



Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

KULGA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

André Luiz Pereira de Oliveira, Legal Specialist, UNFPA
Maria Monica Obezo, Legal Analyst, UNFPA

Introduction

1. On 23¹ and 25 October 2024, the Applicant filed an application contesting what he describes as the “UNFPA Management Evaluation (ME) dated 26 July 2024 stat[ing] that the Organization will proceed with recovering a portion of the Home Leave (HL) lump sum [he] received in January 2024”.
2. On 27 November 2024, the Respondent filed his reply arguing, *inter alia*, that the application was not receivable *ratione materiae* because the outcome of a request for management evaluation does not constitute a reviewable administrative decision and, as such, the United Nations Administrative Tribunals lack jurisdiction to review it. The Respondent further argued that the recovery decision was lawful.
3. Via Order No. 7 (NBI/2025) dated 23 January 2025, the parties were informed that the case would be determined based on the case documentary record and were directed to file closing submissions by 7 February 2025, which they did.

Facts

4. On 3 December 2023, the Applicant applied for Home Leave. In his Home Leave application, he indicated that he, his spouse and his son would travel together from Johannesburg (his duty station) to Moscow (his place of home leave) on 23 December 2023. The return trip was scheduled to start in Moscow on 22 January 2024, arriving in Johannesburg on 23 January 2024.
5. On 6 December 2023, the quotation for the requested dates was calculated to be USD7,081.00 each, totalling USD21,243.00. Accordingly, a lump sum payment was approved for USD15,932.25, (i.e., 75% of the total quotation for the three tickets). The Applicant received the Home Leave lump sum payment of USD15,932.25 with his January 2024 salary.
6. On 29 December 2023, the UNDP Benefits and Entitlements Section (“BES”) reminded the Applicant that, within 30 days of his return from Home Leave travel, he was required to certify and provide proof of the travel. This reminder also warned

¹ An incomplete application was filed on 23 October 2024.

the Applicant that “the Home Leave travel payment [would] be recovered” if the certification and proof were not provided.

7. On 4 February 2024, the Applicant was again reminded of the need to certify and provide proof of the travel on penalty of recovery of the Home Leave payment. In response the Applicant disclosed for the first time that, while he had taken the Home Leave as approved, his family delayed their Home Leave. He indicated “my son ... will start the trip today and is planning the return in April '24” and “my wife will start her trip in April due to her medical issues.” The Applicant also asked when his son must complete the Home Leave trip as he would be turning 21 years old in late May 2024, and the Applicant would be arranging his repatriation entitlement at that time.

8. Ultimately, the Applicant’s son travelled to Moscow on 5 February 2024 and returned to Johannesburg on 1 May 2024. The Applicant’s wife travelled to Moscow on 28 March 2024, and returned to Johannesburg on 28 April 2024.

9. On 16 February 2024, a Human Resources Assistant (“the HRA”) informed the Applicant that she needed the proof of Home Leave travel for him and all his dependents to close the case and to ensure that “the system will not initiate recovery.” The HRA also informed the Applicant that his son needed to complete the Home Leave travel before he turned 21 years old as the son’s entitlement would cease on the day he turned 21 years old.

10. On 18 February 2024, the Applicant provided the boarding passes for his son’s trip from Johannesburg to Moscow on 5 February 2024 and informed of his tentative return on 1 May 2024. He stated that his wife planned to start her Home Leave trip on 1 April 2024 and return with the son around 1 May 2024.

11. Finally, the Applicant’s wife travelled to Moscow on 28 March 2024, and returned to Johannesburg on 28 April 2024.

12. On 8 April 2024, the Applicant informed the HRA that his wife travelled to Moscow on 28 March and would return on 27 April. He further said that his “son will return back from HL to Johannesburg on 30 April and he will repatriate to

Moscow on 05 May 2024 (as he will be 21 years old on 22 May 2024.)” He also asked for advice about how to claim a lump sum for the son’s repatriation.

13. On 13 April 2024, the Applicant presented the boarding passes for his wife’s travel from Johannesburg to Moscow on 28 March 2024, and confirmed that she was planning to return to Johannesburg on 28 April 2024.

14. On 17 April 2024, the HRA told the Applicant that,

[s]ince the travel for your dependents did not happen within one month from the original approved effective date, as per procedure a revised travel quotation is required based on the actual travel date. We have now a new travel quotation for lesser amount than the original dates i.e., US\$2,059.5 per person.

He was instructed how to submit for a revised payment and also told that any repatriation travel for the son would be forfeited because “the rule mentions that there has to be three months interval between two entitlement travels. [And] this is not the case in here.”

15. Within minutes, the Applicant replied asking if he could rearrange the son’s repatriation travel for later in the year, suggesting August-December 2024. The next day, he expanded on his request by asking that the three-month interval be reduced. He also pointed out that the new Home Leave lump sum calculation “is significantly reduced - the difference is huge.” Therefore, he asked for details on that calculation including the fares quotations.

16. On 18 April 2024, the HRA provided the quotation and explained that the reason for the reduction is that the first quotation was for the holiday season.

17. In response, the Applicant requested exceptional approval for the lump sum without further changes from the amount he had already received. The reason he gave was that his “family needed to change the initial travel plan due to [his] wife’s surgery (due to a broken leg ...) and her [related] stay in hospital in December 2023.” He stated that his son travelled to Moscow on 5 February 2023 and was going to return on 30 April 2024; and that his wife travelled to Moscow on 28 March 2024 and going to return on 28 April 2024. Additionally, he had not been

warned of the possibility of recovery “otherwise [he] would speed up HL travel completion at least for [his] son who was not affected by the surgery like [his] wife.”

18. The HRA clarified that the recovery would comprise only the quotation difference applied to his dependents’ tickets, not the Applicant’s, because he had travelled as scheduled. She further added that if his “actual ticket cost for the dependents is higher than the new quotation amount (75% of \$2746), [he could] request reimbursement of [his] actual ticket cost by submitting proof of payment. [The Administration would] then seek an exception to pay [him] based on actual ticket cost.”

19. The Applicant responded on the same day, requesting the HRA to reconsider her decision, stating that his “son travelled on 05 February immediately after the lump sum was received on 24 January 2024.” Accordingly, the Applicant requested to be paid the total lump sum at least for his son. He also asked that the HRA’s supervisor be involved.

20. On 19 April 2024, an HR Specialist (“HRS”) in “BES” informed the Applicant that the lump sum amount was based on a requested date of travel during the peak/holiday season, but the actual travel took place in low season, “hence the need for adjustment. Period.”

21. The HRS also questioned the Applicant’s statement that the son travelled immediately on receipt of the lump sum.

I could be wrong here but my assumption is that he may have travelled to Johannesburg sometime before 5 Feb a) because he studies in a college in Moscow on a full-time basis; and b) the SY2023-2024 is from 31 Aug thru 20 June 2024, - therefore he may have had the return ticket from SA already in his hands. Please forgive & correct me if I am wrong.

In the interest of fairness, simplicity and full transparency, I would suggest that you send a copy of the bill and payment receipt for your child’s ticket, for reimbursement.

22. The HRS further stated that, in relation to the Applicant's request for advice on his son's repatriation, per paragraph 52 of the UNDP Home Leave Policy, a minimum of a three-month interval was required between entitlement travels.

23. On 3 May 2024, the Applicant supplied additional new information to the HRS. He stated that his wife was hospitalized in Moscow from 26 to 29 December 2023 "for the surgery (due to her earlier broken leg)." Accordingly, the Applicant travelled to Moscow on 25 December 2023 and returned to Johannesburg on 20 January 2024. The son and wife travelled from Moscow back to Johannesburg on 23 January 2024 with tickets the Applicant purchased on 19 December 2023. (He does not claim this trip as part of their Home Leave.) His son then went alone on Home Leave from Johannesburg to Moscow on 5 February 2024, staying until 1 May 2024. The Applicant's wife went on Home Leave to Moscow from 28 March to 28 April 2024. He attached the corresponding boarding passes in an attempt to comply with the requirement to provide the boarding passes within 30 days after completing the Home Leave travel.

24. On 6 May 2024, the HRS responded to this new information. She recounted that during frequent discussions with HR about his Home Leave request, the Applicant did not mention that he was travelling alone to Moscow and his wife and son were there already. She added that it was only his email of 3 May 2024 that brought to the light that "the real reason [his wife] couldn't travel with [him] in [December] [was] actually because she wasn't with [him] in Johannesburg either when [he] applied for HL or when [he] travelled on HL."

25. The HRS further pointed out that the Applicant first claimed that his son was only able to travel on Home Leave after the lump sum was received on 24 January 2024. Yet his recent email confirmed "the reason he couldn't travel with [the Applicant] to Moscow in [December] is not the delay in payment but because again he was there in Moscow already and came to Johannesburg on 23 [January]" As a result, the Administration was going to recover the son's lump sum "in full" because he had not spent three months in the duty station and therefore was not eligible for Home Leave. The HRS also said she had no authority to make any exceptions for the Applicant.

26. On 11 June 2024, the Applicant requested management evaluation of the decisions to reduce his family Home Leave lumpsum, to cancel his son's Home Leave entitlement, and to forfeit his repatriation. By letter dated 26 July 2024, management evaluation determined that the request relating to his son's repatriation was not receivable because the Applicant filed no request seeking repatriation and thus, there was no final decision on that issue; and that the decision to recover the difference between the Home Leave lump sum paid and the revised calculation due to the difference in travel dates was reaffirmed.

27. In October 2024, the Applicant filed a timely application for judicial review with this Tribunal.

Parties' submissions

28. The Applicant's principal contentions are:

- a. He disagrees with the UNFPA and BES decisions to recover a portion of his Home Leave lump sum because he submitted the Home Leave request on time, coordinated and transparently shared information with BES on unforeseen circumstances affecting his travel (i.e., his wife's hospitalization and necessary recovery time), and communicated the already undertaken travel and timely shared proof of travel.
- b. He expected BES to treat him and his family with "basic humanity" given the circumstances of his Home Leave request and his wife's medical conditions, hospitalization for the surgery, recovery time, and diagnosis.
- c. The Respondent erroneously referenced staff rule 5.4 as the framework governing Home Leave entitlements for UNFPA.
- d. The delay in processing the lump sum request was occasioned by BES. BES ignored his 18 February 2024 request for advice on his newly proposed Home Leave itinerary, but in their next email, dated 17 April 2024, after 59 days of silence, they informed him that the lump sum would be deducted.

e. The BES and Legal Office requests for the actual cost of his family's Home Leave tickets are irrelevant to the case because he has never requested for retroactive Home Leave reimbursement. He was acting within the framework of approved lump sum for 3 December 2023, which has never been cancelled.

f. The Applicant requests the Tribunal to cancel the decision to recover a portion of the Home Leave lump sum paid to him.

29. The Respondent's principal contentions are:

a. The application is not receivable *ratione materiae*. The Applicant identified the contested decision as the UNFPA management evaluation decision dated 26 July 2024. However, it is trite law that the outcome of a management evaluation does not constitute a reviewable administrative decision under art 2.1 of the UNDT Statute. As such, the application falls outside of the UNDT's jurisdiction and should be dismissed in its entirety.

b. The recovery decision is lawful under the applicable legal framework and jurisprudence.

c. The Applicant has failed to rebut the presumption of regularity of the recovery decision which was lawfully taken based on the Applicant's failure to comply with the home leave framework.

d. The Respondent requests that the application be dismissed in its entirety.

Consideration

Receivability

30. The Respondent argues that the application is not receivable *ratione materiae* because the Applicant identified the contested decision as the UNFPA management evaluation decision dated 26 July 2024.

31. The Respondent's claim is factually correct. In his application the Applicant identified the contested decision as the management evaluation decision which stated that the Organization will "proceed with recovering a portion of the Home Leave (HL) lump sum I received in January 2024." However, the Respondent's argument elevates form over substance.

32. The Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review. When defining the issues of a case, the Appeals Tribunal has held that the Dispute Tribunal may consider the application as a whole. (*See e.g., Fasanella* 2017-UNAT-765, para. 20, and *Cardwell* 2018-UNAT-876, para. 23)

33. The Applicant, who is self-represented, noted in his 11 June 2024 request for management evaluation that he was contesting a series of decisions: the decision to reduce his family Home Leave lump sum and the decision to cancel the son's Home Leave entitlement. He prevailed on the issue of the cancellation of his son's Home Leave entitlement, and thus a portion of the ticket cost was included in the recovery amount.

34. Before the Tribunal, the Applicant is essentially contesting the decision to recover a portion of the home leave lump sum he received in January 2024, which he mischaracterizes as a decision taken by the UNFPA in the 26 July 2024 management evaluation. The Tribunal thus defines the contested decision as the recovery of a portion of his Home Leave lump sum payment.

35. The Tribunal finds and holds that the application is receivable.

Merits

Applicable legal framework

36. Determining the applicable laws governing the Home Leave entitlement in UNFPA is a bit convoluted. As observed by the Appeals Tribunal in *Weerasooriya* 2015-UNAT-571, para. 20, "administrative issuances do not apply to UNFPA, unless their applicability is expressly provided for in the administrative issuance or

expressly accepted by UNFPA being a separately administered fund.” *Id.* para. 20 (referring to ST/SGB/2009/4 (Procedures for promulgation of administrative issuances).) *See also, Toson 2023-UNAT-1319*, para. 19.

37. The Human Resources Policy in UNFPA, PPM/HR/2024/1, outlines the hierarchy which applies to UNFPA in respect of human resources related rules, policies and practices. It provides that

this HR policy framework includes HR related rules, administrative policy and administrative practice in the following order:

- a. Charter of the United Nations;
- b. United Nations Staff Regulations;
- c. United Nations Staff Rules;
- d. **HR policies issued or past practice established by UNFPA;** (emphasis in the original)
- e. HR policies issued or past practice established by UNDP, *mutatis mutandis*, in cases where a HR matter is not regulated by a policy issued or past practice established by UNFPA and UNFPA has decided to apply the UNDP policy or practice;
- f. HR policies issued or past practice established by the United Nations Secretariat, *mutatis mutandis*, in cases where a HR matter is not regulated by a policy issued or past practice established by either UNFPA or UNDP and UNFPA has decided to apply the United Nations Secretariat policy or practice.

38. In this instance, the UNFPA Policy on Leave Recording and Management expressly provides in para. 17. that “[t]he UNDP POPP [Programme and Operations Policy and Procedures] includes policy provisions regarding leave entitlements, which apply to staff members of UNFPA, *mutatis mutandis*.”

39. Thus, the applicable laws relevant to this case are United Nations staff rule 5.4, and paras. 42-44 and 62 of the UNDP Home Leave Policy.

Staff rule 5.4 provides, in relevant part, that

- (o) Subject to the conditions specified in chapter VII (Travel and relocation expenses) of the present Rules, staff members shall be

entitled to claim, in respect of authorized travel on home leave, expenses for themselves and eligible family members for the outward and return journeys between the official duty station and the place of home leave. Staff members may also claim travel time in respect of authorized travel on home leave.

Paragraphs 42-44 and 62 of the UNDP Home Leave Policy (2021).

42. The HL travel entitlement is normally paid as a lump sum amount.

43. Staff members will receive a lump sum amount equivalent to 75 per cent of the cost of the unrestricted economy fare by the least costly scheduled air carrier and by the most direct route.

44. The lump sum option for Home Leave travel cannot be retroactively approved. However, reimbursement on actual costs (subject to the maximum cost of lump sum) may be considered upon request with submission of documentary proof of travel within one year.

62. Upon return from home leave travel, a staff member is required to upload supporting documents into eServices to provide evidence of compliance with the required minimum length of stay in the home country and that travel took place as authorized. Such evidence may include but is not limited to:

- a) Used airline tickets and boarding passes, in hard copy or electronic form; or
- b) national passport containing the dates of arrival and departure from the country to which a particular home leave travel was authorized. If travelling by car, proof of travel will be any evidence showing that travel took place, such as stamped passports and receipts of payments for road tolls, fuel etc.

Failure to upload documentary evidence and/or travel deviations that are not in line with the authorized entitlement, may result in recovery of the home leave lump sum or recovery of the cost of the air tickets if the home leave travel was arranged by the organization.

40. The undisputed facts in this case are that the Applicant applied for Home Leave on 3 December 2023 for himself, his wife and his son to travel together from Johannesburg to Moscow on 23 December 2023 and return to Johannesburg on 23 January 2024. Based on these travel dates, the Applicant received a Home Leave lump sum payment of USD15,932.25 with his January 2024 salary.

41. Once the Applicant's subsequent assertions are closely examined (as the HRS did in the April and May emails which constitute the contested decision), the simple fact is that only the Applicant travelled on the approved Home Leave dates, or even close to the approved dates. Both the Applicant's wife and son were already in Moscow on the date for which their travel was approved.

42. The Applicant's wife and son travelled from Moscow to Johannesburg on 23 January 2024 at the Applicant's expense. The son then returned to Moscow on 5 February 2024 by himself, presumably for his spring term at university since he did not return to Johannesburg until 1 May 2024. The Applicant's wife travelled again to Moscow on 28 March 2024 and returned to Johannesburg on 28 April 2024.

43. In view of these deviations from the approved travel dates, the HRA re-calculated the Applicant's Home Leave entitlements and informed the Applicant that the new and lesser travel quotation was USD2,059.5 each for his wife and son since their travel did not happen within one month of the original approved effective date.

44. Contrary to the Applicant's argument, he did not share information with BES in a timely or transparent manner. Quite to the contrary. From the outset, he was requesting Home Leave for his dependents to Moscow, knowing that they were already in Moscow. His statements that his wife's surgery was unforeseen and this caused a delay in her travel, are contradicted by the fact that she was in Moscow for the surgery. And her alleged inability to travel after surgery is belied by the fact that she travelled on 23 January 2024 using tickets the Applicant purchased on 19 December 2023 "after speaking with a doctor, who said that my wife had a small chance to recover from the surgery at that time." If there was any coordination in his sharing of information, it was at best pursuant to a plan to dribble out information only as he deemed necessary and in such a manner as to clearly obscure the actual facts.

45. The Applicant argues that BES treated him and his family inhumanely given the circumstances of his Home Leave request and his wife's medical condition and treatment. However, he fails to explain how requiring compliance with the

Organization's Home Leave Rules amounts to inhumane treatment. Indeed, the tone of the emails indicate that the Organization was working to assist the Applicant under the assumption that his family had complied with the approved travel and that he just needed to submit their boarding passes as proof.

46. Once the Applicant admitted that his wife and son had not travelled near the approved dates, and the amounts were re-calculated, the Organization continued to provide him assistance, explaining that "If your actual ticket cost for the dependents is higher than the new quotation amount (75% of \$2746), you can request reimbursement of your actual ticket cost by submitting proof of payment. We will then seek an exception to pay you based on actual ticket cost." Rather than submitting the requested proof, the Applicant asked to escalate the matter to a supervisor; it was then his whole scheme unravelled. There is no evidence in the record that the Applicant submitted proof of the actual travel costs for his wife and son as requested. What the record shows is that the Organization treated him quite humanely.

47. The Applicant also alleges that staff rule 5.4 is not applicable as part of the legal framework governing Home Leave entitlements for UNFPA. The Applicant fails to provide any legal authority for this assertion, citing only unidentified instances where UNFPA allegedly has stated that "we must rely solely on UNDP Policies even if they are not including some items from Staff Rules, which they call as "UN Secretariat Staff Rules". Of course, these alleged statements are not authoritative.

48. More importantly, as explained in para. 37 above, the Human Resources Policy in UNFPA sets forth the hierarchy of the applicable rules, administrative policy and administrative practice and places United Nations staff rules near the top of precedence, behind only the United Nations Charter and the Staff Regulations and above both UNFPA policies and practices and UNDP policies and practices. Indeed, UNDP Policy on Home Leave explicitly references United Nations staff rule 5.4 as applicable. *Id.*, paras. 19 and 29.

49. The Applicant also submits that the delay in processing the lump sum request was occasioned by BES and that BES ignored his 18 February 2024 request for advice on his newly proposed Home Leave itinerary until 17 April 2024. The Applicant's submissions on this score are factually incorrect.

50. The Applicant only informed BES of his deviated travel plans on 5 February 2024, despite being aware as early as 23 December 2023, that his wife and son would not be travelling on the approved travel dates. Until 5 February 2024, the HRA was operating under the mistaken belief that the Applicant had complied with the 23 December 2023 approved travel plans. Thereafter, BES was attempting to have the Applicant clarify the actual travel dates and provide documentation thereof. Therefore, any delay was caused by the Applicant.

51. The Applicant argues that the requests for documentation of the actual cost of his family's home leave tickets are irrelevant to the case because he never requested retroactive Home Leave reimbursement. But this argument ignores that those requests would help him recover those costs if they were more than the revised lump sum, pursuant to para. 44 of the UNDP Home Leave Policy.

52. The Applicant does not dispute that he never submitted proof of the actual travel costs, despite multiple requests. Nor does he dispute that the Organization nevertheless exercised flexibility by allowing him to retain a portion of the lump sum payment, even though it could have recovered the entire amount for their trips as provided for at para. 62 of the UNDP Home Leave Policy. (This further negates his argument that he was treated inhumanely.)

53. He further argues that he was acting within the framework of the approved lump sum for 3 December 2023. That framework only applied to him because he travelled on the approved dates. Having travelled on other dates, it does not apply to his wife and son.

54. In sum, the Tribunal rejects the Applicant's arguments and finds that the decision to recover a portion of the Applicant's Home Leave lump sum was lawful.

Costs

55. Additionally, the Tribunal finds that the Applicant manifestly abused the judicial review process by filing a frivolous application. It is exceedingly clear that the Applicant repeatedly lied to the Administration for over six months in seeking to obtain and keep a Home Leave lump sum payment to which he was not entitled.

56. Once the truth was uncovered, he was very fortunate that management evaluation did not address the ultimate forfeiture of the entire portion related to his son's home leave and still allowed him to keep some of that portion, albeit reduced from the original estimated cost to travel during the holiday season to the cost to travel at the later date.

57. Still seeking to keep the lump sum in full, he filed an application with this Tribunal. In that application, and his subsequent submissions, the Applicant repeated his lies and even expanded upon them. Accordingly, the Respondent and the Tribunal were required to expend hours dealing with this case.

58. Article 10.6 of this Tribunal's Statute provides that "[w]here the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party." The Tribunal finds that filing and maintaining an application knowingly based on lies is a manifest abuse of the proceedings.

59. The Tribunal recognizes that the Respondent did not request costs in this case and that both this Tribunal and the Appeals Tribunal have, on occasions, refrained from awarding costs in the absence of such a request. However, the manifest abuse in this case is so blatant that some action is required. And since the Applicant's clear motivation for all his lies was financial gain, it seems that the appropriate action is to impose a financial sanction upon him.

60. In the absence of a request for costs from the Respondent, the Tribunal lacks evidence as to the exact amount of those costs. However, the record indicates that the Applicant received USD2,746 in unrecovered lump sum for his son's home leave, to which he was not entitled (although magnanimously overlooked by management evaluation). Given that the Respondent had to research, draft, and file

a nine-page reply (along with 95 pages of annexes), and a four-page closing submission, the Respondent's costs certainly exceed USD2,746. So, costs are set at USD2,746.

Conclusion

61. In light of the foregoing, the Tribunal DECIDES to:

- a. Deny the application in its entirety; and
- b. Award the Respondent costs of USD2,746 against the Applicant.

(Signed)

Judge Sean Wallace

Dated this 19th day of March 2025

Entered in the Register on this 19th day of March 2025

(Signed)

Liliana López Bello, for Wanda L. Carter, Registrar, Nairobi