



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2022-UNAT-1258

**Yulia Andreeva
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Sabine Knierim Judge Martha Halfeld
Case No.:	2021-1567
Date of Decision:	1 July 2022
Date of Publication:	15 August 2022
Registrar:	Weicheng Lin

Counsel for Ms. Andreeva: Robbie Leighton, OSLA

Counsel for the Secretary-General: Noam Wiener

JUDGE GRAEME COLGAN, PRESIDING.

1. Ms. Yulia Andreeva (the Appellant) contested before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) the decision to find her ineligible for a home leave entitlement. In Judgment No. UNDT/2021/046 (the Impugned Judgment), the UNDT dismissed her application.
2. The Appellant appeals the Impugned Judgment before the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
3. For the reasons below, we dismiss the appeal.

Facts and Procedure

4. On 10 February 2011, Ms. Andreeva joined the Legal Support Office (now known as LO/BMS), of the United Nations Development Programme (UNDP) in New York as a Legal Specialist at the P-3 level. Ms. Andreeva's job responsibilities included the provision of legal support to the Global Fund Partnership Team, now known as the Global Fund/Health Implementation Support Team (GF/HIST) based in Geneva.
5. From November 2013, Ms. Andreeva was redeployed from New York to Geneva while continuing to report to her supervisor in LO/BMS in New York. In April-May 2014, Ms. Andreeva was on certified sick leave due to anxiety and depression caused by what she considered to be workplace harassment by her supervisor.
6. In November 2018, Ms. Andreeva was placed on a "detail assignment" with GF/HIST whereby she reported to a supervisor in GF/HIST and worked on risk management, programming and partnerships. By e-mail dated 31 October 2019, GF/HIST confirmed to the Director of LO/BMS that Ms. Andreeva's detail assignment with GF/HIST would end on 31 December 2019 without further extension.
7. On 3 December 2019, the Director of LO/BMS informed Ms. Andreeva that her detail assignment with GF/HIST would end on 31 December 2019 and she would return to LO/BMS full-time. On 19 December 2019, the Director of LO/BMS provided a further explanation to Ms. Andreeva regarding the end of her detail assignment.

8. On 20 December 2019, Ms. Andreeva made a formal home leave request for the period 6 to 14 January 2020 and submitted it to her supervisor in GF/HIST for approval, who, in turn, advised Ms. Andreeva that she should seek approval from her supervisor in LO/BMS as the requested leave dates were in January 2020 after her return to working for LO/BMS.

9. On 30 December 2019, Ms. Andreeva's supervisor in LO/BMS wrote to her that she understood that the Appellant would be out of the office from 2 to 14 January 2020. On 31 December 2019, the Director of LO/BMS advised Ms. Andreeva that although her taking leave was acceptable, he would need to consult with the Office of Human Resources on whether she had a home leave entitlement at the time. The Director of LO/BMS explained that while a staff member would be entitled to home leave in the event that a staff member's contract was anticipated to continue for more than six months after the return from home leave, yet her contract's end date was 30 June 2020. He further noted that the issue would not be resolved before Ms. Andreeva's departure from Geneva for her home.

10. On 13 January 2020, the Director of LO/BMS replied to Ms. Andreeva's inquiry regarding her home leave entitlement. He explained that "there is a problem with granting [home leave] approval for this trip" and suggested that they would discuss this matter when she returned to the office as it was a complex one.

11. On 27 January 2020, Ms. Andreeva had a telephone call with the Director of LO/BMS during which she was informed that her appointment would not be extended beyond 30 June 2020, and that for this reason her home leave request would not be granted as her contract would not continue for more than six months after her return from home leave.

12. On 30 January 2020, the Senior Human Resources Business Advisor (HRBA) further notified Ms. Andreeva that her fixed-term appointment, which was set to lapse on 30 June 2020, would not be extended.

13. On 27 March 2020, Ms. Andreeva submitted a request for management evaluation of the decision to deny her home leave entitlement. On 11 May 2020, by management evaluation, the Administration upheld the contested decision.

The Impugned Judgment

14. The UNDT found that Ms. Andreeva was ineligible for a home leave entitlement. Noting that the Appellant decided to travel to her home country in the knowledge that her home leave had not been approved and the Director specifically advised her that there was a question as to whether she had such an entitlement, UNDT rejected her argument that the Administration failed to inform her accurately regarding her home leave entitlement and that she was somehow misled to incur costs for home leave.¹ The UNDT found that the record showed that in January 2020 it was decided that her contract would not be renewed. Therefore, her contract was not expected to continue for at least six months from the date of her return from her proposed home leave, so she did not meet this eligibility criteria for home leave entitlement.² Accordingly, UNDT found that the Administration lawfully rejected approval of Ms. Andreeva's home leave request.³ The UNDT dismissed her application.⁴

Procedure before the Appeals Tribunal

15. On 18 June 2021, the Appellant filed an appeal against the Impugned Judgment with UNAT and, on 20 August 2021, the Respondent filed his reply.

Submissions

Ms. Andreeva's Appeal

16. Ms. Andreeva requests that those parts of the Impugned Judgment concerning her home leave entitlement be rescinded and an order made for the payment of all monies associated with that entitlement. She further requests moral damages resulting from the stress and anxiety caused by the delay in home leave approval, noting she made frequent reference to the Director of the stress associated with the practice of not approving home leave, that she was hospitalised in her home country and placed on sick leave upon her return to the United States.

17. Ms. Andreeva submits that the UNDT erred in law by considering the issue of its expectation of her ongoing employment as at the date of its decision, not the date of her request for home leave. She argues that the expectation of her ongoing employment relevant to her

¹ Impugned Judgment, para. 52.

² Impugned Judgment, para. 53.

³ Impugned Judgment, para. 54.

⁴ Impugned Judgment, para. 55.

entitlement was that which existed at the time she requested home leave. If UNDP did not expect that her appointment would be renewed, then it was obliged to inform her of such and deny her request for home leave. The UNDT erred in assessing that state of expectation to be as at 27 January 2020, 12 days after the end of the requested home leave and after the end of the leave irrespective of its characterisation as home leave or as annual leave *simpliciter*.

18. Ms. Andreeva submits that the UNDT erred in fact leading to a manifestly unreasonable decision in finding that UNDP did not mislead her regarding her home leave entitlement and that the rejection of her claim for home leave was lawful. The Appellant submits that the Director's communication of 31 December 2019 did not give any indication that there might be circumstances that rendered it less likely that she might not be employed beyond 30 June 2020. Noting that on 3 December 2019 the Director BMS/LO had before him information that GF/HIST would be reducing its funding in 2020, which eventually became the reason for the non-renewal of her contract, Ms. Andreeva submits that the Director was on notice of the reduced funding before she requested home leave. At some point between 3 and 30 December 2019 a decision was made that the Global Fund would no longer require legal advice from a P-3 Legal Officer in Geneva. The Appellant submits that the Respondent failed to indicate the basis upon which she was separated despite being aware of such at the time she departed on home leave. Alternatively, and at the very least, the Respondent failed to advise her that there were circumstances that made the expectation of the Appellant's continued employment by UNDP beyond 30 June 2020 uncertain. In these circumstances, it should at least have put her on notice that she should consider not travelling to her home country with her family. Having failed to do so, the Respondent should be estopped from relying on the subsequent separation decision to disentitle the Appellant.

The Secretary-General's Answer

19. The Secretary-General requests the UNAT to uphold the Impugned Judgment and dismiss Ms. Andreeva's appeal.

20. The Secretary-General submits that the UNDT correctly held that the Appellant had not been misled that her request for home leave had been approved. The Secretary-General submits that it was clear from the two e-mail messages that Ms. Andreeva sent to the Director (on 20 and 31 December 2019), that she was herself aware that her request for home leave had not been approved. Further, the Secretary-General submits that the Director informed her that her request for home leave had not been approved and that the reason the request was not approved

was because it was not clear that the Appellant's appointment would continue for six months beyond the date of her return from home leave.

21. The Respondent submits that the Director did not mislead Ms. Andreeva regarding the ramifications of the negotiations on the SLA between BMS/LO and GF/HIST. Rather, he was "candid" about how it was likely to affect her position in 2020. The Respondent submits that even if the Appellant misconstrued the Director's statements, they have no bearing on the question of whether she was misled regarding her home leave entitlement. The Respondent submits that Ms. Andreeva knew, or should have known that, according to UNDP policy, to be eligible for the home leave entitlement, her request had to be approved and that she had not received such approval before travelling home. The Respondent submits that, accordingly, the UNDT was correct to find that the Appellant's claim that she had been misled by the Director was without basis.

22. The Respondent submits that the UNDT correctly held that when the decision that Ms. Andreeva was not eligible for home leave was made, her appointment was not expected to continue for six months beyond the end of the period during which she had requested home leave. The Respondent submits that the UNDT correctly held that the decision not to approve her request for home leave was in accordance with Staff Rule 5.2.

Considerations

23. It is appropriate first to describe briefly the significance of home leave as a subset of annual leave. The latter is an entitlement of all staff and Ms. Andreeva's entitlement to annual leave as taken in January 2020 is not, as was not at any material time, in dispute. That she wished it to be treated as home leave would have meant, had she been successful, that she would have been entitled to be credited with leave for the travelling time spent in returning to and from home, and that the costs of this travel would have been met by the Organisation.

24. The issues to be decided on this appeal are governed first by the UNDP's Rules and Regulations and policies and, in light of those, by the relevant facts affecting Ms. Andreeva's leave taken in early 2020. There are two essential questions raised by the Appellant's grounds of appeal. The first is a question of law: did the UNDT assess the UNDP's expectation as at the date of advising Ms. Andreeva that she was not entitled to home leave and not at the date she applied for

this; and second, as a mixed question of fact and law, did the UNDP mislead Ms. Andreeva about her entitlement to home leave so that it should be estopped from denying her leave of that status?

25. The Staff Regulations and Rules address the matter of home leave entitlements at Rule 5.2 materially as follows with our emphasis illustrated by bold type:

...

