



**Judgment No. 2022-UNAT-1294**



**Counsel for Appellant: Robbie Leighton, OSLA**

**Counsel for Respondent:**



THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2022-UNAT-1294

repeatedly extended, except that the last extension was implemented only until the end of May 2019.

8. On 13 May 2019, the Chief, English Interpretation Service (EIS) and the Chief, IS, met with AAF and provided her with a notice that the RTW plan could no longer be implemented from 1 June 2019 (contested decision) because of the needs of the IS during the peak period of meetings which included May and June. The higher number of meetings resulted in an additional burden in terms of managing the process of assigning interpreters to cover all the meetings. Moreover, other interpreters received more assignments, including a higher number of sensitive meetings and assignments outside regular working hours. It was explained to AAF that the RTW plan had caused difficulty for the programmer and for the other staff who had been forced to cover more of the stressful meetings.

9. On 15 May 2019, the First Reporting Officer (FRO) of AAF sent an e-mail to DHMOSH explaining that, because of the needs of the IS as of 1 June 2019, they would no longer be able to abide by all the terms of the amended RTW plan. The DHMOSH responded the same day by taking note of the contested o25.11.1 (u459TJO Tc 0 Tw 1.901 Tw 20.186 0 Td[490.8 (M70

the position that if the RTW plan was not implemented AAF would have to remain on sick leave.

13. On 29 July 2019, the DHMOSH sent an e-mail to AAF including their recommendation (second modification to the RTW plan), based on her physician's advice, to accept "medium level-stress/difficult meetings" on a full-time basis with immediate effect; to take "evening meetings (until 10:00PM)" as of September 2019; and to accept "the most stressful/difficult meetings" as of October 2019, and resume working on weekends once these phases had been introduced successfully, which AAF forwarded to the IS.

14. On 30 July 2019, the IS informed the DHMOSH that it would not be able to implement the recommendations outlined in DHMOSH's e-mail, indicating that the decision not to implement was subject to review by the Management Evaluation Unit (MEU).

15. From 1 August 2019, AAF returned to work full time. In August 2019, the number of meetings serviced by the IS was relatively low.

16. On 23 September 2019, AAF informed the Chief, IS, about DHMOSH's second

20. On 14 July 2020, as a gesture of good faith, the Administration restored to AAF 44 days of sick leave.

21. On 14 May 2021, AAF was reassigned to the Economic Commission for Africa as  
211

reflected in Staff Regulation 1.2(c). The UNDT erred in fact and law in stating that the risk to the AAF's safety and security was alleviated by her placement on sick leave. This conclusion ignored that

100 per cent. The RTW plan was aimed at her full rehabilitation and gradu



evidence and represents an amb

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2022-UNAT-1294

40. As regards AAF's submission that the fact that she went on sick leave following the date of the contested decision was in itself evidence that the Administration's so-called duty of care was breached and that the UNDT should have weighed in its judgment the fact of her subsequent sick leave, the Secretary-General argues that the role of the UNDT is to review the contested decision. The decision-maker could not reasonably be expected to know what would occur in the future, and the contested decision clearly could not have been based on information that occurred following the taking of the decision. Therefore, the UNDT had properly declined to consider factors which were not before the decision-maker as such information is not relevant for the determination of the lawfulness of the contested decision.

41. Similarly, to AAF's claim that the UNDT erred in not taking into consideration the medical advice given to her on 25 July 2019, the Secretary-General responds that the Administration was not required, nor would it have been able, to consider future medical advice to AAF in exercising its discretion under the ST/SGB/2019/3 to end the revised RTW plan during the peak work period, and the UNDT was not required to consider such advice either.

42. The Secretary-General argues that the UNDT correctly did not apply a requirement on

44. In addition, the Secretary-General submits that the UNDT correctly determined that AAF was required to contest the 30 July 2019 decision not to implement the second revised RTW plan from 29 July 2019 by way of management evaluation. In relation to this, the UNDT had correctly 5h.8 (y)-m (T) -ad ih 0 Td(v)-6UEMC /nm(I)-4.5 (0)-0.6 .317 0 Td(e)Tj-0.001 Tc 5.00

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2022-UNAT-1294



2.2 Certain components of the flexible working arrangements may be advised by the Medical Director or a duly authorized Medical Officer as being suitable to accommodate medical restrictions or limitations as part of a time-limited return-to work programme. In line with the general principles of reasonable accommodations for short-term disability, if

T8 -6.54 ( a Td972.9 ( Ur)-1.2N (coD2.9 6n)T(e)-7.c2.9 6n)5 -.5 ( -0)1.8 (-4.3 (e)-t a)3 (.9 6n)tl(d)-4.y(-4.3 ((c)

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2022-UNAT-1294





that correspond to medium level-stress/difficult meeting, on full time basis”, was not followed (which means, in fact, that she criticizes that the Administration did not expose her to more stressful working conditions at an earlier stage). We agree with the UNDT that the 30 July 2019 decision (to not apply the RTW plan as recommended on 29 July 2019) and the 13 May 2019 decision (to stop implementing the previous RTW plan) are two different

urinary tract infection and sepsis at the time; they also render no evidence for a direct link between the administrative decision and those infections.

61. In consequence, AAF cannot claim to be compensated by restoration of more absence days. As found by the UNDT, 44 days were restored to 4oon -2.82 Td0.0pf-5.29.7 (o)-7w1 (n)-5.001 Tw

62. The appeal is dismissed, and Judgment No. UNDT/2021/094 is affirmed.

0