



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/027

Judgment No.: UNDT/2024/053

Date: 30 August 2024

Original: English

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**Before:** Judge Margaret Tibulya

**Registry:** New York

**Registrar:** Isaac Endeley

CALDIN and LANGELAAR

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

George G. Irving

**Counsel for Respondent:**

Tamal Mandal, AS/ALD/OHR, UN Secretariat

## **Introduction**

1. On 14 August 2023, the Applicants, Mr. Caldin, a Reviser, at the P-4 level, with the Department for General Assembly and Conference Management (“DGACM”), and Mr. Langelaar, a Corrections Officer, at the P-5 level, with the United Nations Assistance Mission in Somalia (“UNSOM”), filed an application contesting DGACM’s 23 March 2023 decision and UNSOM’s 12 March 2023 decision to reject each of their requests to be granted 16 weeks of parental leave under the Organization’s new parental leave framework, ST/AI/2023/2 (Parental leave and family leave).

2. On 14 September 2023, the Respondent filed a reply submitting that the application has no merit. The Respondent further submitted that the application was not receivable in part.

3. For the reasons set out below, the application is denied.

## **Factual and procedural background**

4. 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.

5. 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).

6. 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 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.

7. 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.

8. 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*

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

10. 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.

11. 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.

12. 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*

13. On 2 December 2022, Mr. Langelaar's child was born.
14. On 8 March 2023, Mr. Langelaar requested 16 weeks of parental leave under the new parental leave scheme.
15. On 12 March 2023, the Administration rejected Mr. Langelaar's request.
16. 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.
17. 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.
18. On 14 August 2023, the Applicants jointly filed an application before the Dispute Tribunal.
19. On 1 April 2024, the case was assigned to the undersigned Judge.
20. On 3 April 2024, a case management discussion ("CMD") was held remotely via MS Teams to discuss the case.
21. Pursuant to Order No. 043 (NY/2024) dated 8 April 2024, the parties filed their closing statements on the issue of receivability.
22. In the Respondent's closing submissions on receivability dated 18 April 2024, he informed the Tribunal that he does not challenge the receivability of the Applicants' substantive claims in relation to DGACM's 23 March 2023 decision and UNSOM's 12 March 2023 decision to reject each of their requests to be granted 16 weeks of parental leave under the Organization's new parental leave framework ST/AI/2023/2. The Respondent submitted that these claims can be reviewed on their merits.

23. By Order No. 074 (NY/2024) dated 27 June 2024, the Tribunal noted the limited nature of the receivability issues at bar and determined that it would proceed to adjudicate the case on the merits. The Tribunal ordered the parties to file their respective closing submissions on the merits.

24. On 10 July 2024, the parties duly filed their closing statements on the merits.

## **Consideration**

### *Receivability*

25. The Respondent challenges the receivability of parts of the application on two limited grounds: (a) aspects of the application relating to the implementation date of ST/AI/2023/2; and (b) the denial of Mr. Langelaar’s request for special leave with full pay (“SLWFP”).

26. Regarding the first leg of the challenge, the Respondent submits that the implementation date of the new parental leave scheme falls outside the scope of the Dispute Tribunal’s jurisdiction since it constitutes a decision of general application.

27. The Applicants, however, maintain that they do not challenge the implementation date of ST/AI/2023/2 but rather, their arbitrary exclusion from the implementation of the newly promulgated parental leave policy on the basis of their gender. The Applicants maintain that they do “not challenge the parental leave policy but how it is being applied to them by the Administration. As such, the contested decision denying them the benefit of the transitional measures for the policy on the grounds of their gender is a decision taken by the Administration in their individual cases. It has legal consequences on their leave entitlements, and consequently a direct impact on their lives”. According to them, the Respondent’s arguments over the date of implementation of ST/AI/2023/2 are misplaced. The Applicants argue that the new 2023 policy (ST/AI/2023/2) has been applied retroactively to the parents of some children born in 2022, but not applied to them with the only distinguishing characteristic being their gender.

28. Upon review of the record, it is clear to the Tribunal that the Applicants are not challenging the implementation date of ST/AI/2023/2 *per se*. The Applicants' challenge is related to how this new parental leave policy is applied to them and their gender. The Tribunal therefore accepts the Applicants' submission and finds that aspects of the application relating to the implementation of ST/AI/2023/2 are receivable.

29. Regarding the second leg of the challenge, the Respondent maintains that since Mr. Langelaar did not seek management evaluation of the decision to deny his request for eight weeks SLWFP and did not expressly contest that decision in the application, aspects of the application relating to that decision are not receivable. For the following reasons, the Tribunal rejects these arguments as well.

