



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/035

Judgment No.: UNDT/2024/0062

Date: 13 September 2024

Original: English

**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Isaac Endeley

APPLICANT

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Monika Ona Bileris

**Counsel for Respondent:**

Tamal Mandal, AS/ALD/OHR/UN Secretariat

## **Introduction**

1. The Applicant, a former staff member with the Division of Special Activities, Department of Operational Support (“DOS”), filed an application dated 12 October 2023 challenging the decision of 12 May 2023, to separate her from service for abandonment of post (“the contested decision”).
2. The Respondent filed a reply on 15 November 2023 contending that the application is without merit as the contested decision was lawful.
3. For the reasons set out below, the application is denied.

## **Factual background**

4. The Applicant joined the Organization in 2001. At the time of the contested decision, the Applicant encumbered a P-3 level position as a Human Resources Officer in the Division of Special Activities (“DSA”), Department of Operational Support (“DOS”).
5. Between 3 January 2023 and 12 May 2023, the Applicant was absent from work without authorization for 71 days.
6. The Headquarters Client Support Service (“HQCSS”) for DSA emailed the Applicant at her official United Nations email and personal email addresses numerous times in February, March, and April 2023 enquiring about her absences.
7. On 4 April 2023, HQCSS requested an update regarding the Applicant’s absences and reminded her that the last certified sick leave on record was for a half-day of sick leave for 27 February 2023.

8. On 6 April 2023, HQCSS informed the Applicant that HQCSS would record the days that the Applicant had been absent from work as unauthorized absences, or rejected late/unapproved sick leave by the Division of Healthcare Management and Occupational Safety and Health (“DHMOSH”). HQCSS further informed the Applicant that if it did not hear from the Applicant by 10 April 2023, the Organization would proceed to take appropriate action in accordance with sec. 9 of ST/AI/400 (abandonment of post).

9. On 11 April 2023 via email, and on 14 April 2023, via registered mail to the Applicant’s home address, HQCSS requested that the Applicant “report for duty immediately and/or provide a plausible explanation for [her] unauthorized absence”. HQCSS informed the Applicant that unless she was “able to give satisfactory and plausible proof” that her “absence was involuntary and was caused by forces beyond [her] control”, the Organization would “initiate necessary proceedings” for her separation for abandonment of post.

10. On 25 April 2023, via email and registered mail to the Applicant’s home address, the Acting Chief, HQCSS requested the Applicant to “report for duty immediately and/or provide a plausible explanation”. The Acting Chief, HQCSS informed the Applicant that unless she was “able to give satisfactory and plausible proof” that her “absence was involuntary and was caused by forces beyond [her] control” within ten working days (i.e., by 9 May 2023), the Organization would “proceed with the process of separation of abandonment of post under Staff Rule 9.6(b) and in accordance with section 10 of ST/AI/400”.

11. On 2 May 2023, at noon, the Applicant appeared on the 7<sup>th</sup> Floor of the United Nations Secretariat building. The Applicant met with HQCSS and subsequently, with her First Reporting Officer (“FRO”) and Second Reporting Officer (“SRO”). Approximately two hours after appearing, the Applicant left the office without informing or seeking authorization from her FRO and SRO.

12. Thereafter, the Applicant ceased all communications with the Organization. The Applicant did not report for duty in person or virtually.

13. On 5 May 2023, the Applicant's FRO emailed the Applicant at her official United Nations email and personal email addresses, reminding her that the entire section was supposed to be in the office on Mondays, Tuesdays, and Thursdays. The Applicant's FRO also informed the Applicant that she was required to submit her flexible working arrangement request form by the end of that day. The Applicant's FRO informed her that if she was going to be absent from work because she was unwell, she needed to inform her reporting officers and HQCSS, and that if she was going to be working from home, she needed to inform her reporting officers that she was available and ready to take up tasks as required. The Applicant's FRO requested that the Applicant join a meeting at 3:00PM on 5 May 2023. The Applicant did not respond to her FRO's email or attend the meeting in person or virtually.

14. On 12 May 2023, the Under-Secretary-General for the Department of Operational Support, pursuant to his delegated authority, approved the separation of the Applicant from the Organization as per staff rule 9.6(b) and ST/AI/400 for abandonment of post.

15. On 16 June 2023, the Applicant requested management evaluation of the contested decision.

16. On 22 July 2023, the Under-Secretary-General, Department of Management Strategy, Policy and Compliance endorsed the findings and recommendations of the Management Evaluation Unit and upheld the decision to separate the Applicant from service on the grounds of abandonment of post.

## Consideration

### *Receivability*

17. The Respondent challenges the receivability of parts of the application. The Respondent states that to the extent that the Applicant seeks to challenge anything other than the 12 May 2023 decision to separate her from service for abandonment of post, the application is not receivable on two grounds. First, the Applicant did not seek management evaluation of DMOSH's decision rejecting her requests for certified sick leave. As such, any claim challenging the number of days recorded as unauthorized absences due to lack of medical certification and failure to report to work is not receivable. Second, the Applicant did not request management evaluation of HQCSS's 14 October 2022 decision that, after conferring with DHMOSH, her case would not be recommended to the Pension Fund Committee for disability benefits. As such, any claim challenging that decision is not receivable.

18. Upon review of the record, the Tribunal notes that the Applicant did not seek management evaluation of the DHMOSH decisions rejecting her requests for certified sick leave, and therefore, agrees with the Respondent that claims challenging these previous decisions rejecting her requests for certified sick leave are not receivable. However, the Tribunal finds that this would not bar the Applicant from challenging the factors (including status of sick leave requests) which led to the Administration's decision to separate the Applicant from service for abandonment of post. This decision remains a separate reviewable administrative decision.

19. In respect of any challenges regarding the issue of disability benefit, the Tribunal notes that the Applicant did not request management evaluation of HQCSS's 14 October 2022 decision that, after conferring with DHMOSH, her case would not be recommended to the Pension Fund Committee for disability benefits. As such, any claim challenging HQCSS's 14 October 2022 decision is not receivable *ratione materiae* because the Applicant did not request management evaluation of the decision as required by staff rule 11.2(c).

*Legal framework*

20. Leave from work may only be taken when authorized, except for uncertified sick leave and family leave. Under staff rule 6.2(g), staff members are obliged to inform their supervisors as soon as possible of absences for reasons of health, including illness or injury, under conditions established by the Secretary-General. Staff rule 6.2(g) further provides that staff members shall promptly submit any medical certificate or medical report to DHMOSH for review.

21. ST/AI/400 defines abandonment of post as “a separation initiated by the staff member other than by way of resignation” (see para. 4) and sets out the procedure to be followed in cases where a staff member may be deemed to have abandoned her/his post. The absence of a staff member from work, which is not authorized as sick leave under staff rule 6.2, may create a rebuttable presumption of intent to separate from the Organization. To rebut the presumption, the staff member must provide satisfactory proof that such absence was involuntary and was caused by forces beyond their control. The procedure to address unauthorized absences, including absence due to alleged incapacity for reasons of health, and to separate the staff member for abandonment of post, is set out in ST/AI/400.

22. The Appeals Tribunal has stated that mere unauthorized absence is not enough to establish that the staff member had effectively abandoned his post (see *Agha* 2019-UNAT-916, paras. 22-23). In *Webster* 2023-UNAT-1369, the Appeals Tribunal emphasized importance of reviewing the intent of the staff member when determining whether there was abandonment of post (paras. 79 – 82, footnotes omitted):

... Furthermore, Mr. Webster’s temporary unjustified absence from work could not be automatically considered as abandonment of post, without any inquiry about his intention. The *objective* element of unauthorised absence must be interpreted in the context of the *subjective* component of the staff member’s action or inaction. [...] Mr. Webster’s case shows that, as previously mentioned in this Judgment, in the e-mail dated 30 May 2017, he had clearly advised his supervisor of his medical situation, as well as of his “*hope to recover soon and return to work*”. [...]

... This clear statement that Mr. Webster did not want to abandon his post was later corroborated by the phone call of 22 June 2017, when he agreed to obtain an extension of his certified sick leave, and by the fact that he requested a medical report from his doctor on that same date.[...] Two days after, Mr. Webster advised [the Medical Services Division] that his doctor was away and that he would send a report from his psychotherapist as soon as it was made available, which he did on 12 July 2017.[...]

... During the following days, on 19 and 20 July 2017, after the contested administrative decision was taken, Mr. Webster exchanged e-mails with his supervisor and/or the ISA HRO [unknown abbreviation] regarding the medical certificate required to certify his sick leave, even though his doctor was on vacation.[...] However, a reiteration of the decision to separate Mr. Webster from service was made on 1 August 2017, a few days before his sick leave was finally retroactively certified on 10 August 2017, with effects up to 30 September 2017, the date when the separation became effective.

... The plain reading of the facts above leaves no doubt that: i) at the time when the contested decision was taken, there was no willingness of abandonment of the post by Mr. Webster; ii) despite his poor mental health condition that was *medically certified*, Mr. Webster was, at the time when the contested decision was taken, undertaking reasonable steps to comply with the requirements for the certification of the extension of his sick leave; iii) his sick leave was subsequently retroactively certified to encompass the period from 19 June to 30 September 2017, including the date when the contested administrative decision was taken (14 July 2017); and iv) the certification of *retroactive* medical leave is lawful and had been used in the past at least once, on 2 May 2017, for the period from 18 April 2017 to 18 May 2017, when Mr. Webster took his first sick leave after the attack.

23. It follows from the above that the Tribunal must evaluate a decision to separate a staff member for abandonment of post within the wider context of the alleged unauthorized absence. The Dispute Tribunal must interpret the objective element of unauthorized absence in the context of the subjective component of the staff member's action or inaction.

*Discussion*

24. In the present case, the Applicant contends that the decision to separate her from service for abandonment of post was unlawful. She argues that the decision is “null and void” because it is in violation of the United Nations legal framework and it is tainted by procedural and substantive irregularities. In this regard, the Applicant states that she never intended to separate from her post and “only ever tried to take authorized leave and kept the Organization informed of her absences. [The Applicant] states that she routinely submitted sick leave requests, but had to rely on her doctor to submit the requisite medical certifications as per [United Nations] practice, which disallowed her from knowing if/when her doctor submitted said certifications”.

25. The Respondent states, on the other hand, that the contested decision was lawful, rational and procedurally correct. The Respondent submits that between 3 January 2023 and 12 May 2023, the Applicant accrued 71 days of unauthorized absences due to lack of medical certification and failure to report to work. The Respondent notes that the Applicant’s unauthorized absences in 2023 formed part of a pattern of prolonged unauthorized absences that began in mid-February 2021. Despite due diligence on the part of the Organization, including explicitly informing the Applicant of the consequences of her prolonged unauthorized absences from work, the Applicant failed to comply with her obligations to report to work or provide satisfactory proof that her absences were involuntary or caused by forces beyond her control. The Respondent states that the Administration followed the proper procedures for separation from service for abandonment of post as set out in ST/AI/400.

26. Upon review of the case record, the Tribunal notes that the Applicant was absent from work for 71 days between 3 January 2023 and 12 May 2023. Through this period, the Administration made extensive efforts to maintain communication with the Applicant. For example, the records show that HQCSS emailed the Applicant, at her official United Nations email and personal email addresses numerous times in February, March, and April 2023 regarding the reasons for her absences. In these



communications, HQCSS reminded the Applicant of her obligation to submit sick leave certificates, of the expectation to provide a work status update to her managers and HQCSS, and that any leave that had not been approved as certified sick leave, uncertified sick leave or annual leave would be reflected as unauthorized absence.

27. On 11 April 2023, HQCSS spoke with the Applicant via phone and informed her that she must report to the office or submit medical certificates, and that if she failed to do so, HQCSS would proceed with the abandonment of post process, in accordance with ST/AI/400.

28. On 11 and 25 April 2023, HQCSS sent the Applicant two formal notifications, as required under ST/AI/400, at her official UN email and personal email addresses, and by certified mail to her home address. Those notifications reminded the Applicant to report for duty or provide a plausible explanation for her unauthorized absence. The 25 April 2023 notification required the Applicant to respond within ten working days (i.e., by 9 May 2023), and further informed her that unless she was “able to give satisfactory and plausible proof” that her “absence was involuntary and was caused by forces beyond [her] control” the Organization would proceed with the process of separation for abandonment of post under staff rule 9.6(b) and in accordance with the provisions of ST/AI/400.

29. It follows from the above communications and notifications that the Applicant was required to report for duty or provide a plausible explanation for her unauthorized absence, by 9 May 2023. The Applicant did not respond to the Organization’s communications and formal notifications dated 11 and 25 April 2023.

30. The Tribunal notes that the Applicant did, however, attend the office on 2 May 2023. She states that she visited the office to check on the status of her medical insurance in advance of a surgical procedure scheduled for 12 May 2023. During this visit, although she met with HQCSS, her FRO and SRO, the Applicant did not provide the Organization with a response to their 11 and 25 April 2023 notifications, nor could

she be deemed to have reported for duty as she left the office shortly after enquiring on the status of her benefits.

31. The Applicant states that she submitted a letter from a clinical social worker to the United Nations Medical Division on 27 April 2023 and the signed version of the same letter again on 31 May 2023. The Tribunal has reviewed this letter and finds that although the letter explains the Applicant's medical symptoms and her regular appointments with a therapist, the document is not a medical certificate ordering medical leave and specifying its duration.

32. The Applicant provided the Tribunal with additional medical documentation, including a letter from her doctor dated 23 June 2023 (more than five weeks after the contested decision). Although this letter documents her illness, the Tribunal notes that it does not constitute a medical certificate covering her absence during the period between 25 April 2023 and 9 May 2023. In addition, her physician acknowledges that the last time she saw the Applicant (remotely) was on 21 March 2023. In addition, this document postdates the 12 May 2023 contested decision by five weeks. As noted above, it was clear that the Applicant was required to either report for duty or provide a plausible explanation for her unauthorized absence, by 9 May 2023.

33. It follows from the above that given the context of the Applicant's prolonged unauthorized absences from work, together with her inaction and failure to respond to the Administration's various communications to her, including the request to provide the requisite proof that her absence was involuntary and was caused by forces beyond her control by 9 May 2023, the Administration reasonably determined that the Applicant did not indicate any intent to return to work. As a result, the Administration lawfully undertook the process of separation for abandonment of post under staff rule 9.6(b).

34. The Tribunal finds no clear indication from the Applicant that she communicated to the Administration that she did not want to abandon her post, despite receiving formal notifications that the abandonment of post process would be initiated

unless she responded to the notification by 9 May 2023. As a contrast, in the case of *Webster*, the Applicant had clearly advised his supervisor of his medical situation, as well as of his *“hope to recover soon and return to work”* (emphasis added, see para. 79) and remained in regular contact with the Administration during his absence. The Appeals Tribunal further found that “despite his poor mental health condition that was medically certified, Mr. Webster was, at the time when the contested decision was taken, undertaking reasonable steps to comply with the requirements for the certification of the extension of his sick leave [...]” (see para. 82). In the present case, the record establishes that the Applicant failed to take any timely steps to respond to the Administration’s various communications and notifications regarding her absences.

35. The Applicant further claims that the Administration “breached its duty of care by failing to act in good faith”. The Applicant argues that the Administration “was well aware of her medical condition, yet did nothing to assist her in determining what her options were when it was clear that she was unable to function on a fulltime basis, even though she availed herself to numerous staff and officials. It tried to force her back to work without reasonable accommodation, assuming, without proof, that she was ready and able to return to work”.

36. The Tribunal finds no merit to the Applicant’s claims. The record shows that the Administration supported the Applicant and her return to work through her various periods of medical leave by: (a) approving of a return-to-work schedule based on DHMOSH recommendations; (b) issuance of two salary advances despite extensive unauthorized absences; (c) issuance of advance annual leave to ensure full pay status and health insurance; (d) exceptionally allowing her to avail herself of a floating holiday in March 2023, to reinstate health insurance; (e) delays in processing administrative action in order to grant additional opportunities to the Applicant to submit necessary documentation; (f) numerous communications reminding the Applicant of her responsibilities as a staff member; and (g) regular check-ins to confirm her well-being. Further, in response to the Applicant’s concerns over her assigned reporting officers and functions, HQCSS: (a) changed her first reporting officer; (b)

changed her assignments within her section; and (c) approved her participation in two staff immersion programmes within DOS.

37. Based on the above, the Tribunal finds that the Organization acted in good faith, offered appropriate support to the Applicant and repeatedly informed the Applicant of the consequences of her prolonged unauthorized absences from work.

### **Conclusion**

38. In view of the foregoing, the Tribunal finds that the contested decision was lawful and rejects the application.

*(Signed)*

Judge Joelle Adda

Dated this 13<sup>th</sup> day of September 2024

Entered in the Register on this 13<sup>th</sup> day of September 2024

*(Signed)*

Isaac Endeley, Registrar, New York