UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2022-UNAT-1188

Julieta Coca

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Dimitrios Raikos, Presiding Judge Sabine Knierim Judge Martha Halfeld
Case No.:	2021-1536
Date:	18 March 2022
Registrar:	Weicheng Lin

Counsel for Appellant:	Robbie Leighton, OSLA
Counsel for Respondent:	André Luiz Pereira de Oliveira

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal or UNAT) has before it an appeal by Julieta Coca (Ms. Coca), a former staff member who served as a Programme Management Officer at the P-3 level with the United Nations Conference on Trade and Development (UNCTAD) in Geneva.

2. Ms. Coca filed an application with the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) challenging the Administration's calculation of her sick leave entitlements and the related decision to terminate her appointment for medical reasons.

3. On 8 January 2021, the Dispute Tribunal issued Judgment No. UNDT/2021/001,[1] dismissing Ms. Coca's application and finding that her sick leave entitlements were properly calculated and that the Administration had lawfully terminated her appointment for health reasons. The tribunal explained because there was a break in service between the staff member's two appointments, she was not eligible for the sick leave entitlements she was then seeking.

4. For the reasons set out below, we dismiss the appeal.

Facts and Procedure

5. Ms. Coca joined UNCTAD on 12 January 2015 on a temporary appointment. Her temporary appointment was renewed several times before she was recruited on a Fixed Term Appointment (FTA), which began on 1 February 2016. Her FTA was renewed for an additional year on 1 February 2017.

6. While serving as a temporary appointee, the Administration informed Ms. Coca on 30 December 2015 that she had been selected for the position of Programme Management Officer at the P-3 level on a FTA in the same role that she was then occupying.

7. Ms. Coca, on the same day, confirmed her interest in the job offer and informed the Human Resources Management Section (HRMS) that her temporary appointment was set to expire on the next day, that is on 31 December 2015, and as such, she requested her supervisor to extend her temporary appointment until her FTA came into effect.

[1] *Coca v. Secretary-General of the United Nations*, Judgment No. UNDT/2021/001 dated 8 January 2021 (Impugned Judgment).

8. The Administration responded to Ms. Coca on the same day and said in an e-mail:

> Thank you for your confirmation.
>
> You will receive an offer of appointment from UNOG/HRMS for your fixed-term appointment.
>
> In the meantime, please ask your supervisor to send the request for extension of your temporary appointment through 31.01.2016. The temporary appointment can still be shorten if the fixed-term contract is finalised by UNOG before end January 2016.

9. Ms. Coca's supervisor responded in an e-mail on 31 December 2015 saying:

> Following your recommendation, which I greatly appreciate, I would like to hereby request the proper extension of Julieta Coca on her temporary appointment.
>
> This extension should be through 31.01.2016 or when the fixed term contract is expected to be finalised by UNOG, which ever comes first.
>
> Its [sic] important that Mme Coca is allowed in the UN premises and that her work is continued seamlessly, without break in service.

10. On 31 January 2016, Ms. Coca's temporary appointment ended, and on the next day, that is on 1 February 2016, she was appointed on a FTA. There were two Personnel Action forms issued on 1 February 2016. One was titled under "Special Separation w/o break" and the other one said "Reappointment w/o break."

11. After her FTA was renewed for another year on 1 February 2017, Ms. Coca went on sick leave in July 2017. On 26 October 2017, HRMS informed Ms. Coca that she had exhausted her entitlement to sick leave with full pay on 10 October 2017 (65 days over a 12- month period). Ms. Coca then accepted to combine her sick leave on half-pay with her annual leave. This arrangement proceeded until 16 January 2018, at which time she had exhausted all her sick leave entitlements with full pay and half pay.

12. On 16 January 2018, the Administration informed Ms. Coca that her case would be referred for disability if she remained further incapacitated to return to work.

13. On 17 January 2018, Ms. Coca was placed on Special Leave With Half Pay (SLWHP) pending a disability decision, pursuant to Section 4 of Administrative Instruction ST/AI/1999/16 (Termination for health reasons) and Section 3 of Administrative Instruction ST/AI/2005/3 (Sick leave).

14. On 27 February 2018, HRMS referred Ms. Coca's case to the United Nations Joint Staff Pension Committee (UNSPC), and on 18 April 2018, the UNSPC determined that she was incapacitated for further service and was entitled for a disability benefit under Article 33 of the Regulations of the United Nations Joint Staff Pension Fund (UNJSPF). She was notified of this decision by letter dated 23 April 2018.

15. By letter dated 26 April 2018 and effective on the same day, Ms. Coca was notified that her appointment was terminated for health reasons.

16. Prior to her termination, on 14 March 2018, Ms. Coca sought management evaluation of the decision to separate her from service for medical reasons and to refer her case for disability based on an incorrect calculation of her sick leave entitlements (Contested Decision). On the same day, Ms. Coca also sought suspension of action pending management evaluation.

17. On 22 March 2018, the UNDT granted the application for suspension of action pending management evaluation. However, on 20 April 2018, Ms. Coca received a management evaluation response upholding the Contested Decision.

18. On 17 July 2018, Ms. Coca filed an application with the Dispute Tribunal challenging the Contested Decision.

19. On 8 January 2021, the UNDT issued the Impugned Judgment, finding that the Contested Decision was lawful. The tribunal reasoned that Ms. Coca was employed under a temporary appointment for the period of 12 January 2015 to 31 January 2016, and that there was separation from service before she was re-employed under a FTA on 1 February 2016 until 26 April 2018.

20. The tribunal explained that the factual circumstances surrounding the transition of Ms. Coca from a temporary appointment to a FTA demonstrate that she was re-employed on 1 February 2016. In that regard the UNDT said:[2] "[T]he Applicant's temporary appointment expired before she was granted a fixed-term appointment. Therefore, given that her temporary appointment expired, and pursuant to [S]taff [R]ule 9.1 (iii), the Applicant was separated from service. Following her separation on 31 January 2016, the Applicant was granted a new appointment on 1 February 2016."

[2] Impugned Judgment, para. 26

21. The UNDT also noted that in furtherance of the formalities of separation from service, Ms. Coca was paid her annual leave accrued during her temporary appointment in March 2016.

22. Additionally, the tribunal also noted that under Staff Rule 4.17(a), Ms. Coca's re-employment on a FTA constituted a new appointment, and accordingly under Staff Rule 4.17(b), the terms of such new appointment were fully applicable regardless of the period of former service, which cannot be considered as continuous.

23. In conclusion, because the tribunal found a break in service between the temporary appointment and the FTA, the staff member was not eligible for sick leave of up to nine months on full salary and nine months on half salary in any period of four consecutive years, as provided under Staff Rule 6.2(b)(iii).

24. Accordingly, having exhausted all her sick leave entitlements with three months on full pay and three months on half pay, it was lawful for the Administration to refer Ms. Coca's case to the UNSPC. Hence, it was also lawful for the Administration to terminate Ms. Coca's appointment for health reasons following UNSPC's 18 April 2018 determination that she was incapacitated for further service and was entitled for a disability benefit.

25. On 9 March 2021, Ms. Coca filed an appeal against Judgment No. UNDT/2021/001, and the appeal was registered with the Appeals Tribunal as Case No. 2021-1536. On 10 May 2021, the Secretary-General filed his answer.

Submissions

Ms. Coca's Appeal

26. Ms. Coca first submits the UNDT erred in law by failing to take judicial notice of the absence of a requirement that the required continuous service must be purportedly while serving on FTAs only. Staff Rule 6.2(b)(iii) states: "A staff member who holds a continuing appointment, or who holds a fixed-term appointment for three years or who has completed three years or more of continuous service shall be granted sick leave of up to nine months on full salary and nine months on half salary in any period of four consecutive years." As such, Ms. Coca argues she falls in the latter category in that she has completed three years or more of continuous service. She did not need to have a FTA of three years or more to benefit for sick leave entitlements under Staff Rule 6.2(b)(iii).

27. In that regard, Ms. Coca refers to the conclusion of the UNDT in issuing the order granting suspension of action pending management evaluation:[3]

> … The Tribunal disagrees with the Respondent's interpretation of the notion of continuous service in the framework of staff rule 6.2(b)(iii). If the legislator had wanted to consider continuous service only under FTAs, he would, and should have, expressly provided for such a restriction. Counsel for the Applicant rightfully pointed out that e.g., for the purpose of eligibility for conversion to a permanent appointment, the relevant legal provisions explicitly require such continuity to be on FTAs. Indeed, sec. 1(a) of ST/SGB/2009/10 provides that "[t]o be eligible for consideration for conversion to a permanent appointment under the present bulletin, a staff member must by 30 June 2009: (a) Have completed, or complete, five years of *continuous service on fixed-term appointments* under the 100 series of the Staff Rules" (emphasis added).
>
> … No such requirement exists for the determination of sick leave entitlements, as staff rule 6.2(b)(iii) merely requires, as an alternative (use of "or"), that a staff member completes "three years or more of continuous service". The Respondent's argument that the maximum sick leave entitlement for temporary appointments and FTAs/Continuing appointments is different and cannot be compared or computed, or carried over or paid out are irrelevant for that consideration. A literal reading of the above rule can only mean that upon completion of three years or more of continuous service, independently of the type of appointment, the maximum entitlement of up to nine months on full salary and nine months on half salary in any period of four consecutive years applies.

28. Following the above, Ms. Coca explains it is clear that upon three years or more of continuous service, independently of the type of appointment, she should be entitled to the maximum entitlement of up to nine months on full salary and nine months on half salary in any period of four consecutive years.

29. Second, Ms. Coca argues the UNDT erred in law and fact when finding that she had been re-employed under Staff Rule 4.17. In that regard, Ms. Coca posits that an employee who held a contract *every day* with an Organization for a period in excess of three years cannot be said to have been re-employed on transition from one contract type to another. Specifically, Ms. Coca highlights the fact that she was a staff member on 31 January 2016 and was a staff member on 1 February 2016, and there was not one moment in the period from 12 January 2015 until her separation for medical reasons when she was a "former staff member". Since she never became a "former staff member," therefore she could not have been re-employed under Staff Rule 4.17. To that effect, Ms. Coca also points to the fact that non-renewal decisions are not implemented until

[3] *Coca v. Secretary-General of the United Nations*, Order No. 64 (GVA/2018), paras. 25 – 26.

the day following expiry of the appointment, which therefore supports the conclusion that she was never separated.

30. The staff member additionally notes other circumstances demonstrate that no separation had actually taken place; to wit: Ms. Coca did not receive a performance evaluation at the end of her temporary appointment, and furthermore, she was also granted a retroactive settling-in grant in consideration of her travel from Buenos Aires to Geneva, following her first temporary appointment. This type of grant is provided only to international recruits, and therefore, it can't be said that her new appointment was "without regard to any period of former service" as stipulated under Staff Rule 4.17(b).

31. As a final point, Ms. Coca argues that the UNDT erred in law and failed to exercise jurisdiction by choosing not to consider the Administration's breach of the rules regarding reemployment after her temporary appointment. In that regard, Ms. Coca submits the Administration cannot subvert its own rules to benefit from her continuous service and yet disentitle her from the benefits that would have accrued from her continuous service.

32. In conclusion, Ms. Coca submits her appointment was wrongly terminated for medical reasons due to the miscalculation of her sick leave entitlement. As such, she seeks rescission of the Contested Decision or *in lieu* compensation. In addition, she also seeks moral damages for the harm caused by the Contested Decision and submits medical evidence to that effect, detailing the symptoms and the overall decline in her health as a result of the implementation of the "premature employment separation".

The Secretary-General's Answer

33. The Secretary-General argues the UNDT correctly found that Ms. Coca had been re-employed when she was granted the FTA on 1 February 2016. It is the Respondent's contention that Ms. Coca's temporary appointment expired and she was separated from service on 31 January 2016 and that she was re-employed on a FTA on the next day, that is on 1 February 2016. Per the Secretary-General, the continuity of service between the two appointments had been legally broken. As such, Ms. Coca began accumulating sick leave entitlements only from the date the FTA started, that is on 1 February 2016. The Secretary-General also points to the fact that it is because her previous appointment had ended

that Ms. Coca was granted a payout for the unused annual leave that accrued during her temporary appointment.

34. Second, the Secretary-General argues that Ms. Coca's reliance on the jurisprudence in *Katalu*,[4] *Rockcliffe*,[5] *Dunda*,[6] and *Applicant* concerning the meaning of "re-employment" and "break-in-service" is misplaced because the facts and circumstances of the present case as well as the applicable legal framework are markedly different from these other cases.[7] Notably, unlike the case in *Applicant*, here the temporary appointment expired on its own terms. Similarly, in *Katalu*, the staff member had not been separated from service because in that case her temporary appointment had not expired when she transitioned to a FTA.

35. Third, the Secretary-General argues Ms. Coca has not demonstrated that the UNDT erred on a question of fact in finding that she had been re-employed. In that regard, the Respondent submits that nothing in the evidence allows for the conclusion that the FTA started before the expiration of the temporary appointment or that there was even an intention on the part of the Administration that this be the case. The Respondent notes that Ms. Coca's supervisor had requested a final extension of the Temporary Appointment through 31 January 2016 or when the FTA is expected to be finalized, whichever comes first. As such there was no intention on the part of the Administration to have the FTA start prior to the expiry of the temporary appointment.

36. Additionally, the Secretary-General submits that Ms. Coca has failed to demonstrate that the UNDT erred when it disregarded the Administration's breach of the rules regarding re-employment after a temporary appointment. The Secretary-General reasons because Ms. Coca never contested the Administration's decision not to require a break-in-service between the ending of the temporary appointment and the starting of her FTA, she was precluded from raising this issue in her application.

37. In all, the Secretary-General submits the UNDT correctly held that the appellant had not met the requirements of Staff Rule 6.2(b)(iii) to be granted sick leave of up to nine months on full salary and nine months on half salary in any period of four consecutive years. This, argues the Secretary-General, is because the duration of Ms. Coca's temporary appointment is

[4] *Katalu v. Secretary-General of the United Nations*, Judgment No. UNDT/2017/040, para. 25.
[5] *Rockcliffe v. Secretary-General of the United Nations*, Judgment No. UNDT/2012/033, para. 37.
[6] *Dunda v. Secretary-General of the United Nations*, Judgment No. UNDT/2013/034, para. 18.
[7] *Applicant v. Secretary-General of the United Nations*, Judgment No. UNDT/2012/091, para. 84.

irrelevant given that it expired on its own terms, and Ms. Coca was separated from service on 31 January 2016. Under Staff Rule 4.17, the continuity of service between her two appointments was broken, and her re-employment under a FTA constituted a new assignment with the Organization starting 1 February 2016. Consequently, given that Ms. Coca was able to show only two years of continuous service with the Organization, Staff Rule 6.2(b)(ii) applied, and she could only be granted the sick leave up to three months with full pay and three months on half pay over a 12-month period.

38. Regarding the issue of remedies, the Secretary-General notes that even if the Administration had granted Ms. Coca sick leave under the maximum stipulated in Staff Rule 6.2(b)(iii), she has not presented any meaningful evidence showing that she would, or be able to, return to work had her sick leave entitlements been calculated per that rule.

Considerations

39. The main issues to determine in the present appeal are: (i) whether Ms. Coca was eligible for a maximum sick leave entitlement, and (ii) whether the UNDT erred in law and fact in finding that the Organization granted Ms. Coca the appropriate sick leave entitlement and lawfully terminated her appointment for medical reasons.