30. First, the Tribunal notes that it is not disputed that the former Management Evaluation Unit ("MEU") conducted a review of the decision to deny Mr. Langelaar's request for eight weeks SLWFP. The MEU later included the rejection in the management evaluation. The requirement for requesting for management evaluation under staff rule 11.2 (Management evaluation) is to ensure that the evaluation by the Administration takes place prior to a formal contest of an administrative decision before the Dispute Tribunal. Since the impugned decision was indeed subjected to management evaluation, the argument that the decision to deny Mr. Langelaar's request for eight weeks SLWFP is not receivable on account of Mr. Langelaar's failure to request management evaluation of that decision for it is based on a mere technicality and is without merit.

31. Second, the Respondent's assertion that Mr. Langelaar did not expressly contest the decision to deny his request for eight weeks of SLWFP is factually incorrect. While it is true that only the decision to deny the Applicants' parental leave is mentioned as the contested decision in the application, it is later stated in the application that "[o]n 8 March 2023, [Mr. Langelaar] requested parental leave pursuant to the new bulletin. He was told that it did not apply to him. He then requested SLWFP on the recommendation of the officials reviewing his request. This request was also denied on the grounds that

it was not considered to benefit the Organization. A request for an explanation in writing was refused by the mission to which he was assigned (the United Nations Assistance Mission in Somalia (UNSOM))”.

32. It is therefore not true that Mr. Langelaar did not expressly contest the decision to deny his request for eight weeks of SLWFP.

33. Based on the foregoing, the Tribunal finds that the application is receivable in its totality.

*Parties' submissions on merits*

34. The Applicants' submissions may be summarized as follows:

a. On the merits, the Applicants are specifically contesting what they see as the unfair application of the arbitrary *ad hoc* transitional measures applied solely on the basis of gender which have unfairly excluded them in spite of demonstrated need.

b. The Respondent's decision to carve out an exception for an additional benefit, based solely on gender, is directly contrary to the intention of the General Assembly to promote the equality of all persons, including having gender parity in its family leave policies. The exception announced several months after the policy was promulgated does not identify or address the pre- and post-delivery needs of birth mothers as reflected in the World Health Organization (“WHO”) recommendations, but incorrectly distinguishes staff solely based on their gender. This is neither rational nor consistent with staff regulation 1.2 and the Secretary-General's system-wide strategy on gender parity.

c. While the Respondent suggests after the fact that the transitional exception was carved out to assist birthing mothers and address the specific medical needs associated with childbirth, the exception was applied much more

broadly to all “staff members who are still on maternity leave on 1 January 2023” which is not the same group. The *ad hoc* measure covers staff who went on maternity leave up to 16 weeks before, while it ignores birthing mothers who were not on maternity leave on 1 January 2023. The Respondent has still not clearly identified who benefited from this exception.

d. The Applicants are arguing that if there is a transitional arrangement, it should be applied in a gender-neutral manner, consistent with the General Assembly’s intention.

e. The discretionary authority of the Respondent is not unfettered. The Tribunal may consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse (see *Sanwidi*, 2010-UNAT-084, para. 40). If the Administration acts irrationally or unreasonably in reaching its decision, the Tribunal is obliged to strike it down. “When it does that, it does not illegitimately substitute its decision for the decision of the Administration; it merely pronounces on the rationality of the contested decision” (see *Belkhabbaz* 2018-UNAT-873, para. 80).

f. In *Natta* UNDT/2016/033, at para. 42 (not appealed), the Tribunal noted:

It is not the Tribunal's role to examine whether a policy adopted by the Administration is well-founded or appropriate. This does not mean, however, that the Tribunal may not entertain challenges to the legality of the policy in respect of non-compliance with a higher norm ... For example, a promotion policy setting out a discriminatory criterion would lead to an unlawful decision even if it were correctly applied. Whereas there is no doubt that the Tribunal has no authority "to amend any regulation or rule of the Organization" (*Mebtouche* 2010-UNAT-045, para. 11), a decision may be rescinded if it is taken pursuant to a policy which does not comply with a higher norm. In this context, the Tribunal may also "point out what it considers to be a deficiency" in a policy and "recommend a



reform or revision" (*Mebtouche* 2010-UNAT-045, para. 11; see also *Nguyen-Kropp and Postica* UNDT/2015/110).

g. The Respondent's rationalization of the contested decision addresses none of these fundamental points, underscoring the arbitrariness of the underlying decision.

h. The Applicants request rescission of the contested decision and appropriate compensation for the damages suffered as a result of discriminatory treatment in violation of their *dignitas*.

35. The Respondent's submissions may be summarized as follows:

a. The contested decisions are lawful.

b. Following General Assembly resolution 77/256 A-B's approval of a new parental leave framework, the Organization revised its staff rule on parental leave effective 1 January 2023. The Secretary-General established the conditions for granting parental leave in ST/AI/2023/2, which entered into force as of 1 January 2023.

c. ST/AI/2023/2, which implements provisional staff rule 6.3, provides in sec. 1.2 that "[t]he present instruction governs the administration of parental leave in respect of a child born or adopted on or after 1 January 2023". The language of this section is clear that the event that determines the applicability of the new parental leave scheme is the date of birth or adoption.

d. Mr. Caldin's child was born on 12 October 2022, and Mr. Langelaar's child was born on 2 December 2022. As both children were born before 1 January 2023, ST/AI/2023/2 does not apply to the Applicants. Accordingly, the Applicants have no legal right and are not eligible for 16 weeks of parental leave under staff rule 6.3 and ST/AI/2023/2.

e. Further, sec. 10.2 of ST/AI/2023/2 clearly states that ST/AI/2005/2 (Family leave, maternity leave and paternity leave) applies to staff members eligible for “4 or 8 weeks of paternity leave [...] on or before 31 December 2022”. Under this section, the Administration correctly determined that Mr. Caldin and Mr. Langelaar have the right to four weeks and eight weeks of paternity leave, respectively, under sec. 10.3 of ST/AI/2005/2.

f. Finally, the transitional measure approved by the Secretary-General that specifically provided “birthing parents” of children born in 2022, who were still on maternity leave as of 1 January 2023, an additional 10 weeks of SLWFP does not apply to the Applicants as they are “non-birthing parents”.

g. Mr. Langelaar has no legal right to eight weeks of SLWFP. UNSOM lawfully denied Mr. Langelaar’s request for eight weeks of SLWFP. Staff rule 5.5 governs special leave which is normally without pay. In exceptional circumstances, the Secretary-General may place a staff member on special leave with full or partial pay if such leave is considered in the interest of the Organization. Under Chapter V of Annex IV to ST/SGB/2019/2 (Delegation of authority in the administration of the Staff Regulations and Rules and the Financial Regulations and Rules), the Head of Entity, UNSOM had the delegated authority to approve special leave entitlements.

h. UNSOM’s 19 May 2023 decision to deny Mr. Langelaar’s request for eight weeks of SLWFP was within the discretionary authority of the Head of Entity of UNSOM. In exercising her discretion, the Head of Entity considered relevant matters. Particularly, the Head of Entity considered that Mr. Langelaar had alternative leave options available to him to support his partner in taking care of their newborn child. At the time of his request, Mr. Langelaar had over 30 days of annual leave accrued and was eligible to request “family leave”, a specific type of special leave without pay, available to “the parent of a newborn or adopted child,” as stipulated in staff rule 5.5(a)(iv). The Head of Entity also

considered that Mr. Langelaar had the option to telecommute from outside his duty station for eight weeks under a flexible working arrangement, an option he availed previously.

i. Based on these considerations, UNSOM concluded that granting SLWFP on an exceptional basis was not in the interest of the Organization. Mr. Langelaar has adduced no evidence to show that irrelevant matters were considered. Neither his disagreement with nor his argument against UNSOM's decision are evidence.

j. The Applicants' claim that the application of provisional staff rule 6.3 is arbitrary and discriminatory is unfounded. The effective date for the new parental leave scheme is a lawful and reasonable exercise of the Secretary-General's authority to implement General Assembly resolution 77/256 A-B adopted on 30 December 2022 "request[ing] the Secretary-General to implement the [new parental leave] framework ... on an exceptional basis, for the year 2023". Based on the General Assembly's instruction, the Secretary-General lawfully established 1 January 2023 as the effective date.

k. The Organization applies its policy frameworks prospectively, not retroactively. The General Assembly approved the new parental leave framework to take effect going forward, namely "for the year 2023". The General Assembly had not been asked to approve retroactive application of the new parental leave framework. The Appeals Tribunal has recognized that the Organization's legislative framework may establish prospective legal entitlements and benefits. The Appeals Tribunal has applied the general principle prohibiting the retroactive effect and application of laws and held that administrative issuances could not be applied to incidents that occurred before their promulgation (see *Al Abani* 2016-UNAT-663, para. 26; *Assale* 2015-UNAT-534, para. 34; *Hunt-Matthes* 2014-UNAT-444/Corr.2, paras. 26-30; *Nogueira* 2014-UNAT-409, para. 14).

l. The Applicants, whose children were born before the new parental leave framework entered into force (i.e., before 1 January 2023), have no legal right to the increased duration of parental leave provided for in provisional staff rule 6.3 and ST/AI/2023/2, which only applies prospectively. Contrary to the Applicants' argument, neither the effective date of 1 January 2023 nor applying the new parental leave scheme prospectively discriminates against, or arbitrarily excludes, any specific group of staff members.

m. The transitional measure is not discriminatory. It stems from provisional staff rule 6.3(a)(ii), which provides an additional 10 weeks of prenatal and postnatal leave for a "parent who gives birth". The reasoning for the additional 10 weeks of leave is "[to provide for the] specific pre- and postdelivery needs of birth mothers [...] in line with the WHO recommendation to provide six months of leave to allow for breastfeeding and bonding with the child". This additional period of leave does not apply to staff members without the medical needs associated with pregnancy, delivery or breastfeeding, thus maintaining the focus on the "parent who gives birth".

n. The differential treatment of "birthing and non-birthing parents" serves a legitimate policy objective. The Applicants' argument that "the transitional measure ... is designed to meet the medical needs associated with childbirth ... has no basis in fact and appears to be an afterthought" is misplaced. The ASG/OHR communicated that the transitional measure is "[i]n line with WHO's recommendation of six months minimum of breastfeeding". In turn, the International Civil Service Commission ("ICSC") in its Report for 2022 (A/77/30) dated 12 August 2023 noted the requirement to "[p]rotect the physical and mental health needs of birth mothers during and after pregnancy by granting a specific period of leave that is allocated for that purpose" and agreed that "an additional period of 10 weeks should be provided to birth mothers to meet their specific pre- and post-delivery needs, in line with the

WHO recommendation to provide six months of leave to allow for breastfeeding”.

o. Contrary to the Applicants’ argument, there were no “contradictory communications from the OHR”. The ASG/OHR’s communications dated 8 March 2023 and 31 March 2023 both stated that the transitional measure granting an additional ten weeks of SLWFP “enable[s] a greater equity and fairness in the treatment of similarly situated staff members (i.e., those becoming parents by giving birth and who were on maternity leave as of 1 January 2023)”.

p. Finally, by arguing that all parents with children under 1 year of age should have the right to benefit from 16 weeks of parental leave under the new parental leave scheme, the Applicants present arguments on what they perceive that the Organization’s legal framework ought to be, instead of what it actually is. The Dispute Tribunal is not a constitutional court; it reviews the Organization’s legal framework as it stands, rather than as what the Applicants perceive it ought to be.

### *Discussion*

36. By way of relevant background, the Tribunal notes that in its Report for 2022, the ICSC recommended that “the current maternity, paternity and adoption leave policies should be replaced with one parental leave that is equal in length for all parents. The 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. Accordingly, within the proposed provision of 26 weeks, birth mothers would have additional periods for prenatal and postnatal protection”.

37. Following General Assembly resolution 77/256 A-B’s approval of a new parental leave framework, the Organization revised its staff rule on parental leave

effective 1 January 2023 (ST/SGB/2023/1). The references to maternity, paternity, and adoption leave in former staff rule 6.3 were replaced in ST/SGB/2023/1 as follows:

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.

38. Pursuant to General Assembly resolution 77/256 A-B, the Secretary-General established the conditions for granting parental leave in ST/AI/2023/2 which entered into force as of 1 January 2023.

39. On 8 March 2023, the ASG/OHR, DMSPC informed the Heads of Entities of the Secretariat of the Secretary-General's approval of a transitional measure on the establishment of the new parental leave policy, namely, that staff members who had children born in 2022, who were still on maternity leave as of 1 January 2023, would be eligible for an additional ten weeks of SLWFP.

40. The essence of the Applicants' claim is that the Secretary-General's transitional measure dated 8 March 2023 from the previous parental leave scheme to the new one is arbitrary and discriminatory.

41. The Tribunal recalls that in conducting a judicial review of the validity of the Secretary-General's exercise of discretion, the Dispute Tribunal reviews whether the decision was lawful and rational (see *Sanwidi* 2010-UNAT-084, paras. 38-42).

42. The Tribunal will not substitute its views for those of the Administration but will evaluate whether that decision was irrational or arbitrary (see *Gisage* 2019-UNAT-973, paras. 37-40; *Millan* 2023-UNAT-1330, paras. 107-110). It is well-established that it is not the role of the Dispute Tribunal to consider the correctness of the choice

made by the Secretary-General or the official with delegated authority amongst the various courses of action open to them (see *Sanwidi*, para. 40, and *Belkhabbaz* 2018-UNAT-873, para. 66)).

Whether the transitional measures are discriminatory

43. The Applicants contend that the transitional measures are discriminatory in that they apply to staff members who were on maternity leave on 1 January 2023, which creates a gender distinction. They maintain that the same application of the new policy should be available equally to parents of both genders.

44. The Respondent, on the other hand, asserts that under the revised staff rule 6.3 and ST/AI/2023/2, neither Applicant has a legal right to 16 weeks of parental leave under the new parental leave policy, since neither of their children was born or adopted on or after 1 January 2023. Further, that the transitional measure in issue allowed an additional 10 weeks of special leave with full pay to staff members who were on maternity leave on 1 January 2023. In the Respondent's view, the Applicants do not fall under that category of staff members and therefore could not have been discriminated against.

45. The Tribunal understands that revised staff rule 6.3 governs the administration of parental leave in respect of a child born or adopted on or after 1 January 2023. The Applicants state that they have no issue with this either.

46. Their contention is that while the transitional measures grant 10 weeks special leave with full pay to staff members who were on maternity leave on 1 January 2023, their request for 16 weeks parental leave with full pay was denied, despite their children having been born after the ICSC recommendation and well within a year of the promulgation of the new policy. This is in addition to the fact that neither Applicant had exhausted his paternity leave entitlement as of 1 January 2023. Under the former staff rule and the new staff rule, parents are entitled at their discretion to avail themselves of leave within a year of the birth of the child. In the case of both Applicants, that means through most of 2023.

47. The Tribunal notes that staff rule 6.3 of ST/SGB/2023/1 does not provide for special leave with full pay, but rather provides for *parental leave with full pay* (staff rule 6.3(a)(i)) and *prenatal and postnatal leave with full pay* (staff rule 6.3(a)(ii)).

48. The tone of the 8 March 2023 communications by the ASG/OHR, DMSPC regarding the transitional measure, however, suggests that for purposes of transitional measures, the Administration had staff rule 6.3(a)(ii) in mind. The Tribunal finds that although there may have been some ambiguity within the transitional measures and in communications which announced them, there is no lack of clarity of the purpose of the transitional measures. The Organization's intention was to grant, pursuant to staff rule 6.3(a)(iii), 10 weeks prenatal and postnatal leave with full pay to parents who gave birth and were on maternity leave on 1 January 2023.

49. The Tribunal finds no grounds for the Applicants' claim that the contested decisions were unlawful or that they were subject to gender discrimination. Neither Applicant qualifies for sec. 6.3(a)(i) parental leave by operation of sec. 1.2 of ST/AI/2023/2, which set a cutoff date of 1 January 2023, nor do they qualify for the 10 weeks special leave under the transitional measures since they did not give birth and were not on maternity leave on 1 January 2023.

50. The Applicants are not, therefore, similarly placed as the intended beneficiaries (birth mothers) of the 10 weeks special leave under the transitional measures. The decision to reject their request does not therefore constitute gender discrimination.

51. In the Tribunal's view, the fact that the transitional measures apply to only birth mothers, rather than support the argument that they are discriminatory, only confirm that other categories of staff members such as fathers, non-birth mothers and adoptive parents, are not covered by the transitional measures. The Tribunal also finds a clear rationale behind the transitional measures, which is to take into account WHO's recommendation of six months minimum of breastfeeding for birth mothers. In this regard, the Appeals Tribunal has held that "differential treatment which pursues a legitimate policy is not unfair discrimination if there is a rational connection between



the differentiation and the purpose it is designed to achieve” (see *Canova* 2022-UNAT-1252, para. 39, and also *Krioutchkov* 2022-UNAT-1248, para. 32).

52. In this case, the differential treatment of parents who give birth to a child and parents who do not give birth to a child serves a legitimate policy objective. There is a clear rational connection between the differentiation and the purpose of the policy, which is to address health matters related to giving birth to a child in line with the WHO’s recommendation.

53. The Tribunal finds that since the Applicants did not give birth to their children, they were not entitled to an additional 10-weeks parental leave with full pay. Further, their request for parental leave was rightly rejected in keeping with sec. 1.2 of ST/AI/2023/2. The transitional measures are not discriminatory to the Applicants due to their gender.

*Whether the decision to apply the provisional rules only to parents whose children were born or adopted on or after 1 January 2023 is discriminatory and improperly restricts staff rule. 6.3 of ST/SGB/2023/1*

54. The Applicants additionally argue that the decision to apply the provisional staff rules only to parents whose children were born or adopted on or after 1 January 2023 constitutes discrimination. This assertion is premised on the argument that rather than provide a cutoff date for the application of the parental leave measures, each of General Assembly resolution 77/256 A-B, the ICSC recommendation, and staff rule 6.3 of ST/SGB/2023/1 provide that *all parents* with children under 1 year of age are entitled to 16 weeks of leave. The Applicants maintain that the cutoff date of 1 January 2023 leaves some parents out of the application of the parental leave measures contrary to the clear intention of the General Assembly.

55. The Tribunal finds no merit in this line of argument. That the ICSC only made a recommendation is not disputed. The recommendation could be accepted, rejected or modified as seems to have been the case. The General Assembly only welcomed the establishment of the new parental leave framework and requested “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”. Nothing in General Assembly resolution 77/256 A-B requires that parental leave measures should be applied to *all parents* as the Applicants suggest.

56. The Tribunal notes that the General Assembly resolution in fact gives wide discretion to the Secretary-General to determine the modalities of implementation of the measures. It was on this basis that the Secretary-General promulgated staff rule 6.3(a)(i) of ST/SGB/2023/1, which provides “[u]nder conditions established by the Secretary-General, staff members shall be granted: (i) [s]ixteen weeks of parental leave with full pay in the case of the birth or adoption of a child”.

57. The Secretary-General’s determination of the limited category of staff members to whom the parental leave measures would apply is within his mandate under staff rule 6.3(a) of ST/SGB/2023/1. The issuance of ST/AI/2023/2, which sets the cutoff date for the application of the parental leave measures, is therefore in line with the General Assembly resolution and with staff rule 6.3(a) of ST/SGB/2023/1. Staff rule 6.3 of ST/SGB/2023/1 and the relevant parts of ST/AI/2023/2, moreover, relate to a different aspect of the parental leave measures. While ST/SGB/2023/1 articulates the policy, ST/AI/2023/2 guides the implementation of the policy, none restricting, contradicting or being inconsistent with the other. The invocation of the principle of hierarchy of norms is therefore not warranted.

58. Based on the foregoing, the Tribunal finds that the decision to apply the provisional rules only to parents whose children were born or adopted on or after 1 January 2023 is neither discriminatory, nor does it improperly restrict staff rule 6.3 of ST/SGB/2023/1.

Whether the decision to deny Mr. Langelaar's request for SLWFP was lawful

59. Mr. Langelaar asserts that the decision to deny his request for SLWFP was unlawful. He, however, does not substantiate his claim beyond stating that his request

for SLWFP was denied on the grounds that it was not considered to benefit the Organization.

60. The Respondent, on the other hand, asserts that UNSOM's 19 May 2023 decision to deny Mr. Langelaar's request for eight weeks of SLWFP was within the discretionary authority of the Head of Entity of UNSOM, and that in exercising her discretion, the Head of Entity of UNSOM considered relevant matters. The Head of Entity considered that Mr. Langelaar had alternative leave options available to him to support his partner in taking care of their newborn. According to the Respondent, at the time of his request, Mr. Langelaar had over 30 days of annual leave accrued and was eligible to request "family leave", a specific type of special leave without pay, available to "the parent of a newborn or adopted child," as stipulated in staff rule 5.5(a)(iv). The Respondent adds that UNSOM also considered that Mr. Langelaar had the option to telecommute from outside his duty station for eight weeks under a Flexible Working Arrangement, an option he had availed himself of previously.

61. Mr. Langelaar does not dispute any of the above submissions by the Respondent. In the absence of contrary evidence, the Tribunal accepts the Respondent's undisputed assertions, and finds that UNSOM's conclusion that granting SLWFP on an exceptional basis was not in the interest of the Organization was lawful, rational, and procedurally correct.

**Conclusion**

62. The Tribunal finds no merit in the application and dismisses it in its entirety.

*(Signed)*

Judge Margaret Tibulya

Dated this 30<sup>th</sup> day of August 2024

Entered in the Register on this 30<sup>th</sup> day of August 2024

*(Signed)*

Isaac Endeley, Registrar, New York