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JUDGE IMITRIOS AIKOS RESIDING

1. Ms. Sonia Marie Léocadie Da Silveira (Ms. Da Silveira) contested the decision of the Administration to separate her from service on 26 June 2018 on the ground of abandonment of post. The United Nations Dispute Tribunal (Dispute Tribunal or UNDT) by Judgment No. UNDT/2020/055 rejected her application as without merit.¹ For reasons set out below, we dismiss the appeal and affirm the UNDT Judgment.

2. Ms. Da Silveira joined the United Nations Organization Stabilization Mission in

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6. Although Ms. Da Silveira told the MONUSCO Human Resources Section (HRS) that she obtained a new medical report and that her health condition was “incompatible with living conditions in Goma,” she did not actually provide HRS with any updated information or medical reports.

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regarding her separation for abandonment of post. On 25 June 2018, the ASG/OHRM approved the request to separate Ms. Da Silveira for abandonment of post.

12. On 11 May 2018, Ms. Da Silveira sought management evaluation with the Management Evaluation Unit (MEU) concerning the decision to terminate her Continuing Appointment and to separate her from service for abandonment of post. The decision to separate her was upheld by the MEU, which concluded that Ms. Da Silveira was absent from duty and failed to perform the functions assigned to her.

13. The MEU, also in its conclusion, stated that Ms. Da Silveira did not provide a duly authorized medical certificate or provide support or any other justification for her unauthorized absence since 17 January 2017. The MEU concluded that the Administration was statutorily obliged to process her separation for abandonment of post and reasoned that it followed the prescribed procedures and acted in accordance with the terms of Ms. Da Silveira's appointment.

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17. Ms. Da Silveira argues that the UNDT committed an error of law in its interpretation of Section 13 of Administrative Instruction ST/AI/400 (Abandonment of post) by placing the onus on her to challenge the MSD decision for denying her CSL request. She argues that there is no requirement to dispute the MSD decision by seeking referral to an independent practitioner or to a medical board. It is her contention that she may choose to do so but is not obliged to undertake such course of action. As such, Ms. Da Silveira contends that not seeking review of the denial of the MSD decision did not imply that she had abandoned her position.

18. Further, Ms. Da Silveira submits that the Administration should have informed her of the possibility of having her request reviewed by an independent practitioner or a medical board. She contends she was already suffering from mental depression at that time, and she did not have counsel then who could have advised her on any possible recourse. It was therefore unreasonable of the Administration to demand that she defend herself to prove that she was actually sick.

19. Ms. Da Silveira also contends that the proper standard of proof should be “clear and convincing” when termination might be the result of an administrative action. Had the Dispute Tribunal applied the “clear and convincing” standard, it would have found that she had proffered sufficient proof to substantiate the veracity of her claims.

20. Ms. Da Silveira finally also submits that the Dispute Tribunal made a mistake of fact when it considered that the reimbursement for installation of generators or batteries were measures available to her since 2015 and that she could have benefited from those. These measures, arguably, would have addressse

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from 18 October 2016 until 17 January 2017. From 18 January 2017 until 26 July 2018, she had not provided a valid medical certificate or other justification for her failure to report to work.

22. Further, beginning 8 September 2017, MONUSCO repeatedly advised Ms. Da Silveira that she should either: (a) report for duty; (b) provide a valid medical certificate, or (c) provide an otherwise valid explanation for not reporting to duty. MONUSCO also advised her that failure to act accordingly would result in the initiation of abandonment of post procedures. Instead, on 20 September 2017, Ms. Da Silveira's counsel wrote to OHRM requesting transfer to a country where electricity supply was stable. Having received no valid medical certificate or other justification within the prescribed time frame, MONUSCO proceeded with the separation.

23. Ms. Da Silveira did not provide a duly authorized medical certificate or other justification for being absent from duty. The Administration thus rightfully followed the procedures outlined in ST/AI/400 on abandonment of post to separate her from service, after having given her several notices and more than adequate time to respond.

24. Ms. Da Silveira also applies the incorrect standard of proof requiring "clear and convincing" evidence, which is applicable in cases of termination of appointment as a result misconduct. Here, she was being separated from service due to an abandonment of her post, which

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27. To begin, Staff Rule 6.2(a) (Sick leave) lays the groundwork for a staff member's entitlement to sick leave. The rule states: "[s]taff members who are unable to perform their duties by reason of illness or injury or whose attendance at work is prevented by public health requirements will be granted sick leave. All sick leave must be approved on behalf of, and under conditions established by, the Secretary-

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32. Finally, Section 13 of ST/AI/400 clearly lays out the possible consequences for failing to produce a medical certificate and the recourse that may be available to a staff member. In relevant part, Section 13 states:

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to Goma, no matter the lack of basis. The Respondent's decision to separate her on the ground of abandonment of post was lawful."³

35. We find that the evidence on record supports the UNDT's finding. Indeed, the Dispute Tribunal very thoroughly conducted a judicial review of the administrative decision under challenge. It properly reviewed the legality of the contested administrative decision from every possible angle in accordance with the applicable law and established the critical facts of the case.

36. First, the UNDT examined the legality of the MSD's refusal to certify Ms. Da Silveira's sick leave request. The MSD's refusal was not only based on the formal lack of documentation, which in and of itself served as a legitimate reason to deny the CSL, but the MSD action was also *prima facie* reasonable by common sense standards. The UNDT reasoned that 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 Ms. Da Silveira's overall daily functioning and performance of the generic duties of an

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Administration should have informed her of the possibility to refer her case to an independent practitioner or to request a medical review board.

40. As a threshold matter, we note that, as correctly interpreted by the UNDT, the wording of Section 13 of ST/AI/400 clearly establishes an option and not a legal obligation of

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separation from service due to abandonment of post. In any event, we hold that the facts underpinning the challenged administrative decision to separate Ms. Da Silveira from service for abandonment of her post, which also provided the factual basis of the UNDT's reasoning, satisfy more than the preponderance of evidence standard. Ms. Da Silveira's absence during that period of about one and a half years was unauthorized. She failed to show up and perform the work that had been assigned to her. Her actions show the very high likelihood that Ms. Da Silveira had indeed abandoned her post. Therefore, the Administration was justified in separating her from service on 26 June 2018 on the ground of abandonment of post.

46. In these circumstances, and given the presumption of regularity accorded to administrative acts, the Impugned Judgment could not be found erroneous in law, and much less

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50. The appeal is dismissed, and Judgment No. UNDT/2020/055 is affirmed.

Original and Authoritative Version: English

Dated this 19th day of March 2021.

(Signed)

Judge Raikos, Presiding
Athens, Greece

(Signed)

Judge Halfeld
Juiz de Fora, Brazil

(Signed)

Judge Sandhu
Vancouver, Canada

Entered in the Register on this 7th day of April 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar