



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2023-UNAT-1342

AAL ¹

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge Dimitrios Raikos Judge Sabine Knierim
Case No.:	2022-1708
Date of Decision:	24 March 2023
Date of Publication:	9 May 2023
Registrar:	Juliet Johnson

Counsel for Appellant: Dorota Banaszewska, OSLA

Counsel for Respondent: Rupa Mitra

¹ This unique three-letter substitute for the party's name is used to anonymize the Judgment and bears no resemblance to the party's real name or other identifying characteristics.

JUDGE MARTHA HALFELD , PRESIDING .

1.

8. On 24 September 2020, AAL submitted another request to continue telecommuting from home after 1 October 2020. She attached a letter from the medical services in her home country, which she had received in April 2020, advising her on how to keep safe from COVID-19, considering her underlying medical conditions. On the same day, the Mission rejected her request, stating that “the position of child protection officer in the field requires the presence of the staff member on the ground”. The Mission Human Resources Office advised AAL to return to the duty station by 1 October 2020, failing which she would have to apply for sick leave or annual leave or SLWOP.

9. On 25 September 2020, AAL filed a request for management evaluation challenging the decision denying her request to telecommute and compelling her to return to the duty station by 1 October 2020.

10. AAL remained on sick leave from 1 October 2020 to 30 March 2021.

11. By letter dated 11 November 2020, the Under-Secretary-General for Management Strategy, Policy and Compliance informed AAL that she had decided to endorse the findings and recommendations of the Management Evaluation Unit and to uphold the decision requesting AAL to return to the Mission by 1 October 2020 and denying her request to continue. The Management Evaluation Unit conducted management evaluation *inter alia* of the decisions to place her on SLWOP and to engage in discriminatory practices against her. By letter dated 19 March 2021, AAL was informed that the decision to place her on SLWOP from 1 October 2020 to 30 March 2021 was upheld.

13.

- c) Claiming that the Administration had abused its discretion in placing her on SLWP from 1 July 2020 to 7 September 2020, and on SLWOP from 8 September 2020 to 30 September 2020, “instead of providing reasonable accommodation due to her medical vulnerability and enabling her to work”; and
 - d) Claiming that the decisions taken by her manager and the Mission were also discriminatory in nature, further constituting an abuse of discretion. According to AAL there appeared to be a disparity of treatment in how her case was handled by the Administration.
14. On 3 May 2022, the UNDT issued Judgment No. UNDT/2022/040, dismissing the application.
15. The UNDT found the application not receivable *ratione materiae* with regard to AAL's

policy had been implemented universally in the section, resulting in the return of different staff members to the duty station to replace and relieve others, as well as to ensure crucial presence on the ground. It was quite clear that AAL's role as a Child Protection Officer needed presence on the ground and that telecommuting was not appropriate for the functions of her role. The record clearly showed that the reason was true and that AAL was afforded the same discretion as other members of her team. The UNDT found that none of the decisions challenged were unlawful, and as such, AAL was not entitled to any of the remedies she requested.

18. On 1 July 2022, AAL filed an appeal, and on 6 September 2022, the Secretary-General filed his answer.

Submissions

AAL's Appeal

19. The UNDT erred in fact by finding that AAL was not medically required to telecommute for the periods she was placed on SLWP and SLWOP and that she did not have a medical exemption to telecommute for the

that AAL cannot explain in any other way as an

of the above, AAL's claim that this alleged "error in fact" by the UNDT "led unavoidably to an error in law by UNDT" is unsubstantiated.

23. The Secretary-General further contends that the UNDT correctly held that there was no evidence to support AAL's claim that she had been discriminated against. AAL asserted on appeal that the UNDT erred in fact and law in so finding. However, once again, her only argument is the conclusory statement that her manager's "decision to act against a medical recommendation of DMOSH" had no justification, absent proper reasons could only be as an instance of discrimination. First, AAL has not pointed to any medical recommendation of DMOSH, and as the UNDT correctly found, based on the evidence before it, AAL did not have a medical exemption to telecommute for the relevant period and was found medically fit to return to the duty station. Second, the UNDT provided a clear and detailed basis for its findings. The UNDT properly took into consideration that AAL had been allowed to telecommute from 16 April 2020 through the end of June 2020, that AAL's manager stressed the importance of AAL's and other staff members' return to the duty station under the rotation policy, and that the manager sought the return of not only AAL but also other staff members to allow for the relief of colleagues who had been on the ground for extended periods of time given the operational needs of the office. The UNDT reasonably found that AAL's role as a child protection officer needed presence on the ground. At the time, AAL herself wrote to a UNHQ medical officer, copying her supervisor and acknowledging, that as a critical staff, she was needed on the ground.

24. AAL has failed to demonstrate any error on the part of the UNDT in its Judgment. The Secretary-General requests that UNAT uphold the decision.

SLWOP (throughout September 2020), and that consequently, she was not entitled to payment

(f) It is the responsibility of all parties to the agreement to optimize the benefits of flexibility while minimizing potential problems. When staff members avail themselves of flexible working arrangements, their productivity and quality of output must be maintained at a satisfactory level,

telecommuting does not constitute a change of official duty station within the meaning of staff rule 4.8 (a).

28. The plain reading of these provisions reveals that while there is no right to flexible working arrangements, they should be viewed favourably “where exigences of service allow”. Staff members should seek written approval from their managers to avail themselves of flexible working arrangements.

29. The record shows that, having joined the Mission on 3 October 2017 as a Child Protection Officer with the Child Protection Unit on a fixed-term appointment at the P-3 level, AAL was firstly granted certified sick leave from 17 October 2019 to 15 April 2020, 175231.2(2)521.4,2 w4.24 m ot t5(o-10.0aR1-15 4ai)-24.3cge231.2(o)1.9ga t

31. On 24 August 2020, the Mission's Medical Section confirmed having received AAL's medical assessments (7 and 11 August 2020) and cleared her to travel to the Mission. On 8 September 2020, the Mission received clearance from the Ministry of Foreign Affairs to enable AAL to enter the country, and AAL was so informed the same day. On 11 September 2020,

opportunity to leave the duty station for a considerable period of time,⁴ as prescribed by Section 3.5 of ST/SGB/2019/3.

35. Moreover, the reasons given by AAL's manager were reasonable, as they related to the operational needs of the duty station and to the type of work performed by AAL. Apart from the "rotation policy" established by AAL's manager to ensure the presence on site of Child Protection Officers at all times, so as to maintain the engagement with the relevant parties as well as the conduct of verifications of information in a "purely field based operation", AAL was a Child Protection Officer whose work proved to have limited benefits when telecommuting.⁵

36. AAL claims that the fact that the SRO rejected the recommendation for reasonable accommodation, despite it having been previously granted by both UNHQ DMOSH and the Mission, is proof of improper and extraneous discrimination against her. 83.9(o)59 Tm -.c1 Tf

had not been considered medically exempt. The UNDT found that, but for a justifiable exception of one staff member, all the other

Judgment

41. AAL's appeal is dismissed, and Judgment No. UNDT/2022/040 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 24th day of March 2023 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Raikos

(Signed)

Judge Knierim

Judgment published and entered into the Register on this 9th day of March 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar