



**Judgment No. 2023-UNAT-1396**

**Counsel for Appellant: Edwin Nhliziyo**

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(iv) Staff members would be responsible for any expenses incurred for re-granting of a new entry and resident visa; and

(v) Periods of absence while waiting for renewal of Sudanese visa will be charged

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Administration, as she was supposed to come back at the duty station on 8 August 2021, more than two weeks (17 days) before the expiration of her visa. Therefore, she argues that “[t]he [three]-week limit being brought into play here is irrelevant because in this situation [she] could not have satisfied both the [five]-week maximum limit and [three]-week minimum limit” and that “[w]hat was important was [that] she planned to return to the mission well before her visa was due to expire”.

26. Ms. Hanjoury submits that the events that delayed her return to Kadugli were “beyond [her] control” and were not due to the fact that “she failed to obey a Staff Rule”.

27. Moreover, Ms. Hanjoury notes that her claim for DSA arises from the disposition for stopovers during home leave under Staff Rule 7.10(g). She contends that the Dispute Tribunal misapplied Staff Rule 7.10(g) by trying to redefine “stopover” to exclude unplanned stopovers while she rather submits that DSA is payable to any stopover to or from home leave in accordance with “the controlling principle that anyone travelling at [United Nations] expense is entitled to DSA (...) [notwithstanding] the nature of the stopovers involved”.<sup>19</sup> Ms. Hanjoury also argues that it has been established in *Nguyen*<sup>20</sup> that the Administration has no discretion to interfere with this principle during the first 30 days of the staff member’s entitlement to DSA.

28. Ms. Hanjoury contends that the Dispute Tribunal also erred in concluding that a claim for DSA under Staff Rule 7.10(g) requires the staff member to be on United Nations “official business travel”, pursuant to Staff Rule 7.1(a)(ii), instead of travel at “United Nations expense” in accordance with the terms of Staff Rule 7.10. She argues that, in the present case, the issue for consideration was completely covered by Staff Rule 7.10 and that, therefore, there was no need for the UNDT to discuss Staff Rule 7.1(a)(ii).

29. Ms. Hanjoury finally submits that other UNISFA staff members on the same flight “were paid their DSA entitlement even though they also had a [three]-day stopover in Khartoum”.

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<sup>19</sup> Ms. Hanjoury contends that she was travelling on R&R and home leave.

<sup>20</sup> *Van Khanh Nguyen v. Secretary-General of the International Seabed Authority*, Judgment No. 2021-UNAT-1089.

30. The Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety. The Secretary-General submits that the UNDT correctly held that the contested decision was lawful since there was no category of entitlement to DSA under which Ms. Hanjoury fell.

31. The Secretary-General further notes that the Dispute Tribunal correctly concluded that during her time in Khartoum, Ms. Hanjoury was neither in “official business” pursuant to Staff Rule 7.1(a)(ii), nor in “home leave” pursuant to Staff Rules 5.2(k), 7.1(a)(vi) and Staff Regulation 5.3. The Secretary-



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enacted in order to define and circumscribe the terms and conditions of employment for staff members.

44. In this vein, Staff Rule 7.10 provides, in relevant parts, that:

(a) Except as provided in paragraph (g) below, a staff member authorized to travel at the United Nations expense shall receive an appropriate [DSA] in accordance with a schedule of rates established from time to time. Such established rates shall be subject to the provisions of paragraph (d) below and to reductions in cases where lodging or meals are provided free of charge by the United Nations, a government, or a related institution.

(b) Daily subsistence allowance shall comprise the total contribution of the United Nations towards charges such as meals, lodging, gratuities and such payments made for services rendered.

...

(g) No daily subsistence allowance shall be payable in respect of travel on appointment, assignment or repatriation, or in respect of travel on home leave, family visit or education grant, provided that the allowance may be paid for stopovers actually made during such travel under conditions established by the Secretary-General. (...)

45. It can thus be discerned from the above provision that DSA is paid only for authorized or official travel or exceptionally in cases of other travel during stopovers under conditions established by the Secretary-General.

46. The critical issue for our determination in the present case is whether Ms. Hanjoury's travel was authorized pursuant to the above Staff Rule. We answer in the negative. Firstly, per the records, she had just one approved day of annual leave on 24 June 2021 followed by a period of R&R from the 12 July to 16 July 2021.

47. Section 4.4 of Administrative Instruction ST/AI/2018/10 (Rest and Recuperation) provides that:

Staff members shall not receive a [DSA] or terminal expenses when traveling on or for the duration of their [R&R]. This also applies to the [DSA] and terminal expenses related to continuation of travel on [R&R] when combined with official business travel.

48. We now turn to Ms. Hanjoury's averments that the UNDT erred in that it misconstrued Staff Rule 7.10(g), by redefining "stopovers" to exclude unplanned stopovers from the realm of eligibility for DSA.

49. In her appeal, she averred, albeit wrongly, that “anyone travelling at [United Nations] expense is entitled to DSA” notwithstanding the nature of the stopover involved.

50. That principle, she argues, is further protected by the fact, established in *Nguyen*, that the Secretary-General has no discretion to interfere with this principle for the first 30 days.<sup>22</sup>

51. Neither Appeals Tribunal jurisprudence, nor the applicable legal framework establish a principle that staff members travelling at the United Nations’ expense are automatically entitled to DSA during the first 30 days of their travel. Ms. Hanjoury’s reference to *Nguyen* in this regard is also misplaced. As correctly observed by the Secretary-General in his reply, in *Nguyen* the Appeals Tribunal “found a structural concern regarding the Joint Appeals Board (JAB) appeals process and remanded the matter to the JAB ‘to ensure that the Appellant’s case

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