UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/115
Judgment No.: UNDT/2021/132
Date: 18 November 2021
Original: English

**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

# JUDGMENT

**Counsel for the Applicant:**
Brandon Gardner, OSLA

**Counsel for the Respondent:**
Nicole Wynn, AAS/ALD/OHR
Maureen Munyolo, AAS/ALD/OHR

## Introduction

1. The Applicant is a former Public Information Officer who was at the P-3 level, working with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo ("MONUSCO") in Bukavu.[1]

2. By an application filed on 5 August 2019, the Applicant contested: (a) an implied decision not to pay her salaries and entitlements since July 2018; (b) lack of cooperation on the part of administration to resolve the issue of her salary and entitlements for more than a year; and (c) an implied decision by the administration to hold her separation notification form ("PF.4"), thus preventing her from receiving her disability benefits from the United Nations Joint Staff Pension Fund ("UNJSPF").[2]

3. The Respondent filed a reply on 8 November 2019 in which it was argued that:

a. The Applicant's challenge to the implied decision not to pay her salaries and entitlements is not receivable *ratione materiae*. First, there was no decision to that effect, whereas the Organization took steps to pay the Applicant's salary once she provided the required medical reports authorising her 15 months' absence from the duty station. Second, the application is moot because on 11 September 2019, the Applicant received the payment of her outstanding salary and entitlements. The Applicant has thus been granted the relief she requested.

b. The Applicant's challenge to the decision to withhold her PF.4 form is moot because the Organization remitted the Applicant's PF.4 form to the UNJSPF on 26 August 2019.

4. By Order No. 137 (NBI/2019) issued on 2 September 2019, the Tribunal suspended the proceedings to allow the parties an opportunity to resolve the case informally. On 13 December 2019, the Applicant informed the Tribunal that some of

[1] Application, section I.
[2] Application, section V.

her claims had been resolved through informal mediation. However, the following unresolved issues remained:

a. payment of the amount equivalent to 72 days of sick leave on full pay;

b. adequate compensation for moral harm resulting from the lack of cooperation on the part of administration to resolve the issue for more than 14 months.[3]

5. Following a further exchange of pleadings, the Tribunal granted the parties' request to explore a possibility of further narrowing the scope of the dispute. Despite numerous requests by the parties to suspend the proceedings or requests to delay their submissions in order to allow them conclude settlement negotiations;[4] on 14 October 2021, the Applicant finally informed the Tribunal that the parties were unable to reach any agreement and requested the Tribunal to adjudicate the case.[5]

**Background**

6. The Applicant's initial appointment with the Organization was on 30 May 2006. She then held an appointment of a temporary nature, named "Activities of Limited Duration" ("ALD") with the United Nations Organization Mission in the Democratic Republic of the Congo ("MONUC").[6] From May 2006 to 30 June 2009, the Applicant's ALD was extended periodically.[7]

7. From 1 July 2009, without a break in service, the Applicant was granted a fixed-term appointment ("FTA") as a Public Information Officer at the P-3 level with MONUSCO.[8] She served on the same position until she separated from the

[3] Applicant's submissions in response to Order No. 186 (NBI/2019), filed on 13 December 2019.
[4] See Order Nos. 146 (NBI/2021), 182 (NBI/2021), allowing parties to explore informal settlement and extending the deadline for the parties to file their submissions.
[5] Applicant's submissions filed in response to Order Nos. 146 (NBI/2021) and 182 (NBI/2021), filed on 14 October 2021.
[6] Applicant's submissions pursuant to Order No. 186 (NBI/2019), filed on 13 December 2019, para. 14; Reply R/1.
[7] Reply, R/14, p.1, para. 2.
[8] Ibid.

Organization on 18 April 2019.[9]

8. On 11 August 2017, the Applicant took a family leave approved until 21 August 2017.[10] Upon expiry of the leave, she did not return to the duty station.

9. Between December 2017 and October 2018, the Applicant made three requests for certified sick leave ("CSL"). Her CSL requests, however, were rejected by the Medical Service Division ("MSD") on the ground that the medical reports lacked a diagnosis or were otherwise insufficient.[11]

10. In July 2018, MONUSCO urged the Applicant to send the necessary documents to MSD for certification of her absence since 22 August 2017 or report to work within 10 working days. It further informed that, should the Applicant fail to report to work, her salary and allowances would be withheld, and she would be considered having abandoned her post.[12] Indeed the Applicant's salary was withheld as of July 2018.

11. Eventually, following a filing of medical documents in a format required by the MSD, on 30 October 2018, MSD informed the Applicant that her sick leave from 25 August 2017 to 31 January 2019 was approved.[13]

12. On 30 January 2019, MONUSCO submitted a request to the Secretary of the United Nations Staff Pension Committee on behalf of the Applicant for the award of a disability benefit.[14]

13. On 21 March 2019, the Applicant requested management evaluation challenging the non-payment of her salary and allowances.[15] On 26 March 2019, the Applicant received a communication from the Management Evaluation Unit stating that management evaluation in her case was to be completed within 45 calendar-days

[9] Reply, R/1.
[10] Reply, R/2.
[11] Reply, R/3, R/5, R/6, R/7 and R/8.
[12] Reply, R/2.
[13] Reply, R/9, page 2.
[14] Reply, R/10.
[15] Application, Annex 3.

of receipt of her request, or no later than 4 May 2019. It is the Tribunal's understanding that the management evaluation has never been done, which, unfortunately is not an isolated instance where the administration foregoes management evaluation in cases involving complex matters.[16]

14. On 30 March 2019, the Applicant received payment from MONUSCO in the amount of USD22,000. On 30 April 2019, she received a second tranche of USD16,500.[17] The two were made as advance payments based on the projected amount that was due to the Applicant as from July 2018, while the Regional Service Centre Entebbe ("RSCE") continued to work on technical issues relating to her time and attendance record in Umoja.[18] The Applicant separated effective April 2019 and checked out in May 2019. The extent of her sick leave entitlement remained disputed.

15. On 5 August 2019, the Applicant filed the instant application.

16. On 26 August 2019, the administration sent the Applicant's PF.4 form, i.e., the notification of separation that enables processing of the pension, to UNJSPF.[19]

17. On 28 August 2019, the Applicant received a letter from the UNJSPF Chief of Operations, informing her that she was retroactively placed on disability benefit effective 18 April 2019.[20]

18. In September 2019 UNJSPF paid the Applicant USD38,891.34 as her retroactive disability benefit.[21]

[16] Eg. *Mutiso* UNDT/2015/059; *Clarke* UNDT/2019/112; *Kuate* UNDT/2021/018; *Branglidor* UNDT/2021/053.
[17] Application, page 7, paras 16 and 18.
[18] Reply, para. 19.
[19] Reply, R/15.
[20] Application, annex 4, Applicant's submissions in response to Order No. 186 (NBI/2019), filed on 13 December 2019, para.10.
[21] Applicant's submissions in response to Order No. 186 (NBI/2019), filed on 13 December 2019, para. 12 (d).

**The scope of the claim**

19. The Applicant confirms that her application has become moot with respect to the implied decision by the administration to hold her PF.4 and, largely, the non-payment of salaries and a substantial part of entitlements.[22]

20. The foregoing notwithstanding, the Applicant maintains the following two claims: (a) payment of the amount equivalent to 72 days of sick leave on full pay; (b) adequate compensation for moral harm resulting from the lack of cooperation on the part of the administration to resolve the issue for more than 14 months.[23] These two claims presently form the subject of the case and will be considered below.

**Sick leave**

*Receivability*

21. The Respondent contends that the claim to 72 more days of sick leave on full pay is raised for the first time in the Applicant's submissions pursuant to Order No. 186 (NBI/2019). This claim, therefore, is new and is not receivable *ratione materiae* because it had not been submitted for management evaluation as required by staff rule 11.2 (a). The Respondent submits that, on 14 June 2019, the Applicant had been notified by RSCE of the final computation of her sick leave entitlements, providing a summary of her time and attendance records.[24] The Applicant has never requested management evaluation of the 14 June 2019 decision. On 11 September 2019, the Organization processed the Applicant's final payment.

22. With respect to the above argument, the Tribunal recalls that in her 21 March 2019 request for management evaluation, the Applicant had expressly challenged the non-payment of her salary during the period of her sick-leave. The calculation subsequently supplied by the administration in their 14 June 2019 email presents

[22] Applicant's submissions in response to Order No. 186 (NBI/2019), filed on 13 December 2019
[23] Ibid.
[24] Reply R/12, p. 8.

nothing more than a statement of position in the already pending dispute about the scope of her entitlements and certainly did not reset the process to require a fresh request for management evaluation. Thus, the claim to have the salary paid in accordance with the sick leave entitlement is properly before the Tribunal.

*Merits*

*Applicant's case*

23. The Applicant disagrees with the calculations performed by the RSCE and submits that she should still receive an equivalent of 72 days of sick leave with full pay. The difference in calculation was caused by the Administration's erroneous application of staff rule 6.2 (sick leave, maximum entitlements) in conjunction with staff rule 4.17 (re-employment).

24. The Applicant recalls that she joined the Organization in May 2006 and held an ALD contract. The ALD contract was extended periodically until July 2009. From July 2009, the Applicant was reappointed on an FTA. This appointment was a new one, therefore, she was reappointed and not reinstated. Accordingly, pursuant to staff rule 4.17, her terms of the new FTA were to be applicable without regard to any period of former service and, notably her service not to be considered as continuous between prior and new appointments.

25. In light of the foregoing, pursuant to staff rule 6.2, during the period 1 July 2009-1 July 2012, the Applicant was entitled to sick leave up to three months on full salary and three months on half salary in any period of 12 consecutive months. The Applicant's sick leave entitlements shifted three years after the date of her FTA, that is on 2 July 2012, and the Applicant became entitled up to nine months on full salary and nine months on half salary in any period of four consecutive years. The Applicant submits that from a proper reading of the controlling staff rule 6.2(b) it results that as of the date of completion of the qualifying service, her sick leave entitlement should be zeroed out and calculated afresh in accordance with the new regime. Carrying out the used days of sick leave into the new regime would be retroactive.

26. In accordance with her calculation pursuant to the above rule, the Applicant maintains that the Administration reduced her final payment by the amount equivalent to 72 days of sick leave with full pay.

*The Respondent's case*

27. The Respondent submits that the Applicant exhausted her sick leave entitlement and is not entitled to 72 additional days of sick leave as she claims.[25]

28. The Respondent confirms that the Applicant completed three years of service on 30 June 2012, effective 1 July 2012. The Respondent however maintains that the completion of three years of qualifying service does not cause the sick leave entitlement to be re-set and counted afresh as of that date. Rather, the Applicant became entitled to an additional 130 days of sick leave at the full and half salary under the 195-day regime (65 days plus 130 days).[26]

29. The Respondent explains that under the 65-day regime, any sick leave entitlement used up would be "revived" (i.e., the entitlement to the same number of days acquired again) 12 months from the date when the original sick leave was taken.[27] When a staff member transitions from the 65-day regime to 195-day regime, the sick leave days already utilized within the past 12 months, i.e., not yet revived, are deducted from the new entitlement of 195 days.[28] The Respondent maintains that this way of sick-leave calculation has been consistently applied in practice and had been confirmed by a Human Resources Handbook, which, albeit decommissioned, expresses a rule that remains valid.[29]

30. The Respondent admits that the Applicant has accounted for her sick leave days under the 65-day regime in her calculations. However as of 1 July 2012, the Applicant

[25] Respondent's submissions pursuant to Order No. 105 (NBI/2020) filed on 15 June 2020.
[26] Staff rule 6.2(b)(iii); Applicant's submissions pursuant to Order No. 186 (NBI/2019); application annex C.
[27] Reply, R/17, sec. 6.
[28] Ibid.
[29] Respondent's filing of 17 June 2021 and reply, R/22.

had used 78 sick leave days at full salary between 15 November 2011 and 7 March 2012. These days had not been revived because 12 months had not passed since the leave was taken.[30] Therefore, those 78 days were deducted from the new 195-day entitlement, resulting in a sick leave balance of 117 days as of 1 July 2012.

31. The Respondent further explains that one month later, the Applicant went on Special Leave Without Pay ("SLWOP") from 1 August 2012 to 30 June 2015. When the Applicant returned to service on 1 July 2015, her sick leave balance remained at 117 days.[31]

32. The 78 days of sick leave that the Applicant had used from 15 November 2011 to 7 March 2012 were revived after the Applicant's return from SLWOP.[32] Specifically, the Applicant used these 78 sick leave days at full salary from 2 to 17 August 2018 (12 days), from 3 September 2018 to 26 October 2018 (40 days) and from 2 November 2018 to 7 December 2018 (26 days).[33] Altogether, the Respondent affirms that the Applicant exhausted her sick leave entitlement at full salary on 7 December 2018 and at half salary on 17 December 2018.[34]

33. The Respondent further submits that should the Tribunal find that the Applicant is entitled to 72 additional days of sick leave at full salary, it should be offset by the 84 days of sick leave at half salary that the Applicant received beyond her entitlement while her request for disability benefits was pending.[35]

**Considerations**

34. Staff rule 6.2 governs a staff member's maximum sick leave entitlement. Staff rule 6.2(b)(ii) provides that a staff member who holds a fixed-term appointment with less than three years of continuous service shall be granted up to three months, *i.e.* 65

[30] Reply, R/18 and R/19.
[31] Staff rule 5.3(g); reply R/17, para. 7.
[32] Reply, R/20.
[33] Reply, R/18; R/20.
[34] Reply, R/19.
[35] ST/AI/2005/3, Sick leave, sec. 3.2; reply, R/18.

days, on full salary and 3 months, *i.e.* 65 days, on half salary in any period of 12 consecutive months (65-day regime). Staff rule 6.2(b)(iii) provides that a staff member who has completed three years or more of continuous service shall be granted sick leave up to nine months, *i.e.* 195 days, of full salary and nine months, *i.e.* 195 days, on half salary in any period of four consecutive years (195-day regime).

35. The Human Resources Handbook explains the practical application of the above rules as follows:

> The 12-month and 48-month (four-year) consecutive periods are counted as running periods from the month in which sick leave is taken, including the preceding 11 or 47 months, as applicable. The periods are determined on the basis of calendar months, not calendar years (and does not necessarily commence with the date of the staff member's appointment). Computation of extended sick leave begins in the month that the sick leave starts. The number of days of sick leave taken in the preceding 11 or 47 months is counted and added to the sick leave taken in the current month to arrive at the amount of sick leave taken in the 12-month or 4-year consecutive period. The 12-month or 4-year consecutive period moves each month that further sick leave is taken, as 12-month or 4-year period counts backward from the month in which the sick leave is taken.[36]

36. The Tribunal sees no contradiction between the controlling provisions of the Staff Rules and the Handbook. Taking the - undisputed - premise that the completion of three years of continuous service does not amount to reappointment, there is no basis to claim that the calculation must begin at ground zero as of its date. Further, it results clearly from staff rule 6.2 that the entitlement to sick leave does not follow a cycle calculated since the date of appointment, but, rather, is calculated pursuant to its own cycle determined by the date of the sick leave. The method used by the administration to calculate leave days at the junction of 12-month and 4-year regime, albeit convoluted in practice, is consistent with staff rule 6.2, whereas the method advocated by the Applicant is not and seeks to unduly benefit a staff member who exceeded the maximum applicable under the 12-month regime.

[36] Reply, R/22 Human Resources Handbook, p. 409-410 at para 6.

37. The application fails on the score of sick leave; therefore, the Tribunal, will not entertain the counter-claim of set-off. However, as pointed out by the Respondent, as per the applicable rules, the Applicant cannot validly claim to have had unused sick leave on full pay *and* retain the special leave with half pay for the period pending the decision on disability.

**Compensation for moral harm**

*Applicant's case*

38. The Applicant submits that she is entitled to adequate compensation for moral harm resulting from the lack of cooperation on the part of the administration to resolve for more than 14 months the issue of her status and entitlements. In addition, during the period July 2018 to September 2019, the Organization was not contributing to her health insurance.

39. The Applicant submits that the prolonged period of uncertainty regarding her personal finances and stress resulting from daily follow-ups with the administration, significantly aggravated her anxiety and depression.[37] As a remedy, the Applicant requests an equivalent of six months' net base salary awarded to her in compensation for moral damages.

*Respondent's case*

40. With regard to moral damages, the Respondent contests that the Applicant suffered compensable harm and that she is entitled to damages.[38]

41. The Respondent explains that that the Applicant's late and incomplete sick leave requests caused the delay in the payment of her salary, while her continuous disagreement with RSCE about the calculation of her time and attendance record caused the delay in separation payments.

[37] Applicant's submissions pursuant to Order No. 186 (NBI/2019), para. 39.
[38] Respondent's submissions pursuant to Order No. 222 (NBI/2019) filed on 3 January 2020.

42. Regarding the Applicant's claims relating to health insurance, the Respondent submits that the Applicant was continuously covered by Cigna from July 2018 to April 2019.[39]

43. In view of the above, the Respondent maintains that the Applicant did not suffer any compensable harm and that she is not entitled to damages.

***Considerations***

44. In order to attribute responsibility for a moral harm, the impugned decision must be unlawful. Two elements may be of relevance: objective illegality, i.e., breach of a concrete rule, and subjective reprehensibility, i.e., improper motive, in the administrative action or inaction. The Tribunal recalls the Appeals Tribunal's holding in *Kallon*,[40] according to which for a breach or infringement to give rise to moral damages, especially in a contractual setting, where normally a pecuniary satisfaction for a patrimonial injury is regarded as sufficient to compensate a complainant for actual loss as well as the vexation or inconvenience caused by the breach, then, either the contract or the infringing conduct must be attended by peculiar features, or must occur in a context of peculiar circumstances.[41] It would seem that the "peculiar circumstances" required by *Kallon* may concern either the objective or the subjective element, or both.

45. The Applicant's claim is founded on the lengthiness of the process, and an allegation that in this process the administration was uncooperative, i.e., did not act *bonae fidei*. Whereas the former is ascertained by documented facts, the latter would need to be inferred from the circumstances. The Applicant infers ulterior motive from the lengthiness of the process and two instances where the administration is alleged to

[39] Reply, annex R/17.
[40] *Kallon* 2017-UNAT-742.
[41] Ibid., at para. 62.

have initially refused certain entitlements. The Tribunal below will examine whether these facts suffice for the attribution of an ulterior motive.[42]

*Whether the Organization showed lack of cooperation regarding the Applicant's sick leave*

46. The Applicant's case is that, while she had not promptly submitted a certificate to the satisfaction of the administration, she remained in continuous contact with MSD and MONUSCO's Sick Leave Division.[43] In these communications, she clearly communicated her diagnosis certified both by her first contact physician and the specialist in charge of her case. At various occasions, she invited MSD to contact her physicians to clarify the matter and request necessary documents. However, MSD never reached out to her physicians. Following months of exchanges, when she filed correct documents in September 2018, MSD rejected them at first, saying that they were submitted late. In her view, therefore, the administration did not act in good faith.

47. The Respondent's case is that, in accordance with the applicable rules, the Applicant was required to submit a sick leave request and a supporting medical report no later than 10 days after her initial absence. However, she did not do so until December 2017, four months after her approved leave had expired.[44] The Applicant's allegations[45] that she had contacted the MSD in September 2017 and that she clearly communicated her diagnosis to the MSD are denied. Neither is it true that she had submitted a correct medical report in September 2018. The record supports neither of these allegations.[46] The record shows that the Applicant submitted the requested medical report including a diagnosis to support her sick leave only on 27 October 2018, which the MSD promptly approved two days later.

48. The Tribunal recalls that the applicable legal framework is as follows:

[42] *Liu* 2016-UNAT-659; *Assale* 2015-UNAT-534.
[43] Reply, R/7.
[44] Ibid, para. 6; reply, R/2 and R/3, p. 4.
[45] In her submission, pursuant to Order No. 186 (NBI/2021), para 28.
[46] Reply, R/3 and R/6-R/7.

Staff rule 6.2(a) concerning sick leave:

> Staff members who are unable to perform their duties by reason of illness or injury or whose attendance at work is prevented by public health requirements will be granted sick leave. All sick leave must be approved on behalf of, and *under conditions established by, the Secretary-General* [emphasis added].

Staff rule 6.2(f) obligations to submit medical certificates:

> Staff members shall inform their supervisors as soon as possible of absences due to illness or injury. They shall promptly submit any medical certificate or medical report required *under conditions to be specified by the Secretary-General* [emphasis added].

Section 2.3 of ST/AI/2005/3/Amend.1 (Sick leave):

> After 20 working days of sick leave have been certified in accordance with section 2.2, certification of further sick leave by the Medical Director or designated medical officer shall be required. For that purpose, the staff member shall submit to the executive officer or other appropriate official, in a sealed envelope, *a detailed medical report from a licensed medical practitioner* [emphasis added]

ST/AI/400 (Abandonment of post), which applies as *lex specialis*, notwithstanding the change of numbering in the staff rules, provides in relevant parts:

> Section 5
>
> The absence of a staff member from his or her work, unless properly authorized as leave under staff rule 105.1 (b), as special leave under staff rule 105.2, as sick leave under staff rule 106.2 or as maternity leave under staff rule 106.3, may create a reasonable presumption of intent to separate from the Secretariat unless the staff member is able to give satisfactory proof that such absence was involuntary and was caused by forces beyond his or her control.
>
> Section 10
>
> Unless the executive or administrative officer receives a medical certificate or plausible explanation for the absence within 10 working

> days he or she shall refer the matter to the appropriate personnel officer […]. The communication should remind the staff member of the provisions of staff rule 105.1 (b) (ii), under which payment of salary and allowances shall cease for the period of unauthorized absence. It should allow a further period of up to 10 working days for reporting to duty or submission of a medical certification or plausible explanation, and should warn the staff member that failure to do so would be considered abandonment of post and would lead to separation on that ground.
>
> Section 13
>
> […] If the staff member fails to produce [medical] certification or if the certification produced is not acceptable to the Medical Director and sick leave is not certified, the executive or administrative officer shall immediately advise the staff member, with a copy to the personnel officer, that sick leave has been refused and that the staff member must report for duty immediately or be separated for abandonment of post. If the staff member disputes the decision, he or she may request that the matter be referred to an independent practitioner or to a medical board […].

49. The record before the Tribunal shows that the Applicant did not submit any certificate or explanation of her absence until December 2017, i.e., four months after her home leave. No explanation has ever been provided for her inaction. She was clearly in breach of her obligations under staff rule 6.2(f).

50. The December 2017 certification request was rejected, just as it was in January 2018 and February 2018, for the lack of diagnosis.[47] Afterwards, the Applicant fell silent and ignored the Mission's requests for medical certificates made in February and May 2018. It is, therefore, not true that the Applicant was in "constant contact with the MSD and MONUSCO Sick Leave Division".

51. The Applicant was only moved to act in July 2018, after the Mission had informed of locking her salary pursuant to an abandonment of post procedure. Still, communications received from her were not constructive. To the extent it is maintained that "[a]s stated in her e-mail of 24 July 2018, Ms. Waberi understood that the

[47] Reply, R/3.

additional documents had been sent to MSD and her leave was approved"[48], nothing on the record suggests that she had any basis for such understanding, given that she had not submitted the documents requested and maintained that her doctor was on leave till the end of July.[49] In August, in turn, the Applicant maintained that the doctor was on leave till the end of September.[50] She was repeatedly instructed of the requirements for the medical report and provided with a template to follow.[51]

52. To the extent it is maintained that "[i]n September 2018, [the Applicant] filed the correct documents"[52], the Tribunal finds that this statement has no merit. Rather, the Respondent shows that in an email dated 20 September 2018, the Applicant had requested MSD to reassess her submissions and the Medical Officer's determination. On 3 October 2018, MSD confirmed that the Applicant's sick leave could not be approved based on the report that she had submitted, including that there was no evidence why the medical report could not have been submitted within the 20 days as required by the rules.[53]

53. The documents requested by the MSD were filed only on 27 October and three days later, on 30 October 2018, MSD approved the sick leave.[54]

54. As can be seen from the provisions cited above in paragraph 48, there is a degree of formality required for the judgment to be soundly made by medical services. Neither the requirement of the provision of a detailed medical report as per ST/AI/2005/3/Amend.1 nor the requirement that the medical report adhere to a provided template are overly onerous or otherwise unreasonable, considering the need for the MSD to assess the validity of medical reports remotely, on all kinds of ailments and across different national standards for medical reports. It is, likewise, reasonable that in dealing with a protracted period of illness, with each further request for

[48] Applicant's submission pursuant to Order No. 186 (NBI/2019).
[49] Reply, R/4 p.2.
[50] Reply, R/6 p. 3.
[51] Reply, R/6 p.3.
[52] Reply, R/7.
[53] Reply, R/7.
[54] Reply, R/8.

extension, it is required to provide a detailed diagnosis, description of impact of the treatment on the patient and treatment plan. The latter is notably necessary where, as in this case, the medical condition is diagnosed solely upon symptoms reported by the patient, without lab tests, imaging exams or other objective method.[55]

55. In the present case, the MSD refusal to certify the sick leave was not only based on a formal inadequacy of the submitted medical reports, that is, that they did not adhere to the template, but also reasonable by common sense standards.

56. The record demonstrates[56] that medical documents submitted by the Applicant were lacking diagnosis, they were at times anti-dated (with 2017 written over 2018) and, even though they attested up to three months of inability to work at a time, they were not issued by a specialist. A generic, one-word diagnosis appears for the first time in December 2017 and is not attested by a specialist. A specialist certificate comes into the picture only with a date 30 August 2018, and, rather cursory in its form, it still does not address areas required by the template that had been provided. It is only the document dated 26 October 2018 that constitutes a proper medical report, with detail commensurate with the length of the absence from work.

57. The Tribunal finds that there was no lack of cooperation on the part of the administration in handling of the Applicant's sick leave. To the contrary, both MSD and MONUSCO showed extraordinary tolerance and patience with the staff member who disappeared from the duty station and persistently ignored the requirements for sick leave certification.

*Whether there was lack of cooperation in renewal of appointment*

58. The Applicant submits that her appointment was not renewed promptly from 1 November 2018 to 30 June 2019 after the MSD's approval of her sick leave requests. Initially, MONUSCO limited the extension of her contract for purposes of exhausting her sick leave entitlements only. It was only following the intervention of the Office of

[55] *Da Silveira* UNDT/2020/055; affirmed in *Da Silveira* 2021-UNAT-1081.
[56] Applicant's submission pursuant to Order No. 186 (NBI/2021), application, annex I.

Staff Legal Assistance ("OSLA") on 28 November 2018, that on 11 December 2018, the Applicant's contract was retroactively extended from 1 November 2018 through 30 June 2019. The Applicant's letter of appointment was only issued on 21 December 2018.[57]

59. The Respondent confirms that the Applicant's appointment expired on 30 June 2018. The Organization did extend the Applicant's appointment for three months from 1 July 2018 to 30 September 2018 and for one month from 1 October 2018 to 31 October 2018, and following the approval of her sick leave, it extended her appointment until she separated on medical grounds.

60. The Tribunal notes that the Respondent, although specifically asked, does not address the period between 31 October (sick leave approval) and 21 December 2018 (issuance of the letter of appointment). It results nevertheless, from the email correspondence submitted by the Applicant[58], that the Applicant on 19 November 2018 was notified of the approval of her sick leave and, on 11 December 2018, of the issuance of the personnel action pertinent to the extension of her appointment. Communications exchanged in the interim demonstrates that there was a need to clarify the duration of the appointment, with the Applicant's Counsel requesting an extension through January 2019, in accordance with the duration of the sick leave, and the Administration granting the appointment through June 2019. The Tribunal considers that the Applicant's apparent absenteeism, including that the abandonment of post procedure had been initiated, could have plausibly merited a reflection on both whether the position encumbered by the Applicant was to be maintained and whether the Applicant was fit for it, thus, whether her appointment was to be extended and for how long. Contrary to the Applicant's assertions, given the complexity of the situation and the necessary processing time, the period between 31 October and 11 December 2018 is not excessive, whereas the administration clearly acted to the Applicant's benefit.

[57] Applicant's submission pursuant to Order No. 186 (NBI/2019), application, annex F.
[58] Application, annex E.

*Whether there was lack of cooperation in placement on special leave*

61. The Applicant submits that MONUSCO had initially refused to place her on special leave with half pay pending the Pension Fund Committee's decision regarding her placement on disability benefit. The initial position of MONUSCO was not to pay any salary to the Applicant following the exhaustion of her sick leave entitlements. It required the intervention of OSLA for the Administration to vacate this position.

62. The Respondent submits that MONUSCO never refused to place the Applicant on special leave pending the Pension Committee's decision regarding her placement on disability benefit. MONUSCO submitted a request to the Secretary of the Pension Committee for the award to the Applicant of a disability benefit on 31 January 2019[59], and on 5 March 2019 informed the RSCE that the Applicant was placed on special leave with half pay until the date of the Committee's decision in accordance with section 3.2 of ST/AI/2005/3.[60] Consequently, the RSCE processed half a month's salary advance against the February 2019 salary in the amount of USD5,500, which was released to the Applicant on 8 March 2019.[61]

63. The Tribunal observes that email correspondence from February 2019 relied upon by the Applicant in support of her argument[62] does not evince a refusal to place her on special leave with half pay. Rather, this correspondence properly confirms that the issue of special leave with half pay, which, in accordance with section 3.2 of ST/AI/2005/3, is due only after the sick leave has been exhausted, was embroiled with the unfinished calculation of the Applicant's sick leave. It further results that, upon consultation with Medical Services and RSCE, on 22 February 2019 MONUSCO informed the Applicant that all effort would be made for the payment to be made shortly.

[59] Reply, R/10.
[60] Reply, R/11.
[61] Reply, R/12.
[62] Applicant's submission pursuant to Order No. 186 (NBI/2019), application annex G.

64. The Tribunal finds neither an undue delay in the action of the administration, nor indication of improper motive.

*Whether there was lack of cooperation in payment of the salary and separation entitlements*

65. The Applicant submits that the Administration failed to resolve the issue for more than 14 months. Among other, she documents that it took an exchange of 21 emails for the Administration to admit the mistakes it made on manual calculations of her entitlements.[63] The administration delayed forwarding her separation notification to UNJSPF. Further, it took 27 emails and 3 months for the Administration to clarify that the Applicant was entitled to the reimbursement of her return ticket and to correct the erroneous amount initially retained by the administration.[64]

66. The Respondent explains that that the Applicant's late and incomplete sick leave requests caused the delay in the disbursement of her entitlements. Since the Applicant submitted her sick leave requests well beyond the10-day deadline under section 2 of ST/AI/2005/3, her time and attendance could not be automatically calculated in Umoja. For that reason, the Organization had to conduct a complex and extensive audit of her leave, which included her time spent on special leave without pay during 2012 and 2015, to establish her sick leave entitlements and to avoid overpayment. Upon completion of the audit, the RSCE faced technical difficulties in manually uploading the Applicant's certified sick leave in Umoja. Specifically, Umoja did not pick up the 78 sick leave revival days to which the Applicant was entitled. It was necessary to enter the correct number of sick leave days to accurately calculate the Applicant's final payment.

67. The administration mitigated the Applicant's inconvenience by manually calculating her salary and processing two salary advances totaling USD22,000.

[63] Reply, R/12.
[64] Application, annex H.

68. The Respondent further explains that the delay in effecting the final payment is attributable to the Applicant's continued disagreement with the RSCE's calculation of her time and attendance record. Contrary to the Applicant's allegation, the administration did cooperate with her to address her concerns and to pay her promptly. For three months, between May and August 2018, the RSCE responded to the Applicant's queries and had several conference calls with the Applicant and her Counsel regarding the Applicant's sick leave entitlements and leave balances. Once it became clear that an agreement could not be reached, the RSCE processed the Applicant's separation payments based on its calculation of her time and attendance.[65]

69. The Respondent submits that the Organization was prepared to forward the separation notification to the UNJSPF on 16 May 2019 when the Applicant completed her check-out formalities.[66] The three-month period taken to forward the separation notification form to the UNJSPF was again due to the disagreement about the calculation of the Applicant's attendance described above. Once the final pay was calculated, the P.4 form was promptly forwarded to the UNJSPF.

70. Regarding the controversy about the ticket, the Respondent explains that the Applicant initially left the mission on family emergency leave, after which she never returned. Family emergency leave does not carry an entitlement for travel costs. As concerns separation travel entitlement, normally, a staff member who is entitled to a relocation grant, is travelled from the duty station to the staff member's home leave country, which, in the case of the Applicant, was Eritrea.[67] Accordingly, reimbursement for the Applicant's return ticket had initially been calculated from Congo to Eritrea.[68] However, the Applicant subsequently submitted a separation certificate confirming that she had travelled to Paris, France. Therefore, the Organization agreed to reimburse her for her ticket to France.[69]

[65] Reply, para. 41.
[66] Respondent's response to Order No 146 (NBI/2021) and Order No. 182 (NBI/2021), para. 7.
[67] Ibid, para. 10.
[68]Reply, R/12.
[69] Ibid.

71. The Tribunal notes that according to the record, on 20 March 2019, the RSCE informed the Applicant that, due to a technical issue, it was unable to update her time and attendance record and that the Umoja team was working to resolve the issue.[70] On 27 March 2019, the RSCE, after consultation with the United Nations Payroll Office ("Payroll"), made a manual calculation to pay the Applicant's outstanding salary from July 2018 to March 2019, while the RSCE continued to work on the technical issues. Based on the projected amount that was due the Applicant, the RSCE advanced the Applicant USD16,500, representing half the amount due.[71] On 22 May 2019, the RSCE sent the Applicant a spreadsheet with her time, attendance and information regarding her periods of payment of full and half-salary.[72] As a result of the Applicant's disagreement[73], on 14 June 2019, the RSCE responded with a summary of the Applicant's time and attendance and indicated that she would be placed on sick leave at full pay for an additional period of 78 days.[74]

72. The Applicant was separated effective 18 April 2019 because of incapacity for reasons of health.[75] She submitted her check-out on 21 May 2019, at which point she was cleared by all sections except attendance and finance.[76] Throughout the period from May to August 2019 there were extensive discussions between the Applicant, her Counsel and the administration, mainly about the Applicant's attendance. It was only in July 2019 that the Counsel gave a green light to proceed with the Applicant's separation payments.[77] Among other, the record shows that it was only in July 2019 that the Applicant submitted proof of her relocation to France, which is indispensable for the disbursement of the relocation grant. [78] Regarding the reimbursement for ticket,

[70] Application, Annex 2.
[71] Reply, R/12.
[72] Application, Annex 6, p.12.
[73] Ibid., p. 10.
[74] Reply, R/12, p.28.
[75] Reply, R/1.
[76] Applicant's submission pursuant to Order No. 186 (NBI/2019); application annex H, Applicant's email of 21 May 2019.
[77] Reply, R/12.
[78] Ibid.

the record shows that the Applicant sent her ticket for reimbursement some time at the end of May 2018, and in July 2018 the administration corrected the amount to be paid.

73. The Tribunal finds that the Applicant's complaint about a 14-month processing time is grossly exaggerated. The timeline for updating the Applicant's attendance record, and thus, calculating the salary due to her, could not have started before the approval of the sick leave and the decision on the extension of appointment, that is, November/December 2018. The manual calculation that was eventually necessitated must have been time-consuming, given the complicated accounting formula, the multiplicity of absences which included the 2012 and 2015 periods of leave without pay, and the need to do the audit of sick leave going back to 2007. All considered, however, no justification has been put before the Tribunal as to why it had taken until March 2019 to arrive at a constatation that Umoja could not perform the calculation automatically. The three months that passed since the approval of sick leave signify a lack of prompt action, inappropriate in the face of the Applicant not receiving a salary since July 2018. The Tribunal agrees, on the other hand, that under the circumstances, paying the advances was reasonable and capable of mitigating the Applicant's inconvenience.

74. The Tribunal finds no inordinate delay in the reimbursement of the ticket cost and the sending of a notification to UNJSPF. Regarding the latter, it is an established and not unreasonable practice that the administration releases the form to the UNJSPF after the calculation of leave balance and the final payment. It was not unreasonable that the administration tried to accommodate the Applicant until it became clear that an agreement could not be reached. It was upon the Applicant, who was at all time represented by OSLA, to accept separation payments "under protest"[79] earlier than July 2018.

[79] *Ahmed*, 2013-UNAT-386, para 21.

*Whether there was a break in insurance coverage due to lack of cooperation*

75. The Applicant submits that during the period from July 2018 (when she received her last salary through regular payroll) to September 2019 (when she was retroactively placed on disability benefit), the Organization was not contributing to her health insurance. Cigna refused to process direct payments on account of the Applicant, and she had no choice but to pay for the necessary medical bills out of her own pocket. The total amount incurred on such bills is EUR2,286.67.[80] On 19 June 2019, the Applicant received confirmation of her eligibility in the After Service Health Insurance ("ASHI") programme[81], she called Cigna Infoline to inquire whether she could submit medical claims she had been advancing since July 2018. However, the Cigna representative informed her that "[she was] *not on the list of persons covered by ASHI*" and hence she remained not covered by any medical insurance. It was only when the Applicant received the payment on 11 September 2019, that the Organization retroactively transferred the necessary contributions to ASHI and unlocked her medical insurance coverage.[82]

76. The Respondent submits that the Applicant was continuously covered by Cigna from July 2018 to April 2019.[83] The Health and Life Insurance Section ("HLIS") informed the Respondent's Counsel that the Applicant did not submit any claim to Cigna between July 2018 and April 2019. The Applicant has not produced any evidence to support her allegation that Cigna refused to process her claims during that period.

77. On 1 June 2019, the Applicant provided HLIS with her ASHI application dated 17 May 2019.[84] On 19 June 2019, HLIS informed the Applicant that her ASHI coverage became effective from 1 May 2019.[85] The Applicant has not produced any

[80] Applicant's submission pursuant to Order No. 186 (NBI/2019), Application, annex J.
[81] Ibid., annex K
[82] Ibid., annex L
[83] Reply, R/17.
[84] Ibid, R/18.
[85] Applicant's submission pursuant to Order No. 186 (NBI/2019), application., annex K.

evidence to support her allegation that she was uncovered by the medical insurance between May and September 2019.

78. The Tribunal finds that, in light of the documents produced, there was no disruption in the Applicant's insurance. Most importantly, however, the Applicant does not demonstrate any claims made to, or refused by, Cigna during the relevant period. Even if indeed Cigna at a certain point refused to make direct payments as a corollary to the Applicant's uncertain employment status, the administration is not responsible for the lack of clarity as to the Applicant's status. Furthermore, it does not result that the Applicant was refused a refund.

79. As concerns the insurance coverage after service, the document offered by the Applicant as Annex L does not reflect arrears in the Organization's contribution, but, rather, arrears in deduction from the Applicant's pension; it is thus not dispositive of the issue. Information allegedly received by the Applicant through Cigna Infoline remains in contradiction with the notification received from Cigna on email.[86] As such, the matter should have been clarified within Cigna, at first place, and, if need be, addressed with the Respondent, which it apparently was not. The Tribunal, therefore, does not find that the Applicant suffered prejudice in claiming her insurance because of faulty conduct of the administration.

*Conclusion*

80. In totality, the Tribunal understands that the length of the process may have occasioned vexation - indeed well conveyed by the Applicant's prolific correspondence on entitlements, which is in stark contrast with her earlier reluctant response on medical certificates. The Tribunal, however, does not find a tort or a breach of a great magnitude. Apart from the delay in the calculation of sick leave, the administration made a reasonable effort to address the Applicant's grievance on all levels. Communications from the relevant offices exude a helpful attitude, courtesy and an intent to constructively address the problem and mitigate the Applicant's grievance.

[86] Ibid.

The length of time elapsed until the obtaining of the payments is mainly attributable to reasons on the part of the Applicant, that is, her failure to obtain consecutive certification of sick leave over a protracted period. To the extent it has been found that the administration failed to act promptly, the period of delay was relatively short compared with the Applicant's lateness in fulfilling her obligations toward the Organization; moreover, these were technical issues, which do not suggest improper motive.

81. Furthermore, in castigating the administration, the Applicant appears to have expected that her claims had to be addressed instantly. This is not a reasonable expectation. The Applicant's case, being complex and time-consuming, involved determinations by different offices. Among them, the RSCE, the human resources entity that administered the Applicant's salary and entitlements, has obligations which include providing human resources services and payroll and entitlement processing to 77 percent of all United Nations peacekeeping missions and political offices. Its capacity is not unlimited. The Applicant's case could not have been handled at the expense of the overall flow of the operations.

82. The Tribunal therefore does not find circumstances warranting compensation for moral damages.

**JUDGMENT**

83. The application is dismissed.

*(Signed)*
Judge Agnieszka Klonowiecka-Milart
Dated this 18th day of November 2021

Entered in the Register on this 18th day of November 2021

*(Signed)*
Abena Kwakye-Berko, Registrar, Nairobi