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the provisions in section 11.4(b) of ST/AI/2017/1. That is, exceptional circumstances will exist when the criteria set out in section 11.4(b) are met.

15 With regard to urgency, the Respondent submits that the Applicant has failed to satisfy the requirement of this criterion. He cites loss of income and the effect on his family as a reason for the urgency of the Application. In fact, all cases of ALWOP involve loss of salary and, without more, this should not be considered a particular urgency per se as it would defeat the very purpose of ALWOP in all cases.

16 For inoperable harm, the Respondent seeks to rely on *Ullina*¹¹. He submits that an applicant must demonstrate that the decision would cause them inoperable harm, meaning a loss that cannot be adequately compensated through a monetary award. The Dispute Tribunal has previously held that “[i]t is generally accepted that mere economic loss only is not enough to satisfy the requirement of inoperable damage.”¹² Indeed, if this were the case, then all instances of ALWOP would constitute “inoperable harm” per se and this limb of the three-part test would be obsolete.

17 The Respondent further submits that while the Applicant’s financial situation may be affected by the loss of his salary during ALWOP, he has not shown how any negative impact could not be remedied. Staff rule 104(d) and section 11.6 of ST/AI/2017/1 provide that, should the allegations against the Applicant not be substantiated, amounts withheld pursuant to the measure will be restored. Further, throughout the period of ALWOP, the Organization makes the necessary payments and contributions to maintain the Applicant’s entitlements to education grant, health, dental and life insurance and his participation in the United Nations Joint Staff Pension Fund. Consequently, the Applicant has failed to show harm that could not be remedied.

¹¹ *Ullina* UNDI/2009/086 para 50

¹² *Moise* Order No 208(NY/2014), para 42

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25 In all the circumstances, there is no fairly arguable case¹⁴ that the contested decision is unlawful. As the Applicant has not met the essential criteria of proving prima facie unlawfulness of the decision, his application must fail. There is no need to consider whether the other two essential factors of urgency and irreparable harm have been proven.

26 The application is dismissed.

(Signed)

Judge Eleanor Donaldson Honeywell

Dated this 28th day of September 2022

Entered in the Register on this 28th day of September 2022

(Signed)

Abera Kwalye Berko, Registrar, Nairobi

¹⁴ *Mirreva* Order No 056(GVA/2020) para 20; *Jaen* Order No 29(NY/2011), para 24; *Villanoran* UNDI/2011/126 para 28