNDT showed this. The Appellant further contends that the UNDT erroneously accepted that the purpose of the MSD E-mail was “only to certify [the Appellant’s] fitness to work based on the medical report she had submitted”,<sup>4</sup> an assertion that is not memorialized in any formally promulgated issuance.

21. The Appellant submits the UNDT’s reliance on the 7 August 2018 e-mail demonstrates a complete failure to exercise jurisdiction in relation to the question of whether the Appellant’s sick leave had been granted to 13 April 2018. It was manifestly unreasonable for the UNDT to rely on the absence of communication showing a grant to the sick leave as evidence that the sick leave was not granted.

22. The Appellant submits that the UNDT erred in law by finding that absent an express provision in Staff Rule 6.2 requiring extension of appointment for utilization of sick leave, the entitlement did not outline a decision to separate or non-renewal. The Appellant submits that the UNDT failed to exercise its jurisdiction by not considering the Appellant’s related arguments including the Appellant’s argument that its interpretation of Staff Rule 6.2 was inconsistent with Administrative Instruction ST/AI/1999/16 (Termination of appointment for reasons of health), Section 3.1, governing disability which has been adopted by UNOPS.

23. The Appellant argues that Staff Rule 6.2 requires the Organization to extend a staff member’s appointment for the purpose of utilizing sick leave for the full period of the entitlement or until the staff member’s health improves. The Appellant supports her interpretation of Staff Rule 6.2 by citing to the sick leave policies of the United Nations

---

<sup>3</sup> Impugned Judgment, para. 19.

<sup>4</sup> *Ibid.*, para. 20.

Secretariat, the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF,) and the United Nations High Commissioner for Refugees (UNHCR), which each extend the employment of staff members so they may utilize their sick leave.

24. The Appellant argues that staff members should be allowed to exhaust their sick leave entitlements because eligibility for disability benefits from the United Nations Joint Staff Pension Fund (UNJSPF) is only assessed upon the exhaustion of sick leave.

25. The Appellant further supports her interpretation of Staff Rule 6.2 by pointing to the fact that Staff Rule 4.12 provides for a two-year maximum duration for temporary appointments, but Secretariat subordinate legislation allows for the exceptional extension of a temporary appointment for sick leave utilization.<sup>5</sup> The Appellant argues that if the interpretations of Staff Rule 6.2 offered by the UNDT and the Respondent were accurate, the Secretariate's subordinate rule would conflict with the Staff Rule.

26. The Appellant submits that the UNDT erred by finding that absent an express provision in Staff Rule 6.2 requiring the extension of appointment for utilization of sick leave, the entitlement did not survive a non-renewal decision.

27. The Appellant emphasizes that, contrary to the UNDT's interpretation of her arguments, she is not arguing that the rules or administrative issuances of the Secretariat or other United Nations agencies apply to UNOPS. Rather, the Appellant argues that these policies elsewhere in the United Nations system demonstrate that the entitlement created by Staff Rule 6.2 is absolute and does not require an underlying contract, and therefore that a staff member on sick leave cannot be separated from service if they continue to be entitled to sick leave.

28. The Appellant requests that the Appeals Tribunal overturn the UNDT Judgment and find that her separation from service was unlawful. The Appellant requests that an order be made for reinstatement and the retroactive reinstatement of her medical insurance for the period from 31 March 2018 to 7 June 2018. In the alternative, the Appellant requests compensation for the costs incurred due to her separation while on sick leave.

---

<sup>5</sup> Administrative Instruction ST/AI/2010/4/Rev.1 (Administration of temporary appointments), Section 9.2.

**The Secretary-General's Answer**

29. The Respondent submits that the UNDT correctly held that the UNOPS legal framework did not oblige UNOPS to extend the Appellant's appointment in order for her to utilize her sick leave entitlement.

30. The Respondent argues that nothing in the wording of Staff Rule 6.2 mandates such an extension. The Respondent asserts that the Staff Regulations and Rules contain a myriad of entitlements that cease without specific instructions following the separation of the staff member.

31. The Respondent argues that the relevant UNOPS instructions on personnel management (Process and Quality Management System (PQMS)) do not require UNOPS to extend the appointments of staff members on sick leave. Paragraph 7.5.10 of the PQMS contains the instructions related to sick leave for staff members on fixed-term appointments and does not obligate such an extension. The Respondent argues that the existence of provisions for extension in the policies of other United Nations organs and in prior UNOPS issuances demonstrates that the UNOPS Executive Director explicitly chose not to include such an obligation in the PQMS.

32. The Respondent submits the UNDT correctly refrained from holding that not extending the appointments of staff members on sick leave would deny staff members the ability to seek disability benefits from the UNJSPF. The Respondent argues that the procedure for evaluating a staff member's eligibility for disability (set forth in Section 3.1 of ST/AI/1999/16) can be triggered by either the complete exhaustion of the staff member's entitlement *or* the staff member losing their entitlement for another reason (such as the expiration of a fixed-term appointment).

33. Lastly, the Respondent submits that the UNDT correctly held that the MSD E-mail certifying the Appellant's eligibility for sick leave did not constitute approval of sick leave beyond the expiration of her fixed-term appointment. The Respondent argues that UNOPS' lack of response to the MSD E-mail is not a "tacit approval of sick leave beyond the expiration of the Appellant's fixed-term appointment" especially in the absence of any policy that would require UNOPS to so extend the appointment.

34. The Respondent argues that the MSD did not have the authority to extend her fixed-term appointment beyond its expiration date, and even if the Appellant had erroneously relied on the 3 March 2018 e-mail, it cannot bind UNOPS to act contrary to its policies.

35. The Respondent requests that the Appeals Tribunal uphold the UNDT Judgment and dismiss the appeal.

### Considerations

36. The Appeals Tribunal Statute (Statute) provides the Appeals Tribunal with limited jurisdiction on appeal. It provides that the Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the UNDT in which it is asserted that the UNDT has (a) exceeded its jurisdiction or competence; (b) failed to exercise jurisdiction vested in it; (c) erred on a question of law; (d) committed an error in procedure, such as to affect the decision of the case; or (e) erred on a question of fact, resulting in a manifestly unreasonable decision.

37. We disagree with the Appellant that the UNDT erred in fact, law or failed to exercise jurisdiction in concluding that the Appellant had not been granted sick leave to 13 April 2018 that was then terminated or retracted.

38. The Appellant's fixed-term contract expired on 31 March 2018. It is well established that a fixed-term appointment does not carry "any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service, except as provided under staff rule 4.14 (b)".<sup>6</sup>

39. Further, Staff Rule 9.4 provides that "[a] temporary or fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment".

40. Therefore, in this instance the Appellant's fixed-term appointment ended on 31 March 2018. The Appellant seems to argue that, regardless of this, the Appellant's entitlement to sick leave outlives the expiration of the fixed-term appointment. However, there is nothing in the Staff Rules or subsidiary framework that supports this argument or the

---

<sup>6</sup> See Staff Rule 4.13(c); *Herminio Porras v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1068, paras. 21 ff.



argument that the Appellant's sick leave to 13 April 2018 had been granted or approved in the MSD E-mail.

41. The UNDT held that the MSD e-mail was "only to certify [the Appellant's] fitness to work based on the medical report she had submitted... There is no evidence that the UNOPS Administration approved such leave."<sup>7</sup> Given the approval process for sick leave, the UNDT was correct in its conclusion.

42. Staff Rule 6.2 provides that: "(a) Staff members who are unable to perform their duties by reason of illness or injury or whose attendance at work is prevented by public health requirements will be granted sick leave. *All sick leave must be approved on behalf of, and under conditions established by, the Secretary-General.*"<sup>8</sup>

43. The provision clearly states that the sick leave will be granted when staff members are "*unable to perform their duties by reason of illness or injury or whose attendance at work is prevented by public health requirements*".<sup>9</sup> The ordinary reading of the provision is that entitlement to sick leave is conditioned on the staff member having duties to perform and work to attend to.

44. This is confirmed by Staff Rule 9.11 that states "a) When a staff member is separated from service, the date on which entitlement to salary, allowances and benefits shall cease shall be determined according to the following provisions: ... (iii) In the case of expiration of a temporary or fixed-term appointment, the date shall be the date specified in the letter of appointment". Sick leave entitlement is a "benefit" that ceases on the date of the expiration of the fixed term appointment as specified in the letter of appointment. Therefore, there is no authority for entitlement to sick leave to outlive the expiration of the fixed term appointment as requested by the Appellant.

45. The Appellant says that there are administrative issuances that permit the extension of staff member appointments on sick leave for the Secretariat, UNDP, UNHCR and UNICEF and that her sick leave was approved until 13 April 2018 which implicitly extended her fixed-term appointment. However, the fact there are administrative issuances for certain agencies that

---

<sup>7</sup> Impugned Judgment, para. 20.

<sup>8</sup> Emphasis added.

<sup>9</sup> Emphasis added.

expressly permit extension of appointment for staff on sick leave illustrates that, absent such an administrative directive or issuance for UNOPS, such an extension cannot be implied.

46. The Appellant relies on Section 3.1 of ST/AI/1999/16 that provides that the commencement of the consideration for disability benefits from the UNJSPF takes place when a staff member “has used all his or her entitlement to sick leave with full pay”. However, the text uses “entitlement”. This read together with Staff Rule 6.2(a) confirms that the sick leave entitlement does not outlive the expiration of the fixed-term appointment unless expressly provided for.

47. Pursuant to Staff Rule 6.2, the Secretary-General has exercised his discretion and delegated his authority to establish conditions for the administration of sick leave for staff members with UNOPS to the UNOPS Executive Director (see Secretary-General’s Bulletin ST/SGB/2009/1 (Authority of the United Nations Office for Project Services in matters relating to human resources management)). The UNOPS Executive Director has established a legislative framework for UNOPS laying out and organizing the different types of policies, instructions, and guidance documents applicable to UNOPS (Executive Office Directive Ref. EOD.ED.2019.02). The framework includes Operational Directives such as Operational Directive OD.PCG.2017.01 that outlines principles underpinning the management of UNOPS personnel.

48. Section 6.1 of Operational Directive OD.PCG.2017.01 provides the development and implementation of the required process in the PQMS. Paragraph 7.5.10 of the PQMS contains instructions related to sick leave.

49. None of these provisions authorize the extension of appointments for UNOPS staff members on sick leave should their appointment expire or be terminated while on sick leave.

50. As stated in Section 2.1, the purpose of Operational Instruction Ref. OI.PCG.2017.01 is to “outline how UNOPS Personnel shall be managed. The specific processes describing in detail how to manage UNOPS Personnel shall be included in the ... PQMS ...”. Paragraph 7.5.10 of the PQMS provides that the ultimate approval of the sick leave is by the staff member’s “supervisor”. The MSD “certifies” the leave and performs a medical check, but the supervisor is responsible for the

“approval” of the leave. Therefore, the MSD E-mail does not and cannot constitute “approval” as that can only be done by the Appellant’s supervisor.<sup>10</sup>

51. The lack of response from the Organization to the MSD E-mail does not imply approval of sick leave. The UNOPS legislative framework is clear that the supervisor must “approve” the sick leave request. This approval cannot be implied from a lack of response or the Appellant’s reliance on the MSD E-mail.

52. Therefore, the UNDT did not err when it found that that Appellant had not been granted sick leave to 13 April 2018 that then was terminated or retracted. We find no merit in the Appellant’s submissions that the UNDT erred in its Judgment.

### **Judgment**

53. Accordingly, we dismiss the appeal.

Original and Authoritative Version: English

Dated this 29<sup>th</sup> day of October 2021.

*(Signed)*

Judge Sandhu, Presiding  
Vancouver, Canada

*(Signed)*

Judge Murphy  
Cape Town, South Africa

*(Signed)*

Judge Neven  
Brussels, Belgium

Entered in the Register on this 31<sup>st</sup> day of December 2021 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar

---

<sup>10</sup> Annex 4 of the answer.