



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2016/033

Judgment No.: UNDT/2016/182

Date: 7 October





### **Applicant's submissions**

17.

a. The USG/OIOS did not consider all of the relevant information and her decision was based on an irrelevant consideration;

b. The USG/OIOS had no knowledge of Appendix D to the Staff Rules (Rules governing compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations) prior to her decision to deny the Applicant the requested SLWP;

c. Staff rules 5.3(a) states that SLWP m

prohibited conduct in the workplace. Staff rule 5.3(f) also states that a staff ,  
a category that also applies in the present case. These considerations are independent of any application of ST/AI/2005/3 (Sick leave);

d. Staff rule 6.4 and Appendix D to the Staff Rules are irrelevant to the present application;

e. The Applicant has the right under the Staff Regulations and Rules to work in an environment free from discrimination, harassment and abuse. It is an attack on the principles of justice and fairness, and the underlying principles of the UN Charter that a staff member should be forced to utilize his extended sick leave entitlements because of the decisions and/or conduct

;

f. The USG/OIOS administers the Staff Rules independently of the Secretary-General. In the provision of this authority, the USG/OIOS  
ST/AI/401 (Personnel

arrangements for the Office of Internal Oversight Services) was issued in 1995, thereby succeeding the provisions of ST/AI/234/Rev.1 (Administration of the Staff Regulations and Staff Rules), which was issued in 1989;

g. In his closing submission dated 3 October 2016, the Applicant informed the Tribunal that the Medical Services Division had approved his sick leave until 31 October 2016 and stated, *inter alia*, that:

**1.0**

formulation of an absurd decision on the issues raised in Annex 8 or Annex 11 (see paragraph 23 of Order 103 (NY/2013.)

**5.0 Staff Rule 6.4 and Appendix D**

5.1 According to the English Oxford dictionary *attributable* is defined as [footnote omitted]:

Adjective: 1. Regards as being caused by:

*attributable to cardiovascular disease.*

5.3 It is absurd for the SG to argue (assertion) *the* (i.e. caused by) *the fact he is a UN staff member working in OIOS New York.* Staff Rule 6.4 and Appendix D are for illness, death or injury attributable to service in high risk areas and/or incidents beyond the mandate of y:

unlawful (see paragraph 22 of 2014-UNAT-397 with specific reference to *Varnet v UNESCO* Judgment 179 International Labour Organization wherein it states: *it applies also to members of bodies required to make recommendations to decision-making bodies. Although they do not themselves make decisions, both these types of bodies may sometimes exert a crucial influence on the decision to be taken.*

6.3 Notwithstanding the Secretary-General's arguments, ST/AI/401 (with emphasis to paragraph 5) was issued in March 1995 thereby succeeding the provisions of ST/AI/234 Rev 1 (which was issued in March 1989.)

**Resp**

illness is service-incurred he is request to follow the procedures set out in staff rule 6.4 and Appendix D to the Staff Rules;

e. The USG/OIOS does not have the authority to place the Applicant on SLWP. Pursuant to Annex II to ST/AI/234/Rev.1 (Administration of the Staff Regulations and Staff Rules), it is the Assistant-Secretary-General of Human Resources Management who has the authority to place a staff member on SLWP.

## **Consideration**

### *Receivability framework*

19. As established by the United Nations Appeals Tribunal, the Dispute Tribunal is competent to review *ex officio* its own competence or jurisdiction *ratione personae*, *ratione materiae*, and *ratione temporis* (*Pellet* 2010-UNAT-073, *O* 2011-UNAT-182, *Gehr* 2013-UNAT-313 and *Christensen* 2013-UNAT-335). This competence can be exercised even if the parties do not raise the issue, because it constitutes a matter of law and the Statute of the Dispute Tribunal prevents it from considering cases that are not receivable.

20.

between the receivability requirements as follows:

a. The application is receivable *ratione personae* if it is filed by a current or a former staff member of the United Nations, including the United Nations Secretariat or separately administered funds (arts. 3.1(a) (b) and 8.1(b) of the Statute) or by any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered funds and programmes (arts. 3.1(c) and 8.1(b) of the Statute);



- b. The application is receivable *ratione materiae* if the applicant is to be in non-compliance

Statute) and if the applicant previously submitted the contested administrative decision for management evaluation, where required (art. 8.1(c) of the Statute);

- c. The application is receivable *ratione temporis* if it was filed before the Tribunal within the deadlines established in art. 8.1(d)(i) (iv) of the Statute and arts. 7.1 7.3 of the Rules of Procedure.

21. It results that in order to be considered receivable by the Tribunal, an application must fulfil all the mandatory and cumulative requirements mentioned above.

*Receivability ratione personae and ratione materiae*

22. The Tribunal notes that the Applicant is a current UN staff member and therefore the application is receivable *ratione personae*.

23. The Applicant is challenging the decision of the USG/OIOS, to deny his request for SLWP which is a reviewable administrative decision. The decision was orally notified to the Applicant on 24 March 2016 and he requested management evaluation on 25 March 2016, within 30 days from the date of notification. Therefore, the application is receivable *ratione materiae*.

*Receivability ratione temporis*

24. The Tribunal notes that the present application was filed on 20 July 2016, within 90 days from the date when the management evaluation decision was transmitted to the Applicant on 25 April 2016 and the





2. The purpose of the present instruction is to outline the administrative arrangements and the authority of the Under-Secretary-General for Internal Oversight Services in personnel matters.

3. The Staff Regulations adopted by the General Assembly and the Staff Rules and administrative instructions promulgated by the Secretary-General pursuant thereto will apply to staff members serving with the Office in the same manner as they do to the rest of the Secretariat.

5. Subject to the retention by the Secretary-General of his authority to promulgate and interpret the Staff Regulations and Rules and to take final decisions in appeals and disciplinary cases under the Staff Regulations and in compen

28. ST/AI/234/Rev.1, issued 22 March 1989, as amended by ST/AI/234/Rev.1/Amend.2, issued 4 September 2014, states:

Matters within the authority of the Assistant Secretary-General for Human Resources Management

5. Matters within the authority of the Assistant Secretary-General for Human Resources Management are listed in annex II. The Assistant Secretary-General may delegate the exercise of this authority within and outside the Office of Human Resources Management, including to an Under-Secretary-General. Authority with respect to the matters indicated by an asterisk in annex II will be exercised by the Assistant Secretary-General for Human Resources Management in respect of staff at Headquarters and at United Nations missions and information centres and by the head of the office concerned in respect of staff at other offices away from Headquarters. Authority with respect to matters indicated by two asterisks in annex II will be exercised by the Assistant Secretary-General for Human Resources Management in consultation with the Controller.

Annex II

MATTERS WITHIN THE AUTHORITY OF THE ASSISTANT  
SECRETARY GENERAL FOR HUMAN RESOURCES  
MANAGEMENT

Rule 105.2 (a) Grant of special leave with full or partial pay, other than for jury service, and grant of special leave without pay for more than three months (except as provided in annex V)

29. ST/SGB/2015/1 (Delegation of authority in the administration of the Staff Regulations and Staff Rules), provides, of relevance, that:

3.2 With the exception of the matters reserved exclusively for the Secretary-General or as otherwise indicated in the annex, all other matters related to the administration of the Staff Regulations and Rules are delegated to the Under-Secretary-General for Management.

...

4.1 In the exercise of delegated authority related to the administration of the Staff Regulations and Rules, the Under-Secretary-General for Management may amend, supersede, revoke or revise any and all existing delegations of authority unless such authority is retained by the Secretary-General or as otherwise indicated in the annex to this bulletin.

4.2 Notwithstanding section 3.2, the delegations of authority which currently exist through administrative issuances, memorandums or other written communications shall continue to be applicable unless (a) such authority is retained by the Secretary-General or as otherwise indicated through this bulletin; (b) abolished in accordance with section 5 below; or (c) otherwise amended, superseded, revoked or revised by decision of the Under-Secretary-General for Management.

4.3 The Under-Secretary-General for Management shall exercise any other authority related to the administration of the Staff Regulations and Rules which is (a) not retained by the Secretary-General or otherwise indicated in this bulletin; and (b) not delegated to other officials under existing delegations.

4.4 Where existing delegations of authority refer to provisions of the Staff Regulations and Staff Rules that are no longer in force, the most closely associated provisions of the Staff Regulations and Rules currently in force shall apply.

### *Findings*

30. The Tribunal notes that the Respondent stated in his reply, *inter alia*, that:

The USG/OIOS does not have authority to place the Applicant on SLWP. Pursuant to Annex II of ST/AI/234/Rev.1 *Administration of the Staff Regulations administra*



36. Matters related to special leave and/or sick leave within the authority of the heads of departments or offices, such as those dealt with in the present case within the authority of the USG/OIOS, are explicitly stated in Annex IV of ST/AI./234/Rev.1, notably:



then to consider the matter and issue a new reasoned written decision which, considering the urgency of the matter, should be made within 30 days