



UNITED NATIONS DISPUTE TRIBUNAL

## Introduction

1. On 16 October 2017, the Applicant filed a claim challenging the decision to separate him from the Organization on the ground of abandonment of post. The application was presented as a challenge to the decision by the Management Evaluation Unit (MEU) to uphold the administrative decision to separate the Applicant from service. However, a closer examination of the application shows that the Applicant was in fact challenging the administrative decision on separation as being erroneous both procedurally and in substance and that MEU failed to address the inherent unfairness of the decision to separate him from service. By his reply the Respondent accepts that this is the case. In any event, it is settled law that "a recommendation by the MEU cannot have the status of an appealable administrative decision." Accordingly, the Tribunal will not be examining the question whether the MEU was in error.

2. On 15 November 2017, the Respondent submitted his reply resisting the claim and asserting that the decision to separate the Applicant on the ground of abandonment of post was lawful in that it was made in accordance with the applicable procedures. The Respondent requested that the application be dismissed.

3. It is apparent from an examination of the file that this case may properly be determined on the basis of the documents submitted by both parties.

## Findings of fact

4. The Tribunal finds the following facts based on the application and the reply together with the annexes filed by the parties:

- a. On 23 September 2007, the Applicant joined UNIFIL as an information technology assistant at the FS-4 level on a fixed-term appointment. By the time that he was separated from service on 12 July 2017

b. It is not in dispute that the Applicant had a good work and attendance record until in or about 2016 when he suffered ill health for which he had been in receipt of medical treatment which resulted in him being absent from work since 17 March 2016. The Chief Information Technology reported to UNIFIL Human Resources Management Section ("HRMS/UNIFIL") that the Applicant had not informed his supervisor of his absence and that his whereabouts could not be established in response to a notification by the HRMS/UNIFIL that his failure to report to work without explanation was in breach of ST/AI/400 (abandonment of post) the Applicant sent an e-mail on 24 March 2016 explaining that he was under urgent medical care. He stated that a medical report had already been set to that effect. However, the Applicant needed to obtain the appropriate clearance from the Medical Services Division (MSD").

c. On 20 April 2016 MSD approved the Applicant's sick leave from 21 March 2016 to 1 July 2016 and subsequently 7(o)-20(m 467.52U0 1.0 135g6 4460





q. On 26 May 2017 UNIFIL recommended to the Assistant Secretary General for Human Resources Management that the Applicant be separated on the ground of abandonment of post. On 10 July 2017, the recommendation was approved.

r. By e-mail dated 25 July 2017 UNIFIL sent the Applicant a memorandum dated 24 July 2017 informing him that the Secretary General had approved the decision to separate him from service with effect from 12 July 2017 on the ground of abandonment of post.

#### Applicable law

5. Staff rule 5.1(e)(ii) provides:

Leave may be taken only when authorized. If a staff member is absent from work without authorization, payment of salary and



sick leave is not certified, the executive or administrative officer shall immediately advise the staff member, with a copy to the personnel officer, that sick leave has been refused and that the staff member must report for duty immediately or be separated for abandonment of post. If the staff member disputes the decision, he or she may request that the matter be referred to an independent practitioner or to a medical board under the terms of staff rule 106.2 (a) (viii). Pending a final decision following the report of the medical board, the period following the date of notification that sick leave has been refused should be compensatable. However, should it be decided not to consider the period in question as sick leave, the remuneration received by the staff member during this period shall be recovered by the organization.

### Considerations

9. In essence, the issues appear to be:
  - a. Was the Applicant absent from work to perform the duties assigned



absence since 1 April 2017. The only medical certificates he provided with this application are dated 16 January and 9 February 2017 and have no bearing on his absence from 1 April to his separation on 12 July 2017. Additionally, he submitted several lab results all of which are dated July and August 2017, which are after his separation. In the circumstances the Tribunal finds that:

- a. It is not part of the Tribunal's functions to put itself in the position of the managers by making decisions on the deployment of staff or the assignment of their duties, including the place where they are to work. The Tribunal's duty is to judicially review the decisions to determine whether they are in accordance with the law and whether the decision maker/s acted procedurally correctly. In circumstances where a staff member

11. Insofar as the Applicant considers that the assignment to work in Sector East was motivated by improper considerations the onus is upon him to prove such procedural or substantive impropriety.

12. In the current case, the Applicant failed to meet his burden of proving the impropriety that he alleged.

13. The Tribunal finds that the decision to separate the Applicant for abandonment of post was not unlawful.

Judgment