

Introduction

1. The Applicant, an interpreter at the P-4 level with the

The assignment of meetings to Interpreters follows [a] set guidelines. The maximum number of sessions that may be assigned to an Interpreter per week is seven. Eight sessions can be assigned on an exceptional basis. The session limits are absolute, and they are set in recognition of the stress and endurance for the whole week (not parts of a week). Also, an Interpreter can only be assigned two sessions per day of a duration between two and a half to three hours. The combination of these limits dictates the distribution of assignments over the week.

The Applicant worked from 2-23 January 2018 and went on sick leave from 24 January – 19 February 2018.

On 2 November 2018 the Applicant wrote to her first reporting officer (FRO):

To follow up on our phone call, my doctor's recommendations when I initially return to work are: she should avoid stressful meetings; not work outside of normal working hours; and not be part of meetings that extend beyond three hours. She may require other accommodations during a stressful period.

The idea is to build up gradually, first in time (hence, the week-on, week-off initial configuration) and then, once I am able to sustain a full 7-meeting week without undue fatigue, to gradually remove the other restrictions.

I would assume avoiding stressful meetings would be something we should discuss and define together. Here are my thoughts: initially, the least stressful meetings for me would be those I am most familiar with (2nd, 3rd and 4th committees, and GA Plenary, along with certain special events, G77, etc.).

The most stressful meetings, in my experience, would be the Security Council and the ACABQ, then 5th Committee; somewhere in the middle would be 1st and 2nd Committees.

inquiring about formalizing the back-to-work plan. I could give him your cell number if you think that would facilitate contact but I, of course, don't want to do that unless you will find it helpful. Please let me know.

You can also contact Dr. [AS] directly about my return-to-work plan. His e-mail is [email address redacted]. His telephone number is listed as: [phone number redacted].

Hoping to speak with you again soon and looking forward to being back on board[.]

On 5 November 2018, the Medical Services Division (MSD) (now the Division of Healthcare Management and Occupational Safety and Health (DHMOSH)) sent an email to DGACM which stated:

[The Applicant] has been medically cleared to return to work after an extended sick leave. The following plan was put in coordination with her doctor:

Start: As of November 7th 2018. She will be working on alternate weeks i.e. one week of work then one week of sick leave. This arrangement will continue till 31 Dec 2018, after which she will start working full time.

Tasks: Full time. She should not be assigned to stressful meetings or meetings that last for more than 3 hours. She will not work beyond the regular working hours or in the weekends.

Review: Will not be required unless there are any issues.

On 7 November 2018, the FRO sent an email to DHMOSH stating:

I am glad [the Applicant] is well enough to return to work; we will make every effort to abide by the terms of the plan.

As I mentioned, our meetings normally run for three hours but occasionally they exceed this duration. The Interpretation Service does not know in advance whether/where this will happen.

In order to contain exposure to stress the Service will refrain from assigning her to meetings considered to be particularly stressful. I have to point out that entirely eliminating stress is impossible as it is a regular component of an interpreter's work and a certain level of stress is present at every meeting. Thank you for clarifying in the course of our conversation that the term "full time" means our standard workload of 7 meetings per week.

From 7 November 2018 to 31 December 2018, the Interpretation Service implemented medical accommodations for the Applicant, as advised by the Medical Services Division. The accommodations included working on a full-time basis on alternate weeks, no assignments to and not working beyond regular working hours or on the weekends.

On 19 December 2018, the FRO wrote to DHMOSH stating:

We are nearing the end of the year and I note that your email on the Return-to-Work Plan for [the Applicant] below states this arrangement will continue till 31 Dec 2018, after which she will start working full time. I understand this to mean that all conditions under the Return-to-Work Plan expire on 1 January and in the new year [the Applicant] can be assigned to any meeting and carry out tasks such as weekend duty and/or evening assignments (all standard for UNHQ staff interpreters).

If this understanding is incorrect please let me know as soon as possible so that we can adjust our 2019 work program.

On 20 December 2018, DHMOSH responded:

Thank you for your email regarding weekend duty and/or evening assignments. The Return-to-Work Plan for [the Applicant] is valid until 31 December 2018. After this date, the Applicant will be assigned to any meeting and carry out tasks such as weekend duty and/or evening assignments (all standard for UNHQ staff interpreters).

Please reach out to me if this RTW is not working and we will revise to ensure the utmost safety of our s/m as well as the Organization.

From 25 to 26 March 2019, the Applicant took uncertified sick leave (2 days).

On 28 March 2019, DHMOSH wrote to the 89e484 Tm0 g04WF1 0 0.(a)4(r)-6(c)4(h)-9(2

It is my understanding that the RWT is a recommendation.

The RWT plan for [the Applicant] has now been in force for 6 months. Because of the needs of the Interpretation Service as of June 1st we will no longer be able to abide by all the terms of the RWT. Please note that [the Applicant] was informed of this on May 13 in a meeting with me and the Chief of Interpretation Service.

... On 15 May 2019, DHMOSH responded:

This is noted. Thank you for the support you have given to our [staff member] in her [difficult return-to-work].

From 13 May 2019 to 28 May 2019, the Applicant exchanged emails with DHMOSH

Our division is advising on the flexible working arrangement as above to accommodate medical restrictions or limitations as part of a time-limited return-to-work programme. Such advice is for the FRO and it could only be rejected under principles of reasonable accommodations for short-term disability if the requested accommodations represent a disproportionate or undue burden on the workplace (as per ST/SGB/2019/3 [(Flexible working arrangements)]).

Should your supervisor wish or need to speak with us, we will be available to further discuss.

2019 [GM, name redacted] communicated to DHMOSH stating:

Please be advised that upon request the return-to-work plan is currently being reviewed by the Management Evaluation Unit.

We regret that we cannot implement the recommendations in your email. A detailed justification is provided in our submission to the Management Evaluation Unit.

On 1 August 2019, the Applicant returned to work full time.

On 9 August 2019, the Applicant took certified sick leave (1/2 day).

On 27 August 2019, the Applicant took certified sick leave (1/2 day).

On 23 September 2019, the Applicant sent an email to the Chief, Interpretation Service stating:

Thank you for meeting with me on 11 September and for your commitment to continue implementing medical accommodations so as to help ensure my long-term recovery; it is reassuring.

I have noted down the gist of our meeting and the plan we agreed on moving forward over the next few months. Please let me know if anything needs to be clarified or amended according to your understanding:

You said that you were aware of the meeting limitations that had previously been in place (not be assigned to

stressful meetings or meetings that last for more than 3
~~hours; not~~ work beyond the regular working hours or in
the weekends) and that the programmers had been
following those ~~guidelines~~ at your instruction as of
August. Thank you. This is appreciated.

Prior to ~~Tu~~02 rehab~~29~~

Case No.: UNDT/NY/2019/101

Judgment No.: UNDT/2021/094

implementing

medical accommodations from 1 August 2019

b. The Applicant has not established any such

. The mere assertion of such a consequence does not vest the Dispute Tribunal with jurisdiction, and the Applicant must present credible evidence of collateral consequences therefor but has failed to do so;

c. Also, the contested decision caused no ongoing material consequences. The material harm claimed by the Applicant is not attributable to the contested decision. Leave followed

use of sick leave and annual leave in accordance with staff rule 6.2(a) does not constitute material harm. The

Applicant was paid her full salary and entitlements during those dates despite being absent from work, on 14 July 2020, the Organization [683.56(e)474(s)] TJ9792 rei 612

infections and they were created after the fact for the purpose of litigation by individuals who did not treat the Applicant in May 2019 . In addition, the notes are based on no more than the hearsay account and general statements with no citation to scientific or medical literature job description . Lastly, the notes fail to consider the positive aspects of stress, including motivating the Applicant to compete for her new position as Chief, English Translation and Editing Unit in the Economic Commission for Africa (ECA), and to fully reintegrate to full-time work ;

f. In *Kallon*, the Appeals Tribunal recognized that a case may become moot if subsequent events have deprived the proposed resolution of the dispute of practical significance to the ECA rendered her case without practical significance . An order to rescind the contested decision would have no concrete

13. The Applicant, in essence, contends that the application is not moot, stating that she seeks (a) moral damages for illness caused by

reasonable accommodation the decision maker ensured such burden was not met . The decision-maker considered irrelevant facts and failed to consider relevant facts and failed to act fairly, justly and transparently with the Applicant

c. The [redacted] did not explore whether alteration of the [return-to-work] plan could allow for [redacted] needs and medical needs to be met despite DHMOSH explicitly suggesting such .

medical needs were not a relevant factor in the [redacted] . It was not contrary to the need to establish a disproportionate burden . It was not medical information [redacted] prompted a decision to reimplement [redacted] - to-work plan, which a *post facto* explanation in the present case. In conclusion, the decision-maker did not establish disproportionate or undue burden on the workplace ;

d. The Respondent provides multiple different justifications for the

2020, should be struck from the record . No justification is provided for filing this immediately prior to closing submissions . In so doing, opportunity to respond is limited . No justification is provided for not securing evidence from one of the two DHMOSH occupational health specialists [Dr. A, name redacted, and Dr. AS] remain in the employ of the [United N . Dr. R criticizes the [return to work] plan he suggests derived from the treating physician was, in fact, recommended by [Dr. AS] and then [Dr. A] who are duly authorized Medical Officer[s] working in DHMOSH, in line with the rule, which allows for [return-to-work] plans to be recommended exclusively by DHMOSH . Dr. R seeks to provide evidence on work requirements about which he has no expertise and non-expert factual evidence on the impact of the [return to work] plan though he was never involved in such ;

g. No justification for the decision is contradicted by the fact that the decision maker never raised such justification to DHMOSH, the staff member or to the [Dispute Tribunal]. It is contradicted by the fact that the [return to work] plan was successfully implemented for a period of time and that, following management evaluation, the Administration decided to re-implement the [return to work] plan without alteration . These all indicate that the DHMOSH recommended RTW plan could be implemented

h. The provision of multiple conflicting accounts as to why the decision was taken while at the same time purporting to rescind the decision and compensate albeit in a manner not making the Applicant whole, demonstrate the unlawful nature of the decision .

21. The Respondent, in essence, submits that the contested decision fell within the discretion of the Administration.

decisions, which is intelligibility (enabling both implementation and acceptance), accountability and reviewability .

28. In the present case, it is not indicated in the agreed facts what reason(s), if any, provided at the 13 May 2019 decision when rejecting (the contested decision). At this point in time, the

a. DGACM lawfully determined that the second medical accommodations requested by the Applicant represented a disproportionate or undue burden on the Interpretation Service from 1 June 2019 in accordance

b.

DGACM implemented the first and second medical accommodations requested by the Applicant. The medical accommodations were modified or extended a number of times. During this period, no medical advice was provided by DHMOSH to DGACM indicating when the medical accommodations would

c.

operations of the Interpretation Service. First, senior managers in [the English
], Programming Officers and the Interpretation Service devoted additional time to managing the process of assigning meetings to Interpreters, including checking that the Applicant the scope of the medical accommodations and reassigning assignments to other Interpreters. Second, the Interpreters with the same language combination as

e. From April, the higher number of meetings resulted in additional burdens in terms of managing the process of assigning meetings. Also, there was a higher burden placed on other Interpreters as they received more assignments, including a higher number of sensitive meetings, and assignments outside regular working hours

Case No.: UNDT/NY/2019/101

Judgment No.: UNDT/2021/094

Case No.: UNDT/NY/2019/101

Judgment No.: UNDT/2021/094