



## **Introduction**

1. The Applicant contests the decision of the Assistant-Secretary-General for Human Resources not to provide him with an exception under staff rule 12.3(b) in order to grant him an additional one-year extension for him to submit his claim for repatriation grant in accordance with staff rule 3.19(i).
2. The Respondent contends that the application is without merit.
3. For the reasons set out below, the application is rejected on its merits.

## **Facts**

4. On 8 January 2019, the Applicant, who had been employed in New York, was separated from the Organization with the entitlement of a repatriation grant to the destination of his relocation. Such entitlement, however, ceased if no claim was submitted within two years after the date of separation as per staff rule 3.19(i).
5. On 11 August 2020, Applicant requested an exception to the two-year deadline to submit his claim for a repatriation grant, namely for him to do so one year later, on or before 7 January 2022



## Consideration

### *Issues*

11.

inherent power to individualize and define the administrative decision challenged by a party and to identify the sub

*Fasanella* 2017-UNAT-765, para. 20, as affirmed in *Cardwell* 2018-UNAT-876, para. 23.

12. Accordingly, the basic issues on the merits of the present case can be defined as follows:

a. Did the ASG have the delegated authority as per staff rule 12.3(b) to reject request for an exception the two-year deadline stipulated in staff rule 3.19(i)?

b. In the affirmative, did the ASG lawfully exercise her discretion when doing so?

### *The ASG's competence to take the contested decision*

13. The Applicant submits that evidence of the decision- authority to take the contested decision, including copies of the authorized sub-delegation table and entry into the portal of the delegation of authority and acceptance thereof by [the ASG], as required by ST/SGB/2019/2 (Delegation of authority in the administration of the Staff Regulations and Rules and the Financial Regulations and Rules) discrepancies . The sub-delegation table was issued on 1 March 2021, while the entry into the portal is dated 15 April 2021. A 45-day gap therefore between the authorization and the entry to the portal .

Case No.



e. The Respondent ignored the relevant information from the [United Nations World Tourism] Organization WTO , available at the time of Respondent's decision] that international travel continued severely restricted due to COVID-19 . WTO informs that currently one out of five destinations have their borders completely closed as new surges of COVID-19 impact the restart of international tourism . WTO also informs that 98% of all destinations have some kind of travel restrictions in place This relevant matter about international travel restrictions and disruptions due to COVID-10 was ignored by Respondent as clearly there are still severe health risks in international travel

f. The contested decision was illegal, ignored relevant matters and was reckless and exhibited gross disregard for Applicant s and his family s health and safety, breaching Applicant s contractual and human rights. The contested to deny an extension to submit claim on relocation grant, requires [the] Applicant and his family to travel internationally exposing them to serious health risks and possibly even death taff regulation I.2(c) as the Administration did not adequately consider Applicant s safety and security







times more likely to die from COVID-19 than individuals aged 18-29 . The already substantial risk of death for individuals in the age group of the s further increased if the individual is immunocompromised .

. The Respondent ignored relevant matters during the exercise of his discretionary authority, including the medical

infection rate ;

o. In para. 3 of A/BUR/76/1 issued on 14 September 2021 Respondent considered that due to the health risks posed by the global COVID-19 pandemic to the delegates and to the UN personnel, the General Assembly could not conduct its normal sessions in its Headquarters in New York City . The Respondent considered it too risky for delegates to travel to New York City to<sup>th</sup> session held from September to December 2021, or for [United Nations] personnel to report for duty at the [United Nations] offices for regular [United Nations] meetings. At the same time, t)he

;

p. Further, in September contested decision, the Secretary-General is photographed wearing a face mask during the 77<sup>th</sup> session of the General Assembly, a clear indication that [the] Respondent still considers the existence health risks due to the global COVID-19 pandemic .

18. The Respondent, in essence, contends that the ASG acted within the scope of her authority when

12.3(b) to an additional one-year extension of the deadline stipulated in staff rule 3.19(i).

The \_\_\_\_\_ limited judicial review of \_\_\_\_\_ discretionary authority

19. The Tribunal notes that the Appeals Tribunal has consistently held that the \_\_\_\_\_ limited and often refers thereon to its seminal judgment in *Sanwidi* 2010-UNAT-084. Therein, the Appeals Tribunal defined the scope of this review as it is for the Dispute Tribunal to determine if the administrative decision under challenge is reasonable

has the general authority to grant an exception to the Staff Rules, including the deadline set out in staff rule 3.19(i), if three particular conditions spelled out therein are satisfied.

25. In addition, the Tribunal notes that the majority opinion in *Applicant* 2021-UNAT-1133 (overturning *Applicant* UNDT/2020/116/Corr.1) held that the Dispute Tribunal is not competent to review a medical assessment of DHMOSH (see, in particular, para. 58).

to which

the Applicant refers in his submissions.

**Conclusion**

29. The application is rejected.

*(Signed)*

Judge Joelle Adda

Dated this 11<sup>th</sup> day of November 2022

Entered in the Register on this 11<sup>th</sup> day of November 2022

*(Signed)*

Morten Michelsen, Officer-in-Charge, New York