



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/101

Order No.: 25 (NY/2021)

Date: 18 March 2021

Original: English

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**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

APPLICANT

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON CASE MANAGEMENT**

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**Counsel for Applicant:**  
Robbie Leighton, OSLA

**Counsel for Respondent:**  
Alan Gutman, ALD/OHR, UN Secretariat

## **Introduction**

1. By Order No. 11 (NY/2021) of 11 February 2021, the Tribunal directed (a) the Applicant to file his comments to the reply, and (b) the parties to file a joint submission on agreed and disputed facts, as well as on production of additional evidence.
2. On 22 February 2021, the Applicant filed his comments to the reply, also appending a number of documents.
3. On 12 March 2021, the Respondent filed the joint submission.

## **Consideration**

### *Scope of the case*

4. The Appeals Tribunal has consistently held that “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 further held that “the Dispute Tribunal may consider the application as a whole”. See *Fasanella* 2017-UNAT-765, para. 20, as affirmed in *Cardwell* 2018-UNAT-876, para. 23.
5. After closely perusing the parties’ submissions, the Tribunal finds that the principal issues of the case can be identified as:
  - a. With reference to the mootness doctrine adopted by the Appeals Tribunal in *Kallon* 2017-UNAT-742, if the decision of 13 May 2019 not to implement the return-to-work plan for the time period from 3 June to 31 July 2019, although it was superseded by the decision to implement the new plan from 1 August 2019, had a negative consequence for the Applicant or if the application is moot. In this regard, the Tribunal will consider whether the sick

leave that the Applicant took during the relevant time period was a result of the contested administrative decision;

b. If the application is not moot, was the contested decision a lawful exercise of the Administration's discretion? This review will entail an assessment of whether the reason(s) provided for rejecting to implement the return-to-work plan were lawful and correct.

c. If not, to what remedies is the Applicant entitled?

*Case management*

6. In the joint motion dated 12 March 2021, the Applicant requested the following additional evidence to be produced (para. 67-70):

a. “[A]dditional medical evidence to demonstrate that infections diagnosed on 19 and 20 May [2019] resulted from the contested decision”;

b. “[E]mails from two P-4 interpreters in the English booth which address the question of whether her return to work plan placed an undue burden on other interpreters and describe other accommodations made for interpreters with regards to meetings they might work on”;

c. [S]chedules of meetings to demonstrate that freelancers were not used to cover high stress meetings”;

d. “[A]n email of 19 July 2019 between her and the Executive Office”.

7. The Respondent, in the joint motion dated 12 March 2021, made the following submission regarding additional evidence in para. 71:

... Should the Dispute Tribunal grant the Applicant's request to adduce additional evidence, the Respondent asserts the right to examine

and test the Applicant's evidence. This includes: a) disclosure of the Applicant's medical records; b) cross examination of the Applicant's physicians; c) the opportunity to rebut the Applicant's medical evidence; d) cross examination of the Applicant's evidence with respect to the allocation of work and resources within [English Interpretation Section]; and e) the opportunity to present rebuttal testimony from Sergey Kochetkov, Chief of the Interpretation Section; Elina Pekler, the Applicant's former [first reporting officer]; and a staff member from the Executive Office of [Department for General Assembly and Conference Management] with respect to the Applicant's attendance records.

8. In consideration of the preliminary definition of the scope of the case, the Tribunal will allow the Applicant to submit the stated evidence and grant the Respondent's request concerning disclosure of the Applicant's relevant medical records (para. 71(a)). Regarding these medical records, the Tribunal notes that in accordance with Practice Direction No. 6 (Records of the Dispute Tribunal), the case file is confidential and that the relevant medical records can be filed under seal if the Applicant finds this appropriate. The Tribunal will further anonymize the Applicant's name on its written orders and judgment as an additional precaution. Regarding the Respondent's remaining requests for production of additional evidence, the Tribunal will assess their necessity upon receiving the other documentation and in light of the parties' submissions thereto.

9. In light of the above,

IT IS ORDERED THAT:

10. The Applicant's name is to be anonymized in all written orders and the judgment;

11. By **4:00 p.m. on Thursday, 8 April 2021**, the Applicant is to file the relevant documentation as per para. 6 above and her medical record relevant to her sick leave during the time period from 3 June to 31 July 2019. Together with the documentation,

the Applicant is to file her relevant comments not exceeding 3 pages, using the font Times New Roman, 12 pt. and 1.5 line spacing;

12. By **4:00 p.m. on Thursday, 15 April 2021**, the Respondent is to file his observations to the Applicant's 8 April 2021 filings not exceeding 3 pages, using the font Times New Roman, 12 pt. and 1.5 line spacing.

*(Signed)*

Judge Joelle Adda

Dated this 18<sup>th</sup> day of March 2021