





Advisory Section.<sup>8</sup> The problems apparently persisted even though Ms. Seftaoui was not based in the Applicant's duty station. As a result of the Applicant's complaints and interventions, the Applicant was

period through 17 January to MSD. The medical report recommended further leave



(b) In the alternative, an agreed termination of her appointment.<sup>26</sup>

18. On 21 September 2017, the Officer-in-Charge (OiC), HRS wrote to the Applicant noting that she had not reported for duty or replied to the 8 September 2017 letter. He again requested that she provide a plausible explanation or supplementary sick leave certification for her absence beyond 17 January 2017. The OiC/HRS also informed the Applicant that should she fail to do so, MONUSCO would initiate the procedure to separate her for abandonment of post.<sup>27</sup>

19. On 28 September 2017, the Counsel for the Applicant wrote to the OiC/HRS explaining that the Applicant had not abandoned her post, but rather was on sick leave due to her medical condition caused by the harassment she suffered at work. He further explained that she was unable to return to Goma because she was suffering from sleep apnea, which required an uninterrupted electrical supply to operate her medical device.<sup>28</sup>

20. On 24 October 2017, MONUSCO requested the Department of Field Support (“DFS”) to seek ASG/OHRM’s approval to separate the Applicant from service on the ground of abandonment of post.<sup>29</sup>

21. On 24 April 2018, the OiC/HRS informed the Applicant of the procedure regarding her separation for abandonment of post.<sup>30</sup>

22. On 25 June 2018, the ASG/OHRM approved the request to separate the Applicant from service on the ground of abandonment of post.<sup>31</sup> The Applicant was separated on 26 June 2018.<sup>32</sup> The decision to separate the Applicant for abandonment of post was upheld by management evaluation.<sup>33</sup>

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<sup>26</sup> Application, annex 48 .

<sup>27</sup> Application annex 49.

<sup>28</sup> Application, annex 52 .

<sup>29</sup> Reply, R/ 4.

<sup>30</sup> Application, annex 54 .

<sup>31</sup> Reply, annex 5.

<sup>32</sup> Ibid. annex 1 .

<sup>33</sup> Application, annex 63 .

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2017, when the relevant memorandum was circulated, she was on a sick leave and, thus, was unaware of this facility.

28. As a remedy, the Applicant requests the Tribunal to:





appropriate official, in a sealed envelope, a detailed medical report from a licensed medical practitioner

38. ST/AI/400, which applies as *lex specialis* notwithstanding the change of numbering in the staff rules, provides in relevant parts:

Section 5

The absence of a staff member from his or her work, unless properly authorized as leave under staff rule 105.1 (b), as special leave under staff rule 105.2, as sick leave under staff rule 106.2 or as maternity leave under staff rule 106.3, may create a reasonable presumption of intent to separate from the Secretariat unless the staff member is able to give satisfactory proof that such absence was involuntary and was caused by forces beyond his or her control.

Section 10

Unless the executive or administrative officer receives a medical certificate or plausible explanation for the absence within 10 working days he or she shall refer the matter to the appropriate personnel officer [...]. The communication should remind the staff member of the provisions of staff rule 105.1 (b) (ii), under which payment of salary and allowances shall cease for the period of unauthorized absence. It should allow a further period of up to 10 working days for reporting to duty or submission of a medical certification or plausible explanation, and should warn the staff member that failure to do so would be considered abandonment of post and would lead to separation on that ground.

Section 13

[...] If the staff member fails to produce [medical] certification or if the certification produced is not acceptable to the Medical Director 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 [...].

39. As can be seen from the above-cited provisions, there is a degree of formality required for the judgment on fitness to be soundly made. Neither the requirement of a detailed medical report as per ST/AI/2005/3/Amend.1 nor the requirement that the medical report adhere to a provided template are overly onerous or otherwise unreasonable, considering the need for the MSD to assess the validity of medical



sense standards. The MSD justifiably insisted on information as to how, notwithstanding the three and half months of sick leave and therapy, the alleged stress adaptation disorder would still have impeded the Applicant's overall daily functioning and performance of the generic duties of an administrative assistant while half a year earlier she had declined an offer of a transfer. Moreover, pharmacotherapy and psychotherapy are usually available in Missions, the latter, if not through sessions in person, then by audio-visual means, while rest and recuperation breaks

46. The Tribunal posits that a staff member who, by reasons of health, requires special logistics in order to effectively perform, may count on a reasonable effort by the Organization in arranging for amenable conditions. The Organization, however, cannot bear all the burden of accommodating a staff member's special needs and to the furthest extent, this responsibility rests mainly on the staff member. For example, whereas a staff member who cannot climb stairs may reasonably expect that his or her office be placed on a ground floor and a ramp built to access the ground floor, he or she cannot, however, demand the instalment of an elevator. The burden of logistics necessary for the staff member's comfortable functioning must be shared in cooperation, with the Organization's focus being on security and staff members having discretion in their choices.

47. In this regard, as demonstrated by the Respondent, throughout the relevant period, the Applicant was in receipt of residential security allowance. Residential security measures, including reimbursement for a generator or a battery with inverter,

**JUDGMENT**

49. The application is dismissed.

(Signed)  
Judge Agnieszka Klonowiecka-Milart  
Dated this 15<sup>th</sup> day of April 2020

Entered in the Register on this 15<sup>th</sup> day of April 2020

(Signed)  
Abena Kwakye-Berko, Registrar, Nairobi