
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/002

Judgment No.: UNDT/2024/046

Date: 29 July 2024

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

BARBULESCU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Robbie Leighton, OSLA

Counsel for Respondent:
Lucienne Pierre, AS/ALD/OHR, UN Secretariat

7. On 18 July 2022, in expectancy of the birth of the Applicant's second child via gestational surrogacy, she requested the Administration that, as with her first child born in 2021, she should be granted 14 weeks of post-delivery maternity leave.

8. On 30 August 2022, the Administration declined the Applicant's 18 July 2022 request and instead advised her that she could "be granted eight weeks of [SLWFP] equivalent in duration to adoption leave in line with the provisions of staff rule 5.3(iii)(a) that staff members are granted special leave with full pay in the case of an adoption of a child".

9. On 18 September 2022, the Applicant's second child was born via gestational surrogacy.

10. On 27 October 2023, the Appeals Tribunal issued Judgment No. 2023-UNAT-1392 in which it partly upheld Judgment No. UNDT/2022/090 and affirmed the Dispute Tribunal in granting the Applicant 14 weeks of SLWFP as an exception to the staff rules under staff rule 12.3(b).

20. Unlike what is argued by the Respondent, the Tribunal finds that by the Applicant's explicit and direct reference to her previous case from 2021, which the Administration decided with reference to staff rule 12.3(b), she also, at least implicitly, requested an exception to the staff rules under staff rule 12.3(b) in her 18 July 2022 request. This request regarding her *second* child followed the Admin

exception must be agreed to by the staff member directly affected; and (c) Such an exception, in the opinion of the Secretary-General, must not be prejudicial to the interests of any other staff member or group of staff members”.

29. Concerning the Applicant’s first child, the Appeals Tribunal upheld in Judgment No. 2023-UNAT-1392, para. 64, the Dispute Tribunal’s finding in Judgment No. UNDT/2022/090 that the Applicant should be granted an exception to the staff rules under staff rule 12.3(b) and be granted 14 weeks of SLWFP. Specifically, the Appeals Tribunal stated that,

... We find the Dispute Tribunal did not err when it held that the Administration failed to exercise its discretion on this request judiciously. In rejecting her request, the Administration failed to properly consider [the Applicant’s] personal circumstances involving the birth of a biological child via surrogacy and the complications that resulted. For example, her situation is not equal to situations of staff members who become parents through adoption, perhaps with older children. The individual circumstances of applicants are relevant considerations and must be taken into account in reviewing the request for exceptions. Further, other than receiving additional weeks of benefits, the Administration failed to properly set out the prejudice to other staff members who become parents through adoption. Other staff members could also request exceptions based on their personal circumstances.

30. In the present case, in the contested decision of 30 August 2022, the Tribunal notes that the Administration did not address the issue of an exception to the staff rules under staff rule 12.3(b) concerning the Applicant’s second child, despite having done so when rejecting her similar request concerning her first child in 2021. The Applicant then specifically raised the question of an exception in her 27 October 2022 request for management evaluation of the contested 30 August 2022 decision, but the Administration decided not to respond thereto for which reason the contested decision remained unchanged.