(a) Internationally recruited staff members, as defined under staff rule 4.5 (a) and not excluded from home leave under staff rule 4.5 (b), who are residing and serving outside their home country and who are otherwise eligible shall be entitled once in every 24 months of qualifying service to visit their home country at United Nations expense for the purpose of spending in that country a reasonable period of annual leave. Leave taken for this purpose and under the terms and conditions set forth in this rule shall hereinafter be referred to as home leave.

(b) A staff member shall be eligible for home leave provided that the following conditions are fulfilled:

(i) While performing his or her official duties:

a. The staff member continues to reside in a country other than that of which he or she is a national; or

b. In the case of a staff member who is a native of a non-metropolitan territory of the country of the duty station and who maintained his or her normal residence in such non-metropolitan territory prior to appointment, he or she continues to reside, while performing his or her official duties, outside such territory;

(ii) The staff member's service is expected by the Secretary-General to continue:

a. At least six months beyond the date of his or her return from any proposed home leave; [...]

26. Next is the UNDP's Policy on Annual Leave which must conform to the Staff Regulations and Rules. Not inconsistent with the foregoing is the following policy:

11. Annual leave is subject to exigencies of service and must be authorized in advance by the supervisor, except where a compelling circumstance makes this impossible.

27. There is no question that Ms. Andreeva's annual leave in January 2020 was approved by UNDP and was authorised in advance.

28. When UNDP can be held to have its expectation of continuing service by the staff member is not specified in the Rule. We consider it is necessarily implicit that it will be determined a reasonable time in the material circumstances after the application is made. This will be determined by factors including the relevant history of the staff member's employment, the status of that employment, the circumstances of the employing organisation, the advance notice given by the staff member, the timing of the decision to allow annual leave to be taken, the time of year, and the like.

29. Ms. Andreeva left it very late to apply for her home leave. She did so only on 20 December 2019 and in anticipation of her return to UNDP's principal sphere of operations from a lengthy assignment away in the nature of a secondment. Because of the requirement to ascertain whether there was an expectation of her continued service beyond 6 months from the date of her return from the proposed leave and in light of the fact that her fixed-term appointment would expire on 30 June 2020 within that 6-month period, it was reasonable that the Respondent would need to take time to assess and then convey to her whether it expected to retain her services beyond that date. This had to take place at a notoriously busy time of the year, immediately before the (western world's) Christmas break when both many staff members were themselves beginning leave and UNDP had to deal with administrative arrangements for that period with a less-than-full staff complement on duty.

30. Since her initial engagement with UNDP in 2011, Ms. Andreeva had been on a series of fixed-term appointments and so must be taken to have been aware of the expiry dates of these. Despite their predecessors having been renewed or extended, Ms. Andreeva must also be taken to have known that she could not have any legitimate expectation that this would happen again.

31. An analysis of the e-mail and other written correspondence between UNDP and Ms. Andreeva indicates that she could not have been led to believe that she could have expected a continuing engagement of her in 2020. Indeed, any indications given to her tended to the contrary: in an e-mail of 19 December 2019 when the Appellant's return from her GF/HIST assignment was re-confirmed, she was advised of some uncertainty about looming potential financial problems, for UNDP in the New Year and that she would be kept informed about that.

32. On 30 December 2019, LO/BMS acknowledged that she would be taking leave between 2 and 14 January 2020, that is after her return from her assignment with GF/HIST, under the management of LO/BMS. While the Respondent took what was arguably a positive tone about the

work to be undertaken on her return including referring to “interesting matters and exciting projects”, there was reference not only to concerns about her home leave application, but also to the fact that “all staff contracts” with LO/BMS were to end on 30 June 2020. UNDP indicated it had problems with obtaining human resources advice about her situation and would be unlikely to be able to do so until after she had left on her leave.

33. In light of the foregoing analysis of the evidence and assessing it against the regulatory requirements, did the Respondent comply with its obligations to consider and decide the application for home leave reasonably and in a timely fashion? We conclude it did in all the relevant circumstances at the time. Had Ms. Andreeva applied for home leave earlier than she did on 20 December 2019, an informed decision against allowing it might have been provided before she departed on holiday with the accompanying certainty of how much leave she would have and who would meet the travel costs. But in the circumstances then prevailing, it was reasonable for the Respondent to assess the question about her expected retention in UNDP’s service after the following 30 June as and when it did.

34. We conclude that the UNDT has not been shown to have erred in law or fact in its Impugned Judgment, and Ms. Andreeva’s appeal must fail. In these circumstances, Ms. Andreeva is not entitled to claim for moral damages.

Judgment

35. The appeal is dismissed and Judgment No. UNDT/2021/046 is affirmed.

Original and Authoritative Version: English

Decision dated this 1st day of July 2022.

(Signed)

Judge Colgan, Presiding
New York, USA

(Signed)

Judge Knierim
Hamburg, Germany

(Signed)

Judge Halfeld
New York, USA

Judgment published and entered into the Registry on this 15th day of August 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar