Introduction

1. The Applicant, a Security Officer in the Department of Safety and Security ("DSS") based in New York, contests the 18 July 2022 decision to place him on sick leave with half-day pay combined with a half-day annual leave in order for him to remain at full pay until his entitlement to sick leave at full pay was revived.

2. The Respondent contends that parts of the application are not receivable and that, in any event, the application has no merit.

3. For the reason set out below, the application is rejected.

Facts

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Consideration

entitlements

7. According to the current staff rule 6.2, a staff member, who has held a fixed-term appointment for three years, is entitled to sick leave for up to 195 days, whereas the former staff rule 6.2 stipulated that this was nine months on full pay and another nine months on half pay. In ST/AI/1999/13 (Recording of attendance and leave), para. 3.5(b), it is, in any event, specified that the previously applicable period of nine months should "comprise 195 whole working days on full pay or half pay, as appropriate, in any period of four consecutive years". This is what is also known as the 195-day regime.

8. Section 3.5(e) of ST/AI/1999/13 provides that:

> … A staff member's sick leave entitlement shall be exhausted when the total number of working days on sick leave in any of the consecutive periods referred to in subsections (a) and (b) above reaches the maximum entitlement. The staff member's entitlement may arise again when, in a successive period of 12 months or four years, as appropriate, the amount of sick leave granted falls below the staff member's maximum entitlement.

9. The Respondent explains, with reference to sec. 3.5(e) of ST/AI/1999/13 and the Human Resources Handbook, that under "the 195-day regime, sick leave on full pay is calculated on a rolling basis and any sick leave taken is 'revived' (i.e., the entitlement to the same number of days acquired again) four years from the date the original sick leave was taken". The 195-day regime "encompasses both certified sick leave ["CSL"] and uncertified sick leave ["USL"]" and any "utilization of CSL or USL will reduce the 195 days quota".

10. Also referring to

Receivability

Relevant legal framework

11. Staff rule 11.2

entries", which he did not. Second, DSS "informed the Applicant of his sick leave balances for 2021 on several occasions. On 24 March 2022, DSS "provided the Applicant with his 'certified and uncertified sick leave absences from 01 April 2021 to March 2022'

19. Consequently, the Tribunal finds that the Applicant's management evaluation request was filed in a timely manner under staff rules 11.2(a) and (c),

The 23 September 2022 decision to correct the Applicant's UMOJA records

20. In the Applicant's submissions to the Tribunal, he makes no appeal against any decision of 23 September 2022 to correct his UMOJA records. The decision is therefore not under appeal before the Tribunal.

Conclusion

21. The Tribunal finds that the application is receivable in full.

Was the contested decision lawful?

22. The Applicant's submissions may be summarized as follows:

a. The "[principle] of rationality as a review ground requires only that a decision be rationally connected to the purpose for which it was taken and be supported by evidence". The "[principal] aim of proportionality review is to avoid an imbalance between the adverse and beneficial effects of an action with suitability of the means deployed to achieve the purpose".

b. There "was no imbalance" and, on 4 April 2022, the Applicant "lost a 20-week-old baby just because the money that [he] had already planned for the [mother's] medical treatment was unfortunately deducted leaving [him] with no choice".

c. There was "no presumption that official acts have been regularly performed". The presumption of regularity "advances efficiency, certainty, and finality in the administration of the [O]rganization which was not found in this case".

d. On 19 September 2022, the Applicant received an email from the Human Resources Assistant, which informed him of "raising an Ineed Help

Ticket to review [his] sick leave records". On the same date, the Applicant "wrote a protest email on the ticket" to which the Human Resources Assistant replied that "

h. Some dates stated in Table 1 had "a double entry of accountability and cannot be used to give a final result of this particular table". In particular, errors were made concerning: (i) 30 January to 7 February 2021 as these days were indicated as USL, but the

25. Regarding Table 2, it is noted that it follows from the Respondent's contentions that the contested decision was based on the figures outlined therein. Table 2 was presented as follows in the USG's response to the Applicant's request for management evaluation and the annex to the reply:

Year	Sick Leave Entitlement Quota Balance	Sum of Quota (CSL plus USL) Deduction	Sick Leave Revived period	Number of days Reviving	Quota Remaining Balance
Column (1)	Column (2)	Column (3)	Column (4)	Column (5)	Column (6)

System", UMOJA and the Division of Healthcare Management and Occupational Safety and Health ("DHMOSH"). In principle, Table 2 therefore constitutes hearsay evidence as its figures were not original data but instead derived from other sources and then compiled together thereon.

27. Hearsay evidence is, in principle, admissible before the Dispute Tribunal but its "probative value depends largely on the credibility … of the person giving such evidence" (see, paras. 72 and 73 of *Applicant* 2022-UNAT-1187). Whereas the Applicant describes the contested decision as a disguised disciplinary measure, it is "the well-established jurisprudence" of the Appeals Tribunal that "the burden of proving any allegations of ill-motivation rests with the applicant" (see, para. 38 of *Kisia* 2020-UNAT-1049). The Tribunal notes that the Applicant has provided no evidence to this effect, and that the Administration would have no apparent or perceived interests in misrepresenting the relevant figures in the Table.

28. Concerning Table 1, this is also hearsay evidence as it is not an actual UMOJA document but was produced by the Administration for the purpose of the present judicial proceedings. Some figures stated in Table 1 are also imprecise. For the consecutive time period from 13 December 2020 to 21 January 2021, it is stated that DHMOSH approved 23 CSL days for the Applicant—but when the Tribunal calculates the total number of working days for this time-

UMOJA, and even if he was actually telecommuting and this was also indicated in UMOJA, it would not have affected his balance of sick leave days on full pay.

c. 18 February 2021. According to the Applicant's own submissions, the day was counted as annual leave as he himself had requested this. If recorded as annual leave in UMOJA, the day could then not be counted as sick leave with full pay and, accordingly, it would not have affected his sick leave on full pay balance.

31. The Tribunal notes that it is debatable under the jurisprudence of the Appeals Tribunal what the applicable evidentiary standard is for a decision such as the contested decision: whether it is the preponderance of the evidence or the presumption of regularity (see, for instance, *Applicant* 2022-UNAT-1187, paras. 60 to 66, as well as *Toson* 2022-UNAT-1249, para. 29, *Noberasco* 2020-UNAT-1063, para. 42,