40. Staff Rule 6.2(b) provides as follows:

> (i) A staff member who holds a temporary appointment shall be granted sick leave at the rate of two working days per month;
>
> (ii) A staff member who holds a fixed-term appointment and who has completed less than three years of continuous service shall be granted sick leave of up to 3 months on full salary and 3 months on half salary in any period of 12 consecutive months;
>
> (iii) A staff member who holds a continuing appointment, or who holds a fixed-term appointment for three years or who has completed three years or more of continuous service shall be granted sick leave of up to nine months on full salary and nine months on half salary in any period of four consecutive years.

41. Section 3 of ST/AI/1999/16 on termination for health reasons states that "[w]hen a staff member has used all his or her entitlement to sick leave with full pay, the executive or local personnel office shall bring the situation to the attention of the Medical Director or designated medical officer …".

42. A plain reading of the above provisions regarding a staff member's eligibility to receive the maximum entitlement to sick leave, as defined under Staff Rule 6.2(b)(iii), requires the latter to either hold a continuing appointment or a FTA for three years or the staff member must complete three years or more of continuous service.

43. In the present case, it is obvious that the duration and continuity of Ms. Coca's service was the determining factor in calculating her sick leave entitlement. Thus, the UNDT correctly identified the crucial question as being whether Ms. Coca's service on the temporary appointment for the period of 12 January 2015 to 31 January 2016 could count towards the calculation of the three years or more of continuous service as required by Staff Rule 6.2 (b)(iii).

44. In this respect, the UNDT held that Ms. Coca's continuity of service between her two appointments, namely her temporary appointment from 12 January 2015 to 31 January 2016 and her FTA from 1 February 2016 to 26 April 2018, was broken.[8] Per the UNDT's reasoning, the appellant's temporary appointment expired before she was granted a FTA and, therefore, pursuant to Staff Rule 9.1 (iii), she was separated from service. Following her separation on 31 January 2016, Ms. Coca was granted a new appointment on 1 February 2016, and she accepted a letter of appointment to this effect. In accordance with the formalities of separation of service, the appellant was paid her annual leave accrued during her temporary appointment in March 2016.

45. Based on these findings, the UNDT opined, further, that the continuity of service between the appellant's two appointments was broken and, thus, given that she served under a temporary appointment for one year and, after separation, was re-employed under a FTA for two years, she could only be granted the maximum entitlement under Staff Rule 6.2 (b)(ii), that is up to three months with full pay and three months on half pay over a 12-month period.[9]

[8] Impugned Judgment, paras. 26-28.
[9] *Ibid*., para. 28.

46. The reasoning of the UNDT was predicated upon Staff Rules 4.17 and 4.18, which read:

> Staff Rule 4.17
>
> Re-employment
>
> (a) A former staff member who is re-employed under conditions established by the Secretary-General shall be given a new appointment unless he or she is reinstated under staff rule 4.18.
>
> (b) The terms of the new appointment shall be fully applicable without regard to any period of former service. When a staff member is re-employed under the present rule, the service shall not be considered as continuous between the prior and new appointments.
>
> …
>
> Staff Rule 4.18
>
> Reinstatement
>
> (a) A former staff member who held a fixed-term or continuing appointment and who is re-employed under a fixed-term or a continuing appointment within 12 months of separation from service may be reinstated if the Secretary-General considers that such reinstatement would be in the interest of the Organization.

47. Upon application of the above legal provisions, the UNDT held that, pursuant to Staff Rule 4.17 (a), the appellant's re-employment on a FTA constituted a new appointment, which commenced on 1 February 2016, and further, pursuant to Staff Rule 4.17 (b), the terms of her new appointment were fully applicable regardless of her period of former service. Thus, the UNDT reached its final conclusions that:

> (a) Ms. Coca did not meet the requirement of Staff Rule 6.2 (b)(iii) to be granted sick leave of up to nine months on full salary and nine months on half salary in any period of four consecutive years, and, accordingly, her sick leave entitlements were properly calculated as per Staff Rule 6.2 (b)(ii), and
>
> (b) Once Ms. Coca exhausted all her sick leave entitlements with three months on full pay and three months on half pay, it was lawful for the Administration to refer her case to the UNSPC, and following UNSPC's 18 April 2018 determination that Ms. Coca was incapacitated for further service and was entitled for a disability benefit, it was lawful for the Administration to terminate her appointment for health reasons.

