



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2022-UNAT-1258

**Yulia Andreeva
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Sabine Knierim Judge Martha Halfeld
Case No.:	2021-1567
Date of Decision:	1 July 2022
Date of Publication:	15 August 2022
Registrar:	Weicheng Lin

Counsel for Ms. Andreeva: Robbie Leighton, OSLA

Counsel for the Secretary-General: Noam Wiener

The Impugned Judgment

14. The UNDT found that Ms. Andreeva was ineligible for a home leave entitlement. Noting that the Appellant decided to travel to her home country in the knowledge that her home leave had not been approved and the Director specifically advised her that there was a question as to whether she had such an entitlement, UNDT rejected her argument that the Administration failed to inform her accurately regarding her home leave entitlement and that she was somehow misled to incur costs for home leave.¹ The UNDT found that the record showed that in January 2020 it was decided that her contract would not be renewed. Therefore, her contract was not expected to continue for at least six months from the date of her return from her proposed home leave, so she did not meet this eligibility criteria for home leave entitlement.² Accordingly, UNDT found that the Administration lawfully rejected approval of Ms. Andreeva's home leave request.³ The UNDT dismissed her application.⁴

Procedure before the Appeals Tribunal

15. On 18 June 2021, the Appellant filed an appeal against the Impugned Judgment with UNAT and, on 20 August 2021, the Respondent filed his reply.

Submissions

Ms. Andreeva's Appeal

16. Ms. Andreeva requests that those parts of the I I

entitlement was that which existed at the time she requested home leave. If UNDP did not expect that her appointment would be renewed, then it was obliged to inform her of such and deny her request for home leave. The UNDT erred in assessing that state of expectation to be as at 27 January 2020, 12 days after the end of the requested home leave and after the end of the leave irrespective of its characterisation as home leave or as annual leave *simpliciter*.

18. Ms. Andreeva submits that the UNDT erred in fact leading to a manifestly unreasonable decision in finding that UNDP did not mislead her regarding her home leave entitlement and that the rejection of her claim for home leave was lawful. The Appellant submits that the Director's communication of 31 December 2019 did not give any indication that there might be circumstances that rendered it less likely that she might not 43 tf0.3 (t(me)fl4gn 9)-2.9 ()5.1 c (i)-23.5 (a)0a (i)-23.5 (a)0ofUenre

was because it was not clear that the Appellant's appointment would continue for six months beyond the date of her return from home leave.

21. The Respondent submits that the Director did not mislead Ms. Andreeva regarding the ramifications of the negotiations on the SLA between BMS/LO and GF/HIST. Rather, he was

this; and second, as a mixed question of fact and law, did the UNDP mislead Ms. Andreeva about her entitlement to home leave so that it should be estopped from denying her leave of that status?

25. The Staff Regulations and Rules address the matter of home leave entitlements at Rule 5.2 materially as follows with our emphasis illustrated by bold type:

...

(a) Internationally recruited staff members, as defined under staff rule 4.5 (a) and not excluded from home leave under staff rule 4.5 (b), who are residing and serving outside their home country and who are otherwise eligible shall be entitled once in every 24 months of qualifying service to visit their home country at United Nations expense for the purpose of spending in that country a reasonable period of annual leave. Leave taken for this purpose and under the terms and conditions set forth in this rule shall hereinafter be referred to as home leave.

(b) A staff member shall be eligible for home leave provided that the following conditions are fulfilled:

(i) While performing his or her official duties:

a. The staff member continues to reside in a country other than that of which he or she is a national; or

b. In the case of a staff member who is a native of a non-metropolitan territory of the country of the duty station and who

work to be undertaken on her return including referring to “interesting matters and exciting projects”, there was reference not only to concerns about her home leave application, but also to the fact that “all staff contracts” with LO/BMS were to end on 30 June 2020. UNDP indicated it had problems with obtaining human resources advice about her situation and would be unlikely to be able to do so until after she had left on her leave.

33. In light of the foregoing analysis of the evidence and assessing it against the regulatory requirements, did the Respondent comply with its obligations to consider and decide the application for home leave reasonably and in a timely fashion? We conclude it did in all the relevant circumstances at the time. Had Ms. Andreeva applied for home leave earlier than she did on 20 December 2019, an informed decision against allowing it might have been provided before she departed on holiday with the accompanying certainty of how much leave she would have and who would meet the travel costs. But

Judgment

35. The appeal is dismissed and Judgment No. UNDT/2021/046 is affirmed.

Original and Authoritative Version: English

Decision dated this 1st day of July 2022.

(Signed)

Judge Colgan, Presiding
New York, USA

(Signed)

Judge Knierim
Hamburg, Germany

(Signed)

Judge Halfeld
New York, USA

Judgment published and entered into the Registry on this 15th day of August 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar