



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2025/018
Judgment No.: UNDT/2025/073
Date: 2 October 2025
Original: English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

AEM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Ludovica Moro

Counsel for Respondent:

Halil Göksan, AS/ALD/OHR/UN Secretariat

Tamal Mandal, AS/ALD/OHR/UN Secretariat

Introduction

1. By application filed on 18 February 2025, the Applicant, a former staff member at the United Nations Economic and Social Commission for Western Asia (“ESCWA”), contests a 19 August 2024 decision denying her request for remote work on medical grounds and to extend her placement on Special Leave Without Pay (“SLWOP”) (“the contested decision”).

2. The Respondent filed a reply on 24 March 2025 arguing that the application is not receivable *ratione materiae*. On the merits, the Respondent submits that the contested decision was lawful, reasonable, procedurally fair and that the Administration reasonably exercised its discretion under ST/SGB/2019/3 (Flexible working arrangements).

3. Via Order No. 135 (NBI/2025), dated 21 August 2025, the parties were informed that the Tribunal would determine the case without holding a hearing and were directed to file closing submissions which they did on 8 September 2025.

Facts

4. On 15 August 2024, the Applicant wrote to the Director of Administration at the ESCWA Resources Management and Service Development Division (“RMSDD”) requesting authorization to work remotely and/or to be reassigned to a suitable duty station. The Director, RMSDD denied the Applicant’s request on 19 August 2024. This is the contested decision.

5. On 10 October 2024, the Applicant filed a management evaluation request contesting the 19 August 2024 decision.

6. On 20 November 2024, the Management Advice and Evaluation Section (“MAES”) concluded that the Applicant’s request was time-barred and not receivable. On the merits, MAES informed the Applicant that there is no right to telecommute from outside the duty station.

7. The factual background of this case is very similar to that in an earlier application filed by the Applicant, Case No. UNDT/NBI/2024/060 (“AEM 1”).

Thus, it is unnecessary to repeat those facts here, except for the slight ways in which they differ. That prior case was decided by the Tribunal on 9 May 2025 in Judgment No. UNDT/2025/021. The parties did not appeal said Judgment.

8. In AEM 1, the Applicant contested a 29 February 2024 decision denying her request for remote work and the decision to reassign her to Amman, Jordan. The Respondent similarly argued in that case that the application was not receivable because the Applicant was first informed of ESCWA's decision to deny her request for telecommuting on 9 August 2023, that the same decision was reiterated to the Applicant again on 9 November 2023 and on 29 February 2024. Accordingly, the Respondent argued that the deadline for the Applicant to request management evaluation was 9 October 2023 but the Applicant's request was not made until 19 March 2024.

9. In Judgment No. UNDT/2025/021, this Tribunal held:

- a. The 29 February 2024 decision constituted a fresh administrative decision and was not a mere reiteration of the 9 August 2023 decision as argued by the Respondent.
- b. The Organization persisted in reiterating the earlier decision and ignoring the dramatic changes in circumstances between the requests.
- c. Just as a staff member may not reset the clock by repeatedly questioning the original decision, the Organization may not freeze the clock and deprive a staff member of their right to a new decision based on new circumstances.

10. On the merits, the Tribunal held in AEM 1:

- a. That the 29 February 2024 implied decision not to grant the Applicant's request for remote work was unlawful and awarded the Applicant compensation for material damages for the period 1 March 2024 to 1 December 2024; and

b. In awarding compensation, the Tribunal took judicial notice that the Applicant separated from the Organization on 15 January 2025 and considered this in assessing the award.

Parties' submissions

11. The Applicant's principal contentions are:

a. The application is receivable, contrary to the Respondent's contention, because subsequent requests for remote work made in light of new circumstances constitute new administrative decisions and not mere reiterations of a prior refusal, as established in Judgment No. UNDT/2025/021.

b. Her 15 August 2024 request was made after: the Division of Healthcare Management and Occupational Safety and Health ("DHMOSH") declared her medically unfit for Amman and any other medium/high-risk duty station on 1 May 2024; and ESCWA authorized all staff to telecommute from outside Lebanon due to escalating conflict in August 2024.

c. These new circumstances transformed the context of her request from the prior denial on 9 August 2023, obliging the Administration to reassess it. The 19 August 2024 refusal is therefore a new administrative decision, fully receivable.

d. The Administration failed to properly exercise discretion under ST/SGB/2019/3. The Respondent's justification that fairness required consistent treatment and that the Applicant's functions necessitated presence at the duty station is contradicted by the record:

i. Similarly situated colleagues were permitted to telework.

ii. The Applicant's tasks, as even listed by the Respondent, can be performed remotely. In the limited periods where she was allowed to telework, her performance was undisputedly satisfactory.

iii. Following the mass evacuation of staff from Beirut in August 2024, the argument for physical presence was moot.

e. The Administration disregarded its duty of care to her as a staff member injured in service. Instead of offering reasonable accommodation, it persisted in forcing the Applicant onto SLWOP, despite her medical unfitness for Amman and the availability of remote work options.

f. In Judgment No. UNDT/2025/021, the Tribunal ordered that the Applicant's period of SLWOP be converted into Special Leave With Full Pay ("SLWFP"), recognizing the Administration's unlawful denial of her right to work under reasonable accommodation. Consistency, equity, and legal certainty demand that the same remedy be applied here.

g. The period of SLWOP imposed on the Applicant because of the 19 August 2024 denial must likewise be converted into SLWFP for the period not covered by Judgment No. UNDT/2025/021, that is, from 1 December 2024 until the Applicant's separation on 15 January 2025.

h. Additionally, the fact that she was compelled to submit multiple applications to fight for the same right warrants additional compensation, at least for the costs incurred and for the additional psychological harm suffered at the hands of ESCWA.

12. The Respondent's principal contentions are:

a. The Applicant's attempt to distinguish the contested decision because of change of circumstances due to DHMOSH's reassessment of her medical clearance does not make the application receivable.

b. In denying the Applicant's request on 19 August 2024, ESCWA reiterated the remaining options following DHMOSH's reassessment. That decision did not add to or subtract from the unambiguous meaning of the 9 August 2023 decision and did not reset the clock for requesting management evaluation.

c. The Applicant's claim that she faced discrimination which amounts to prohibited conduct is not receivable. Under section 5.4 of ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority), allegations concerning possible prohibited conduct shall be reported under section 4 of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) either to the responsible official, with a copy to the Office of Internal Oversight Services ("OIOS"). The Applicant may not bring such claims before the Dispute Tribunal in the first instance.

d. The application is moot because the Applicant's requested remedies are identical to those in her earlier case, AEM 1.

e. As neither party appealed Judgement No. UNDT/2025/021 in AEM 1, that judgement is final and binding (*res judicata*).

f. In AEM 1, the Dispute Tribunal already awarded the Applicant compensation for material damages by ordering the regularization of the period from 1 March 2024 to 1 December 2024 as SLWFP. In determining that award of compensation, the Dispute Tribunal was mindful of the Applicant's separation from service on 15 January 2025.

g. In view of the finality of AEM 1 and the award of compensation for material damages in that judgment, there is no longer an existing or live controversy in terms of material damages in the present case.

h. In AEM 1, the Dispute Tribunal already awarded the Applicant moral damages in the sum of 10 months' net pay. There is no evidence that the Applicant suffered further and additional moral harm because of the contested decision dated 19 August 2024 in this case. Rather, she relies upon the same medical reports in this case that the Dispute Tribunal considered in AEM 1 to award moral damages. There is thus no longer an existing or live controversy in terms of moral damages in the present case.

i. In AEM 1, the Dispute Tribunal rejected the Applicant's claim in relation to reimbursement of insurance premiums. In view of the finality of AEM 1, this claim is barred by the doctrine of *res judicata* and cannot be relitigated.

j. In Case No. UNDT/NBI/2025/026 ("AEM 2"), the Applicant specifically contested the decision denying her reimbursement of health insurance premium costs. The Tribunal in AEM 2 dismissed that claim as not receivable for the failure to request management evaluation.

k. Accordingly, considering AEM 1, the Applicant has already been placed in the same position she would have been in had the Organization complied with its obligations, including in relation to the contested decision dated 19 August 2024 in this case. Therefore, under the Appeals Tribunal's jurisprudence, it is not possible for the Dispute Tribunal to award more compensation to the Applicant. Any further compensation, whether for material or moral damages, will not only be duplicative, but also risk giving rise to undue enrichment.

l. The Applicant's request for reimbursement of reasonable legal fees should be denied. Like in AEM 1, the Applicant has failed to show why OSLA would not have adequately or independently represented her in this case to justify her decision to prefer to retain external counsel. Nor is there any evidence that the Respondent has manifestly abused the appeals process to justify an award of legal costs.

Considerations

13. First, it is important to clarify the claims that are properly before the Tribunal.

14. In her rejoinder, the Applicant said,

[w]hile the Applicant did argue that she has been subject to discrimination, she does not submit a new independent claim ... As a matter of fact, she does not ask for any remedies in connection with the discrimination suffered.

Accordingly, discrimination need not be addressed here.

15. The Applicant also claims to “contest the MAES determination that my request for remote working is unreceivable”. However, a management evaluation response is not itself a reviewable decision. See for example *Nastase* 2023-UNAT-1373, para. 40. Thus, the Tribunal will focus only on the 19 August 2024 decision of the ESCWA Director of Administration to deny her request to telecommute.

16. The Respondent also argues that the application is not receivable *ratione materiae* because the contested decision was merely a reiteration of the 9 August 2023 decision denying her request for telecommuting. As such, her 10 October 2024 request for management evaluation was untimely.

17. The date of an administrative decision is based on objective elements that both the Administration and the staff member can accurately determine. *Said* 2018-UNAT-813, para. 14. In *Said*, the Appeals Tribunal observed that it had consistently held that the reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to statutory timelines; rather time starts to run from the date on which the original decision was made. For this reason, a staff member cannot reset the time for management evaluation by asking for a confirmation of an administrative decision that has been communicated to him earlier. Neither can a staff member unilaterally determine the date of an administrative decision. *Id.*, para. 15.

18. However, just like the situation in AEM 1, between 9 August 2023 and 19 August 2024, there were changes of circumstances affecting ESCWA staff generally and the Applicant in particular. Beyond those discussed in AEM 1, the following occurred:

- a. On 1 May 2024, DHMOSH declared the Applicant medically unfit for Amman and any other medium/high-risk duty station; and

b. On 1 August 2024, ESCWA authorized all staff to telecommute from outside Lebanon due to escalating conflict.¹

19. The Director/RMSDD in his response to the Applicant on 19 August 2024 did not address the new circumstances raised by the Applicant but instead informed her that:

Our options still stand, and at this stage you are still being extended on special leave without pay. If you have any news on changes in your status or considerations, please let me know.

20. The Tribunal finds that the 19 August 2024 decision constituted a fresh administrative decision and was not a mere reiteration of the 9 August 2023 decision. The Applicant having timely requested management evaluation after that decision, the Respondent's argument is without merit.

21. However, an application will be moot where the impugned administrative decision has not taken effect because it has been rescinded or superseded by subsequent actions of the Administration. In such cases, the UNDT will lack subject-matter jurisdiction to examine the merits of the case. *Annette Guetgemann* 2022-UNAT-1201, para. 22.

22. In cases where the Administration rescinds the contested decision during the proceedings, an applicant's allegations may be moot. This is normally the case if the alleged unlawfulness is eliminated and, unless the applicant can prove that he or she still sustains an injury for which the Tribunal can award relief, the case should be considered moot. *Kallon* 2017-UNAT-742, para. 46.

23. Taking into consideration the compensation/remedies awarded to her in AEM 1, the Applicant must demonstrate to the Tribunal how her rights remain adversely affected.

¹ According to the record, this authorization for all staff to telecommute extended until at least the end of October 2024.

24. First, the Applicant requests that the period from 1 December 2024 until 15 January 2025 be converted to SLWFP. However, in AEM 1, the Tribunal held, at para 43:

The Tribunal takes judicial notice that the Applicant separated from the Organization on 15 January 2025. The Applicant acknowledges this and that specific performance does not appear practicable given this change of circumstances. The Tribunal will therefore consider compensation as an alternative.

Contrary to the Applicant's submission, in awarding compensation to her in that case, the Tribunal took into consideration the period from 1 December 2024 until 15 January 2025.

25. Second, the Applicant seeks additional compensation for the additional psychological harm suffered at the hands of ESCWA because she was compelled to submit multiple applications to fight for the same rights.

26. However, the Tribunal considered and awarded compensation for "the psychological distress that the Applicant suffered subsequent to the contested decision **and is continuing to suffer.**" (Emphasis added). The Applicant has not submitted any evidence of additional harm suffered beyond that previously awarded. As such the previous damage award fully compensated the Applicant, and her claim for additional damages is barred by the doctrine of *res judicata*.

27. Finally, the Applicant requests reimbursement of reasonable legal fees incurred in the submission of her case. In support of this request, the Applicant attached an exchange of emails between her and OSLA dated between January 2022 and 18 March 2022, with which she aims to prove that OSLA did not agree to represent her.

28. The contested decision was taken on 19 August 2024 whereas the email exchanges occurred in 2022. The refusal by OSLA to represent her in 2022 cannot be taken to have been a blanket refusal to represent her in any future case, including with respect to the contested decision. The Applicant's claim for legal fees on this basis has no merit.

Conclusion

29. In view of the foregoing, the application is dismissed in its entirety.

(Signed)

Judge Sean Wallace

Dated this 2nd day of October 2025

Entered in the Register on this 2nd day of October 2025

(Signed)

Isaac Endeley, for Wanda L. Carter, Registrar, Nairobi