48. The appellant submits that the UNDT erred on a question of law and fact in holding that she had been re-employed under Staff Rule 4.17, and, thus, she did not meet the requirement for continuous service under Staff Rule 6.2.(b) (iii), because no separation from service took place in her case. The appellant submits that she was a staff member on 31 January 2016 and was a staff member on 1 February 2016. She argues that staff members are not deemed to be re-employed with each new appointment, and the UNDT has not pointed out any compelling reason to explain "why a staff member employed continuously on different contractual modalities should be treated differently".

49. The ordinary meaning of Staff Rules 4.17 and 4.18, which are of general application, is clear and unambiguous. They provide that re-employment, with the exceptions specified in subparagraph (c) of Staff Rule 4.17, which is of no interest in the case at hand, as sick leave entitlements is not one of them, will not lead to service being regarded as continuous presumably for the purpose of determining benefits, seniority and so on.[10]

50. Staff Rule 9.4 further provides that "[a] temporary or fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment".

51. In light of the above, the crux of this case is whether the appellant was separated from service on 31 January 2016 when her temporary appointment expired and re-employed on 1 February 2016 on a FTA.

52. The evidence on record shows, as the UNDT correctly found, that the appellant's temporary appointment expired before she was granted a FTA effective 1 February 2016, and that, upon the expiration of her temporary appointment, the appellant was in fact separated from service and her entitlement to annual leave accrued during her temporary appointment was paid to her with her salary of March 2016, that is two months after being granted a FTA. Under these conditions, we share the UNDT's view that:[11] "[T]he factual circumstances surrounding the Applicant's transition from the temporary appointment to the fixed-term appointment demonstrate that Applicant was "re-employed" on 1 February 2016. The

[10] *Couquet v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-574, para. 35 (finding that periods of former service are relevant only in cases enumerated in Staff Rule 4.17(c), such as termination indemnity, repatriation grant or commutation of accrued annual leave, ASHI was not one of the exclusions specified under the rule.)
[11] Impugned Judgment, para. 25.

Organization did not treat her as being continuously employed and it proceeded with an actual separation from service and dealt with the effects that it entails."

53. Indeed, Ms. Coca was re-employed, not reinstated. Moreover, her service on a FTA could not be considered a reinstatement because the terms of the contract reflect that it consisted a new appointment and there was nothing in the letter of appointment that stipulated that Ms. Coca had been reinstated. Accordingly, pursuant to Staff Rule 4.17 (a), Ms. Coca's re-employment with the Organization on a FTA constituted a new appointment, which commenced on 1 February 2016. Pursuant to Staff Rule 4.17 (b), the terms of such new appointment were fully applicable regardless of her period of former service, which could not be considered as continuous.

54. The appellant claims that the Organization breached its own rules when it allowed her to transition from her temporary appointment to a FTA without a temporal break. She argues, citing our Judgment in *Castelli*,[12] that the Administration could not subvert its own rules in order to benefit from her continuous service and concurrently apply those rules to disentitle her from the benefits that accrued from it. She further asserts that the UNDT erred when it considered that a particular challenge was required for her to contest the inconsistency of the positions taken by the Administration in this regard. In this context, she argues that the grant or renewal of a FTA is a decision in a staff member's favor, and as such, a challenge to such decision is not receivable in the formal justice system. Finally, the appellant relies on the UNAT holding expressed in *Vattapally* for her proposition that the UNDT purportedly conflated the eligibility requirement for continuous service with that of consecutive service.[13] She also notes that in obiter dictum, UNAT left open the question as to whether Mr. Vattapally's service might have been deemed continuous.

55. These submissions are devoid of any merit. First, in *Castelli*, the concerned staff member was appointed to a temporary assignment of eight months and 28 days, which was extended through 30 June 2018. No similar circumstances are present in the instant case. Unlike in *Castelli*, the appellant's temporary appointment was not extended by the Administration. Instead, it expired and, thus, the appellant was legally separated from service on the same date, as alluded above.

[12] *Castelli v.Secretary-General of the United Nations*, Judgment No. 2010-UNAT-037.
[13] *Vattapally v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-891, para. 28.

56. Next, we are not persuaded by the argument that the UNDT was wrong in finding that the staff member had to contest the administrative decision to renew her appointment on a FTA, because it was a favorable decision. We hold that the appellant's argument in this regard is misconceived. The issue was not about the legality of her FTA effective 1 February 2016. What was relevant and material in the instant case was whether Ms. Coca had been reinstated or not, and in her case, she was not, which reflected adversely on her. In this context, it is common cause that the appellant never made a request to be reinstated, pursuant to Staff Rule 4.18., or brought a challenge, at any time, in this respect, in accordance with the formalities of the law. Consequently, she was not allowed to make her case on that point for the first time before the UNDT.

57. Last but not least, Ms. Coca cannot rely on our Judgment in *Vattapally* either. In that case, as the Secretary-General correctly argues, the dispute related to mobility allowance entitlements and the respective legal requirements outlined in the former Staff Rule 3.13. Such provision required, among others, that the staff member should have been on an assignment of one year or more and be installed at the new duty station. Further, the staff member should have served for five consecutive years in the United Nations common system of salaries and allowances. While, in the case at hand, the dispute revolves around the issue of sick leave entitlements, which is under a different legal framework and requires the demonstration of continuous service with the Organization – a requirement that was not fulfilled. At any rate, as we stated in *Vattapally*,[14] the use of the word "consecutive" instead of "continuous" in former Staff Rule 3.13 (a)(iii) demonstrates that a different meaning was intended. The two words do not bear the same meaning in normal usage. Consecutive means proceeding in logical sequence or occurring adjacently. Continuous means uninterrupted in time or sequence. As the UNDT correctly found in the present case, the appellant's service was not continuous.

58. In the premises, the Appeals Tribunal holds that, contrary to Ms. Coca's contentions, the UNDT did not err in concluding that the staff member did not fulfill all the requirements to be eligible for a maximum entitlement to sick leave, because there was indeed a break in her service continuity, which prevented her from reaching three years of continuous service as required under Staff Rule 6.2(b)(iii). On that basis, the UNDT correctly held that, since the staff member had started her FTA on 1 February 2016 and was separated from service for

[14] *Ibid.*, para. 31.

reasons of incapacitation effective 26 April 2018, she only demonstrated two years of continuous service with the Organization, namely less than the three years required by law. As such, she could only be granted sick leave of up to three months on full salary and three months on half salary in any period of 12 consecutive months in accordance with Staff Rule 6.2 (b)(ii). Concomitantly, the UNDT correctly held further that, once the staff member exhausted all her sick leave entitlements, it was lawful for the Administration to terminate her appointment for health reasons, following the UNSPC 18 April 2018 determination that she was incapacitated for further service and was entitled to a disability benefit.

Request for compensation

59. The appellant's claim for compensation is rejected. Since no illegality was found, there is no justification for the award of any compensation. As this Tribunal stated before, "compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member's rights or administrative wrongdoing in need of repair".[15]

60. For the foregoing reasons, we find that the appellant has failed to establish that the UNDT made any error of law or fact in its review of the challenged administrative decision. It follows that the appeal must fail.

[15] *Verma v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-829, para. 33, citing *Kucherov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-669, para. 33.

Judgment

61. The appeal is dismissed, and Judgment No. UNDT/2021/001 is hereby affirmed.

Original and Authoritative Version: English

Dated this 18th day of March 2022.

(Signed)	*(Signed)*	*(Signed)*
Judge Raikos, Presiding Athens, Greece	Judge Knierim Hamburg, Germany	Judge Halfeld Juiz de Fora, Brazil

Entered in the Register on this 4th day of April 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar