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moved to Kirkuk, but this decision was later rescinded (on 5 February 2016) because UNAMI said that it did not have a P2 post in that city under its approved budget for 2016. Mr. Ories made several subsequent requests for transfers to other duty stations, but none eventuated.

5. Also in 2014, Dr. BS, Mr. Ories' psychiatrist, recommended that his patient not return to Erbil so as to ensure he did not re-live the events of the attack on him. Dr. BS repeated this recommendation again in 2016. During that time, however, Mr. Ories continued to serve intermittently as his health permitted but otherwise took further sick leave on half-pay.

6. On 30 September 2018, Mr. Ories was advised of the latest refusal of his request to transfer, including that as from the end of August 2018 there had been no medical documentation supporting his request for reassignment to a duty station other than Erbil. This was the first decision of the Respondent challenged by the Appellant (Contested Decision #1). He again went on full-time sick leave from 9 September 2018 until 30 April 2019, using a combination of sick and annual leave entitlements. Mr.

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said that the residual effects of this had caused a partial degree of impairment

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of his latest sick leave period which expired on 1 May 2019. Thereafter the MSD only certified him by email dated 4 June 2019 as cleared to return to work. There is no basis for compensation as the Applicant has already availed himself of his sick leave entitlements under staff rule 6.2.!

15. Turning to Contested Decision #2, the UNDT ruled that the broadcast announcement of another's appointment was not an administrative decision reviewable under Article 2(1)(a) of the Statute of the United Nations Dispute Tribunal (UNDT Statute). Further, the UNDT held that Mr. Ories suffered no adverse outcome from it as he was then on paid sick leave receiving all of his remuneration and other benefits, and there was no regulatory requirement for the Respondent to require the Organisation to reassign Mr. Ories to Baghdad on medical grounds. The UNDT also found that at the time of the second application, there was no pending decision refusing to assign the Appellant to a post at a duty station other than Erbil.

16. At para. 32 of its Judgment, the UNDT added: "[T]he Respondent was bound to take into consideration that the medical reports put forward by the Applicant from September 2018 to April 2019 certified him as unfit to return to work. The decision to fill the Baghdad position would have been made long before the broadcast of the result. The decision was taken before the Applicant was cleared as fit to return to work."

17. The UNDT also found Mr. Ories' application to be moot because, when he was first cleared to work from sick leave on 1 May 2019, the Administration accordingly assigned him to a duty station other than Erbil, with effect from 24 May 2019. It was after that date, i.e. on 4 June 2019, that he filed his case in the UNDT relating to Contested Decision #2.

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20. The two contested decisions were challenged timeously through the MEU, in which Appellant did in fact argue that the Administration had breached its duty of care in not offering him accommodations for his medical condition.

21. The Appellant claims that the UNDT erred when it ignored the clear jurisprudence regarding the time limit for challenging an administrative decision for non-selection, which runs from the date the affected staff member becomes aware of the decision (i.e. the broadcast e-mail constituted such notice to Appellant that he was not selected for the Baghdad post).

22. The Appellant refers to General Assembly

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27. Additionally, citing *Cohen*,⁴ *Haroun*, and *Dalgamouni*,⁶ the Appellant argues that he is entitled to compensation of two years' net base pay because of the prolonged duration of the handling of his request for reassignment.

28. The Respondent submits the UNDT correctly held that any decisions that may have been made in 2014 and 2016 and were not challenged at that time were not receivable within time following Staff Rule 11.2(c) and Article 8(3) of the UNDT Statute.

29. The Appellant cannot succeed by arguing as he does, i.e. Mr. Ories contended that the 2014 and 2016 decisions were not part of the present applications, and yet they should serve as grounds showing the unreasonable delay, or that the Organisation was negligent, and that he should be awarded compensation on that basis.!

30. The UNDT also correctly held that it had lacked jurisdiction to adjudicate the negligence claim. The Respondent argues that both claims for compensation for negligence by the Respondent were not receivable because the Appellant never made or submitted a negligence claim to the Respondent. The Secretary-General argues citing, Article 2 of the UNDT Statute, and *Benamar*, and *Wamalala*, that because a negligence claim was never submitted, the Organisation never made a decision on a negligence claim, and as such, UNDT lacked jurisdiction to adjudicate such claim, as does the Appeals Tribunal now.

31. The UNDT correctly held that the Respondent was not obligated to reassign the Appellant to a different duty station because of a medical condition. The Respondent argues that Appellant misconstrued recommendations stemming from General Assembly resolution 70/170, ST/SGB/2008/5 and ST/SGB/2014/3, all pertaining to accommodations, as instructions when in fact they are just recommendations.

32. The Respondent cites Staff Regulation 1.2(c) granting the Secretary-General broad discretion to assign staff and that absent any wrongdoing, the UNDT should not interfere. Specifically, citing Staff Rule 6.2, Respondent argues that when a staff member is unable to

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Judgment No. 2017-UNAT-716.
Judgment No. 2017-UNAT-720.
Judgment No. UNDT/2016/094.
Judgment No. 2017-UNAT-797, para. 48.
Judgment No. 2013-UNAT-300, para. 25.!

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37. We agree with the UNDT that, to a significant extent, the Appellant's two separate contested decision-based causes of action, overlap and merge. In essence, they are both complaints, albeit the first more general and the second more specific, that UNAMI did not accommodate Mr. Ories by reassigning him to another post in Iraq after he had returned to that country following his convalescence. As we have already referred to, for most of the period during which the Organisation's actions or inactions are complained of, the medical information it had about Mr. Ories certified his inability to continue to perform the no-doubt demanding and stressful work of an associate security officer and recommended his retirement as disabled on medical grounds. We infer that it was his decision, if not contrary to then taking informed account of his medical advisers' opinions, to continue to remain in his post, both in his home country of the USA and in Iraq on a combination of sick leave, annual leave and on half pay and hoping for a transfer to another location. The UNDT concluded, correctly, that Mr. Ories did not seek, within the time prescribed for doing so, management evaluation reviews of the refusals of those requests for transfer which were declined. That was an essential prerequisite for applying to the UNDT to challenge those refusals. Although this alone would be sufficient, as the UNDT also concluded, to have disposed of the first proceeding brought by Mr. Ories, the UNDT also proceeded to consider and decide the merits of this case. For completeness, we will also review this decision of the UNDT.

38. Although, for cases such as Mr. Ories' it might be thought desirable to have a Staff Regulation or Staff Rule provision addressing changes of post for medical reasons, it has not

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42. For the foregoing reasons, Mr. Ories' appeal must fail and is dismissed. The UNDT Judgment is affirmed.

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Original and Authoritative Version: English

Dated this 19 day of March 2021 in New York, United States.

(Signed)

Judge Colgan, Presiding
Auckland, New Zealand

(Signed)

Judge Murphy
Cape Town, South Africa

(Signed)

Judge Knierim,
Hamburg, Germany

Entered in the Register on this 15 day of April 2021 in New York, United States.

(Signed)