
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2018/070
Judgment No.: UNDT/2021/001
Date: 8 January 2021
Original: English

Before: Judge Joelle Adda
Registry: New York
Registrar: Nerea Suero Fontecha

COCA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Robbie Leighton, OSLA

Counsel for Respondent:
Jérôme Blanchard, UNOG

Note: The number of this Judgment hci JN09Tdcicq

Case No.

10. On 26 October 2017, the Applicant was informed by the Human Resources Management Service (“HRMS/UNOG”) that she had “exhausted [her] entitlement to sick leave with full pay on 10 October 2017 (65 days over a 12- month period)”. The Applicant accepted to combine her sick leave on half-pay with her annual leave. On the same day, the Medical Service was informed of the matter.

11. On 16 January 2018, the Applicant exhausted all her sick leave entitlements with full pay and half pay, and she was informed that her case would be referred for disability if she remained further incapacitated to return to work.

12. On 17 January 2018, she was placed on special leave with half pay pending a disability decision, pursuant to section 4 of the ST/AI/1999/16 (Termination for health reasons) and section 3 of ST/AI/2005/3 (Sick leave).

13. On 27 February 2018, HRMS/UNOG referred the Applicant’s case to the United Nations Joint Staff Pension Committee (“UNSPC”).

14. On 18 April 2018, the UNSPC determined that the Applicant was incapacitated for further service and was entitled for a disability benefit under Article 33 of the Regulations of the UNJSPF. The Applicant was informed of this decision by letter dated 23 April 2018.

15. By letter dated 26 April 2018, the Applicant had been notified that her appointment is terminated for health reasons effective 26 April 2018.

Consideration

16. The issue in this case is whether the Applicant’s sick leave entitlement of three months on full salary and three months on half salary

23. The related staff rule 4.18 on reinstatement provides:

(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.

24. It follows that staff rule 4.17 would prevent the Applicant from claiming that she had completed more than three years of continuous service based on her previous service under the temporary appointment if she had been “re-employed” on the fixed-term contract.

25. The Tribunal finds that the factual circumstances surrounding the Applicant’s transition from the temporary appointment to the fixed-term appointment demonstrate that the Applicant was “re-employed” on 1 February 2016. The 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.

26. In that regard, tng 8(n)2

appointment for one year and, after separation, was re-employed under a fixed-term appointment for two years, she could only be granted the maximum entitlement under staff rule 6.2(b)(ii), *i.e.* to three months with full pay and three months on half pay over a 12-month period.

29. The Tribunal, therefore, finds that the Applicant did not meet the criteria of article 10 (s)9 (h)4 (qu)18 (ff).

