



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2023-UNAT-1364

**Mustapha Guenfoudi
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Gao Xiaoli, Presiding Judge Sabine Knierim Judge Martha Halfeld
Case No.:	2022-1728
Date of Decision:	30 June 2023
Date of Publication:	31 July 2023
Registrar:	Juliet Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Patricia C. Aragonés

JUDGE GAO XIAOLI, PRESIDING.

1. Mr. Mustapha Guenfoudi (Appellant), a former staff member in the Department for General Assembly and Conference Management (DGACM), filed an application with the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) contesting the termination of his continuing appointment due to unsatisfactory performance. In Judgment No. UNDT/2022/076, the Dispute Tribunal rejected his application (impugned Judgment).
2. Mr. Guenfoudi has filed an appeal of the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
3. For the reasons set forth herein, the Appeals Tribunal dismisses Mr. Guenfoudi's appeal and affirms the impugned Judgment.

Facts and Procedure

4. Mr. Guenfoudi joined the United Nations Secretariat in 2011. He was a Verbatim Reporter/Translator at the P-3 level in the Arabic Verbatim Reporting Section (AVRS) in the Meetings and Publications Division (MPD) of DGACM.
5. During the performance period from 1 April 2019 to 31 March 2020, the Chief of the AVRS (Chief/AVRS), who was also Mr. Guenfoudi's First Reporting Officer (FRO), raised issues related to the quality of the Appellant's work. For example, the Chief/AVRS noted that Mr. Guenfoudi "often fail[ed] to use references", "often fail[ed] to do due diligence to ensure understanding of the English text", and made "many careless mistakes". He observed that "[t]his trend has been worsening (...) to a point where revisers dread receiving your translation for revision because it takes them an inordinate amount of time".¹
6. On 13 November 2019, the Chief/AVRS advised that he would be preparing a performance improvement plan (PIP) in order for Mr. Guenfoudi to improve the quality of his translations (First PIP). Mr. Guenfoudi said he would not discuss the PIP with him or reply to any e-mails on the subject.

¹ 5 November 2019 e-mail from Chief/AVRS to Mr. Guenfoudi, Subject: Issues with the quality of your work.

7. On 25 November 2019, Mr. Guenfoudi filed a complaint against the Chief/AVRS for abuse of authority. This complaint was investigated and the panel found insufficient evidence to support Mr. Guenfoudi's allegations of abuse of authority, harassment or discrimination.

8. On 26 November 2019, the Chief/AVRS attempted to arrange a meeting with Mr. Guenfoudi to discuss the PIP. Mr. Guenfoudi refused to discuss it.

9. Mr. Guenfoudi's final rating in the electronic performance appraisal system (ePAS) report for the 2019-2020 performance year was "partially meets expectations", and several competencies were identified as "requir[ing] development". The comments of the Chief/AVRS included that Mr. Guenfoudi "met his goals (...) [b]ut he fell short in the area of professionalism (too many avoidable mistakes) and the ability to take responsibility for his mistakes, learn from them and improve". It was also noted that he had "adopted a racially discriminatory attitude toward his supervisor during the end-of-cycle meeting".²

10. Mr. Guenfoudi contested the rating before a Rebuttal Panel. The Rebuttal Panel concluded that "the overall rating should not be changed".³ The Rebuttal Panel stated that their interviews and the documentation they reviewed revealed errors and omissions by Mr. Guenfoudi which demonstrated performance below what was expected for his level.

11. On 13 August 2020, the Chief/AVRS attempted to introduce a new goal into Mr. Guenfoudi's workplan, namely that he would improve the accuracy of his translations. Mr. Guenfoudi disagreed with the goal and refused to add it into the online performance management system.

12. On 17 August 2020, the Chief/AVRS provided a PIP for the period 17 August 2020 to 28 February 2021 (Second PIP). Mr. Guenfoudi rejected the Second PIP and declined numerous invitations from the Chief/AVRS and his Second Reporting Officer (SRO) for coaching and/or to discuss the Second PIP.

13. For several months, the Chief/AVRS attempted to engage with Mr. Guenfoudi on the Second PIP, but Mr. Guenfoudi refused to discuss it because he claimed the Chief/AVRS was

² Guenfoudi, Mustapha; United Nations Performance Document, Performance Cycle: 2019-2020, pp. 2-3.

³ 15 July 2020, Report on performance rebuttal of Mr. Mustapha Guefoudi for 2019-2020 cycle, p. 3.

harassing him. Mr. Guenfoudi sent the Chief/AVRS multiple e-mails declaring the PIP “null and void” and stated that it was “not applicable” to him and that he would not consent to it.⁴

14. The Chief/AVRS attempted to close out the Second PIP in March 2021, but Mr. Guenfoudi refused to meet with him.

15. On 18 March 2021, the Chief/AVRS finalized the Second PIP and indicated that Mr. Guenfoudi had “not met” 5 of 8 goals, and only “partially met” 3 of the goals.

16. On 22 April 2021, the Chief/AVRS and the SRO completed Mr. Guenfoudi’s ePAS for the 2020-2021 performance cycle with the overall rating of “Does Not Meet Expectations”. His rating for the competencies of Integrity, Professionalism, Accountability, Communication and Client Orientation was “unsatisfactory”.⁵

17. On 3 May 2021, Mr. Guenfoudi sent an e-mail to the Chief/AVRS stating that he did not “recognize [the] botched unilateral eP[AS]” and that he was in a “dire situation, thanks to [the Chief/AVRS’s] repetitive harassments, mistreatment and unhealthy working conditions before the pandemic in the UNITAR building”.⁶ He further stated that the ePAS prepared by the Chief/AVRS was “null and void”.⁷

18. On 5 May 2021, Mr. Guenfoudi was advised of the procedure to rebut the performance rating, but he did not do so. Thus, his performance evaluation document was deemed signed and final on 18 May 2021.

19. On 6 May 2021, the Director of MPD advised that DGACM would seek termination of Mr. Guenfoudi’s continuing appointment for unsatisfactory performance.

20. On 30 July 2021, the Under-Secretary-General for General Assembly and Conference Management (USG/GACM) sent Mr. Guenfoudi a letter advising him that in light of the “partially meets performance expectations” rating for the 2019-2020 cycle, and the “does not meet

⁴ 5 March 2021 e-mail from Mr. Guenfoudi to Chief/AVRS, Subject: Repetitive harassments.

⁵ Performance Management and Development, Manual Appraisal Form, Performance Cycle 2020-2021, Mustapha Guenfoudi, p. 14.

⁶ UNITAR is the United Nations Institute for Training and Research.

⁷ 3 May 2021 e-mail from Mr. Guenfoudi to Chief/AVRS, Subject: Non recognition of your botched unilateral eP[a]s evaluation.

performance expectations” rating for the 2020-2021 cycle, the Organization had decided to terminate his continuing appointment (contested decision).

21. On 27 August 2021, Mr. Guenfoudi requested management evaluation of the contested decision.

22. On 8 October 2021, Mr. Guenfoudi filed an application with the UNDT, challenging the contested decision.

Impugned Judgment

23. In its Judgment, the UNDT took note that Mr. Guenfoudi made many arguments and submissions regarding the performance appraisal process, but that the question for the tribunal was whether the termination decision was unlawful.⁸

24. Likewise, the UNDT held that it could not undertake judicial review of Mr. Guenfoudi’s allegations of prohibited conducted by the Chief/AVRS or his complaint that the United Nations Federal Credit Union (UNFCU) had confiscated certain payments.⁹

25. With respect to the termination decision, the UNDT was guided by Staff Rule 9.6(c)(ii) and Staff Regulation 9.3(a)(ii),¹⁰ which permit terminating a staff member for unsatisfactory performance. The UNDT noted further that performance standards fall within the prerogative of the Secretary-General.¹¹

26. The UNDT found that two consecutive underperformance ratings, concomitant with Mr. Guenfoudi’s refusal to engage with his supervisors on improving his performance, provided a rational foundation for the Secretary-General to terminate Mr. Guenfoudi’s appointment.¹²

27. The UNDT further held that Mr. Guenfoudi’s unsatisfactory performance was well-substantiated and that the contested decision was entirely lawful and appropriate.¹³

⁸Impugned Judgment, para. 13.

⁹*Ibid.*, para. 14.

¹⁰ Secretary-General’s Bulletin ST/SGB/2018/1 (Staff Rules and Regulations of the United Nations).

¹¹Impugned Judgment, paras. 16-19.

¹²*Ibid.*, paras. 26-27.

¹³*Ibid.*, paras. 28-29.

28. With regard to Mr. Guenfoudi's sick leave entitlements, the UNDT noted that the Administration had in fact encouraged Mr. Guenfoudi to take his sick leave prior to the termination of his appointment, which he refused. Moreover, the UNDT observed that Mr. Guenfoudi only applied for sick leave after he had been told that DGACM was seeking to terminate his appointment, and thus this was not a case where action was taken against him during his sick leave and he was not able to mount a defense.¹⁴

29. In the main, the UNDT held that Mr. Guenfoudi had no right to continue working for the Organization simply because he had not yet exhausted his sick leave, and there was no good reason to delay his termination so that he could use his remaining sick leave entitlement.¹⁵

30. The UNDT thus dismissed Mr. Guenfoudi's application.

31. Mr. Guenfoudi filed an appeal of the impugned Judgment on 8 September 2022, to which the Secretary-General submitted an answer on 14 November 2022.

Submissions

Mr. Guenfoudi's Appeal

32. Mr. Guenfoudi argues that the UNDT Judgment incorrectly identified the official who signed his termination letter as being the Under-Secretary-General for Management Strategy, Policy and Compliance (USG/MSPC), when in fact it was signed by USG/GACM. Mr. Guenfoudi further argues that the USG/GACM had a conflict of interest because he was known to support the Chief/AVRS, whom Mr. Guenfoudi considers to be "abusive".

33. Mr. Guenfoudi contends that his termination was clearly retaliatory because he had filed a complaint against the Chief/AVRS, noting in particular that the UNITAR building where he worked did not have proper ventilation, and that he suffered from extreme heat in the summers, and that the building was full of mice "dead and alive". Mr. Guenfoudi submits that the UNDT Judge disregarded the unhealthy working conditions that he endured.

34. Mr. Guenfoudi also argues that the UNDT Judge completely disregarded the medical reports which he submitted, and states that his medical issues are the direct result of the stress,

¹⁴*Ibid.*, paras. 31 and 33.

¹⁵*Ibid.*, paras. 34-35.

harassment and mistreatment that he endured by the Chief/AVRS, as well as the dangerous work environment in the UNITAR building.

35. Mr. Guenfoudi concedes that he did not participate in the PIP process but explains that this was because the Chief/AVRS was not applying the rules on PIPs properly. He further argues that the Chief/AVRS “weaponized” the PIP against him, because Mr. Guenfoudi questioned the Chief/AVRS’s competency on the grounds that the Chief/AVRS was not a mother-tongue speaker of Arabic.

36. Mr. Guenfoudi submits that no one would believe that a staff member like him who had twenty years of experience as an Arabic translator and eight good consecutive ePAS evaluations would suddenly start doing poor work after the arrival of his new “incompetent” and “harassing chief”.

37. Mr. Guenfoudi claims that the UNDT erred in finding that his performance ratings in 2019-2020 and 2020-2021 were objective. He also states that the rebuttal process for the ePAS in 2019-2020 was in “vain” because the Rebuttal Panel was not independent but rather under the control of the abusive DGACM Administration.

38. Mr. Guenfoudi contends that the UNDT misunderstood his claim with regard to his unused sick leave balance. He explains that his request to the UNDT was to receive compensation for the unused sick leave balance, and claims that there is nothing in the Staff Rules that permits the Administration to cancel the balance of his sick leave upon his termination.

39. Mr. Guenfoudi argues that his sick leave days are an acquired right, and that the Administration could not withdraw these sick leave days upon his termination. He maintains that he should have been compensated with nine months of sick leave at full salary, and nine months at half salary.

40. Mr. Guenfoudi points out that he was placed on certified sick leave after he was shocked and traumatized by a menacing e-mail from his Director, who he alleges has been complicit and supportive of the harassment he has endured from the Chief/AVRS.

41. Mr. Guenfoudi submits that the UNFCU has wrongfully withheld certain sums from him, and that no one told him to file a request for management evaluation with respect to the UNFCU's acts and now it is too late.

42. Mr. Guenfoudi requests that the UNAT: (1) order restitution of his wrongfully confiscated termination benefits, (2) pay him compensation for the perverse retaliatory termination of his appointment and the abusive cancellation of his sick leave balance, and (3) award him compensation for all the health issues that he has suffered from working in an unhealthy and toxic work environment.

43. Mr. Guenfoudi also requests an oral hearing before the UNAT to "explain and defend [his] case better".

The Secretary-General's Answer

44. The Secretary-General submits that the UNDT properly concluded that the Appellant's claims with respect to a flawed performance appraisal process, the outcome of his harassment complaint against the Chief/AVRS, and the retention of certain of his funds by the UNFCU, were all separate decisions that have not been subject to management evaluation, and thus were not cognizable before the UNDT.

45. The Secretary-General argues that the issue on appeal is very narrow, namely, whether the UNDT erred in concluding that Mr. Guenfoudi's appointment was lawfully terminated based on unsatisfactory performance under Staff Rule 9.6(c)(ii).

46. The Secretary-General submits that the Organization's legal framework, namely ST/AI/2010/5 (Performance management and development system) permits the termination of a staff member whose performance shortcomings have not been rectified or who has received a performance rating of "does not meet performance expectations".

47. The Secretary-General avers that the UNDT correctly concluded, after examining over 250 pages of documentation, that Mr. Guenfoudi failed to meet performance standards and was given several opportunities to address his performance shortcomings but declined to do so.

48. The Secretary-General submits that the UNDT properly found that the record demonstrated that Mr. Guenfoudi's unsatisfactory performance was well-established, and that the procedure followed by the Organization to terminate his appointment was in no way flawed.

49. The Secretary-General argues that Mr. Guenfoudi has failed to identify any reversible error by the UNDT, and that his appeal is largely a reiteration of the arguments considered and rejected by the UNDT. This constitutes impermissible re-litigation of his case and his appeal should be denied on this ground alone.

50. The Secretary-General states that the USG/GACM had the delegated authority to sign Mr. Guenfoudi's termination letter, and that Mr. Guenfoudi's allegation about the USG/GACM's support of his "abusive chief" is unsubstantiated and was not presented to the UNDT.

51. The Secretary-General submits that Mr. Guenfoudi's claims that the UNDT did not consider his various arguments, including his complaints about the Chief/AVRS and his submissions about his medical condition, are without merit. The UNDT acknowledged these issues in the impugned Judgment.

52. The Secretary-General states that Mr. Guenfoudi's argument that the Second PIP was not valid because it was not developed in consultation with him has no basis in the legal framework.

53. The Secretary-General submits that there is nothing in the applicable legal framework that requires the Administration to delay termination of a staff member to allow them to use their remaining sick leave balance.

54. The Secretary-General avers that the UNDT properly found that Mr. Guenfoudi was not denied the opportunity to take sick leave.

55. The Secretary-General argues that there is no "acquired right" to unused sick leave.

56. The Secretary-General submits that Mr. Guenfoudi's complaints about delays in payment of his separation entitlements and the remittance of a portion to the UNFCU were not properly before the UNDT, or the UNAT.

57. The Secretary-General urges the UNAT to deny Mr. Guenfoudi's claims to compensation for the alleged retaliatory termination and unhealthy workplace, because there has been no illegality established.

Considerations

Request for Oral Hearing

58. Mr. Guenfoudi requested an oral hearing, noting in his appeal form that this was for him to "explain and defend [his] case better".

59. The Appeals Tribunal's disposition of requests for oral hearings are guided by its Statute and Rules of Procedure. Article 8(3) of UNAT Statute provides:

The judges assigned to a case will determine whether to hold oral proceedings.

60. Article 18(1) of UNAT Rules of Procedure further provides:

The judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case.

61. According to the foregoing rules, the UNAT has discretion to determine whether to hold an oral hearing or not with the aim to deal with the case efficiently and fairly.

62. We have applied these standards in many cases. For example, in *Fairweather*¹⁶, we denied a request for an oral hearing, explaining that:

... (...) The factual and legal issues arising from this appeal have already been clearly defined by the parties and there is no need for further clarification. Moreover, we do not find that an oral hearing would "assist in the expeditious and fair disposal of the case", as required by Article 18(1) of the Rules.

63. In the present case, Mr. Guenfoudi has offered no additional evidence and argument beyond his pleadings before the UNDT. Accordingly, we do not see that an oral hearing would "assist in the expeditious and fair disposal of the case". His request for an oral hearing is therefore denied.

¹⁶ *Fairweather v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1003, para. 28.

64. The issues in this case include: i) Did the UNDT err in concluding that the Administration's decision to terminate Mr. Guenfoudi's appointment was lawful? ii) Did the UNDT err in rejecting Mr. Guenfoudi's claim to compensation and/or use of his sick leave balance prior to his termination? And iii) Did the UNDT err in failing to address Mr. Guenfoudi's claims related to his unhealthy working conditions, the alleged harassment by the Chief/AVRS, his medical issues, and payments from the UNFCU? We address each of these contentions in turn.

Did the UNDT err in concluding that the Administration's decision to terminate Mr. Guenfoudi's appointment was lawful?

65. We have set forth the standard of review in poor performance cases in *Sarwar*,¹⁷ which states:

... Whenever the Secretary-General is called upon to decide if a valid and fair reason exists to terminate an appointment for poor performance, he should consider whether the staff member in fact failed to meet the performance standard and if so whether: i) the staff member was aware, or could reasonably be expected to have been aware, of the required standard; ii) the staff member was given a fair opportunity to meet the required standard; and iii) termination of appointment is an appropriate action for not meeting the standard in the circumstances. The processes and standards contained in ST/AI/2010/5 are geared to the specific attainment of these general objectives.

66. With the foregoing as our guidepost, we find firstly, that Mr. Guenfoudi could reasonably be expected to have been aware of the required standards of performance for his function given his relatively long service. Mr. Guenfoudi joined the United Nations Secretariat in 2011 and he was a Verbatim Reporter/Translator at the P-3 level.

67. Termination of staff for reasons of poor performance is based on established rules, regulations and administrative issuances of the Organization. Staff Rule 9.6 includes "unsatisfactory service" as a basis for termination as follows:¹⁸

Termination Definitions

¹⁷ *Sarwar v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-757, para. 73.

¹⁸ Secretary-General's Bulletin ST/SGB/2018/1/Rev.2 (Staff Regulations and Rules of the United Nations).

...

Reasons for termination

(c) The Secretary-General may, giving the reasons therefor, terminate the appointment of a staff member who holds a temporary, fixed-term or continuing appointment in accordance with the terms of the appointment or on any of the following grounds:

(i) Abolition of posts or reduction of staff;

(ii) Unsatisfactory service;

...

68. Staff Regulation 9.3 is to the same effect, providing that:

(a) Secretary-General may, giving the reasons therefor, terminate the appointment of a staff member who holds a temporary, fixed-term or continuing appointment in accordance with the terms of his or her appointment or for any of the following reasons:

(i) If the necessities of service require abolition of the post or reduction of the staff;

(ii) If the services of the staff member prove unsatisfactory;

...

69. The Organization's performance evaluation process is set out in ST/AI/2010/5 which aims to improve the delivery of programs by optimizing performance at all levels. Section 9.1 of ST/AI/2010/5 provides, with respect to individual core values and competencies:

Staff shall be appraised on the basis of the indicators that correspond to each of the core values and competencies and shall be given one of the following four ratings:

- Outstanding;
- Fully competent;
- Requires development;
- Unsatisfactory.

70. Section 9.7 of the same Instruction also stipulates with regard to an overall rating:

Staff who have not fully met performance expectations should be given one of the following two overall ratings:

- Partially meets performance expectations;
- Does not meet performance expectations.

These two ratings indicate the existence of performance shortcomings.

71. Finally, Sections 9.8 and 9.9 further elaborate, respectively, that:

... A rating of “partially meets performance expectations” should be considered when the staff member did not meet the defined success criteria and/or performance expectations for some of the goals/key results but demonstrates potential to develop the required skills;

... A rating of “does not meet performance expectations” should be considered when the staff member did not meet the defined success criteria or performance expectations for the majority of the goals/key results, and the staff member demonstrates an inability to develop the required skills.

72. Notably, Section 10.3 informs staff members that: “If the performance shortcoming was not rectified following the remedial actions indicated in [S]ection 10.1, a number of administrative actions may ensue, including the withholding of a within-grade salary increment pursuant to [S]ection 16.4, the non-renewal of an appointment or the termination of an appointment for unsatisfactory service in accordance with [S]taff [R]egulation 9.3.”

73. In this case, Mr. Guenfoudi’s overall performance rating was “partially meets performance expectations” for the 2019-2020 cycle and “does not meet performance expectations” for the 2020-2021 cycle.

74. Taking into account the duration of Mr. Guenfoudi’s service in the Organization as well as the workplans and the PIPs offered by his FRO with the aim of improving Mr. Guenfoudi’s work performance, we find it manifest that Mr. Guenfoudi was aware of the required performance standard for his post.

75. Secondly, we conclude that Mr. Guenfoudi was given a fair opportunity to meet the required performance standards for his role. Mr. Guenfoudi, however, did not meet the performance standards in two consecutive years, either through lack of effort or competence, and correspondingly, the potential termination of his appointment was to be expected. Unfortunately, Mr. Guenfoudi refused to take part in the proposed PIPs, thereby sealing his fate.

76. Mr. Guenfoudi explained his reason for refusing to accept or participate in the PIPs as a result of supposed unfairness by his managers. Mr. Guenfoudi thought that the Chief/AVRS was not applying the rules on PIPs properly and “weaponized” the PIP against him because he

questioned the Chief/AVRS's competency. However, his harassment complaint against the Chief/AVRS is a different issue and cannot be an excuse for his refusal to take part in the PIPs when he fell short in his performance appraisal.

77. Human resource management requires not only that the employer ensures the rights and benefits of the employees, but for employees to make every effort to maintain their technical or subject-matter competence and to finish their assigned work in compliance with the required standard. Staff Regulation 1.3(a) sets forth such obligation explicitly:

Staff members are accountable to the Secretary-General for the proper discharge of their functions. Staff members are required to uphold the highest standards of efficiency, competence and integrity in the discharge of their functions. Their performance will be appraised periodically to ensure that the required standards of performance are met.

78. In circumstances where a staff member is dissatisfied with the decisions or measures taken by the Administration (like the performance appraisal at issue here), several remedial measures are afforded to him or her, with both administrative and judicial recourse. There is no excuse for a staff member to give up on performing their inherent duties when they are dissatisfied with the Administration's decisions. We find that the Appellant was given a fair opportunity to meet the required standard, however, he refused to do so, without any reasonable ground for his obstinance.

79. Thirdly, the legal framework set out in *Sarwar* above makes plain that the termination of a staff member's appointment with the Organization is an appropriate and foreseeable action when the staff member is not meeting the requisite standards.

80. In *Said*,¹⁹ the Appeals Tribunal held that the UNDT must accord deference to the Administration's appraisal of the performance of staff members, and cannot conduct a *de novo* appraisal of the staff member, or place itself in the role of the decision-maker and determine whether it would have renewed a staff member's contract, based on a performance appraisal. Performance standards generally fall within the prerogative of the Secretary-General and, unless the standards are manifestly unfair or irrational, the UNDT should not substitute its judgment for that of the Secretary-General.

¹⁹ *Said v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-500, para. 40.

81. In this case, the UNDT was not at liberty to re-assess the Appellant's performance on its own, but rather should have examined the process by which the Administration determined that his performance was unsatisfactory, including whether unfairness or irrationality was present. The Administration has the discretion to establish the criteria that a staff member should meet and to terminate the service of a staff member upon unsatisfactory performance of those prescribed criteria.

82. Mr. Guenfoudi repeatedly alleges that his ratings for 2019-2020 and 2020-2021 cycles were tainted by improper motive and that the response to his rebuttal of his rating for the 2019-2020 cycle was manipulated by a biased and non-independent panel. However, he failed to present any persuasive evidence for these charges, except his own self-serving statements. Moreover, Mr. Guenfoudi did not challenge the final decision concerning his performance appraisal in the 2020-2021 cycle. Consequently, the Appellant's allegations cannot be the trigger for the Tribunal to examine the latter performance evaluation in the first instance. We agree with the UNDT that the Tribunal cannot undertake a judicial review of any such decisions in this context.

83. In addition, Mr. Guenfoudi did not take any action to ameliorate his performance or show any active intention to cooperate with the Administration. In this circumstance, he did not fulfill his duty. The contested decision for termination made by the USG/MSPC is based on two consecutive years of substandard ratings and the failure to remedy the shortcomings by the Appellant. Mr. Guenfoudi's repetitive allegations that his substandard ratings were a product of retaliation, and that the rebuttal process was biased are groundless. During the performance evaluation process no unfairness and irrationality was found. The ratings made through such process are final and effective, unless challenged pursuant to specific procedures that were well-known to him, but that he did not pursue with regard to his last rating in the 2020-2021 cycle. It is lawful for the Administration to terminate the Appellant's continuing appointment in accordance with the rules concerned. We uphold the UNDT's decision in this regard.

84. Mr. Guenfoudi also argued that the USG/GACM did not have the administrative authority or competence to sign the contested decision.

85. To resolve this issue, it is necessary to clarify the different functions performed by DGACM and DMSPC in the circumstances presented in this case.

86. In the letter dated 30 July 2021, the USG/GACM emphasized that “the Under-Secretary-General for Management Strategy, Policy and Compliance has decided to terminate your continuing appointment (...)”. That is, the decision of termination was made by the USG/MSPC. Correspondingly, this decision was delivered to Mr. Guenfoudi by the head of the entity in which he worked, namely, the USG/GACM.

87. We note that for effective mandate delivery and good administration, the Secretary-General has promulgated the Secretary-General’s Bulletin ST/SGB/2019/2, entitled “Delegation of authority in the administration of the Staff Regulations and Rules and the Financial Regulations and Rules”. According to annex IV (Delegation of human resources authorities), the authority concerning termination for unsatisfactory performance under Staff Regulation 9.3 as well as Staff Rule 9.6 has been delegated to the USG/MSPC. Meanwhile, the function of notifying such termination to the staff member has been vested in the heads of the entity where the staff member is employed, the DGACM in this case. Both of these provisions are applicable to staff members at the D-2 level and below. Considering the Appellant served as an Arabic Verbatim Reporter at level P-3 in the DGACM, the USG/MSPC was entitled to determine the termination in question. As well, it was proper for the USG/GACM to inform him of his termination by the letter dated 30 July 2021. In sum, the contested decision was made by the proper authority.

Did the UNDT err in rejecting Mr. Guenfoudi’s claim to compensation and/or use of his sick leave balance prior to his termination?

88. We have held in *Gueben* that:²⁰ “Since no illegality was found, there is no justification for the award of any compensation. As this Tribunal stated before, ‘compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member’s rights or administrative wrongdoing in need of repair.’”

89. As discussed herein, the Appeals Tribunal finds that the termination of the Appellant’s continuing appointment was lawful. Therefore, the Appellant’s request for compensation for his unlawful termination has no legal and factual basis, and we cannot support his requested remedy.

²⁰ *Gueben v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-988, para. 49 (internal citations omitted).

90. Mr. Guenfoudi reiterates his claim that he is due appropriate compensation for his unused sick leave balance. He further asserts that his outstanding sick leave entitlements are an acquired right, of which he has been deprived upon termination. In his opinion, the entitlement to sick leave outlives the termination of his appointment.

91. We disagree. Staff Rule 6.2(a) provides:

Staff 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-General.

92. In *Patkar*,²¹ we found that the ordinary reading of the latter provision is that entitlement to sick leave is conditioned on the staff member having duties to perform and work to attend to. Moreover, a staff member's request for sick leave must be approved by his supervisor. The lack of response does not imply approval of sick leave. We reasoned that:

... The provision clearly states that the sick leave will be granted when staff members are "unable to perform their duties by reason of illness or injury or whose attendance at work is prevented by public health requirements". The ordinary reading of the provision is that entitlement to sick leave is conditioned on the staff member having duties to perform and work to attend to.

... This is confirmed by Staff Rule 9.11 that states "a) When a staff member is separated from service, the date on which entitlement to salary, allowances and benefits shall cease shall be determined according to the following provisions: ... (iii) In the case of expiration of a temporary or fixed-term appointment, the date shall be the date specified in the letter of appointment". Sick leave entitlement is a "benefit" that ceases on the date of the expiration of the fixed term appointment as specified in the letter of appointment. Therefore, there is no authority for entitlement to sick leave to outlive the expiration of the fixed term appointment as requested by the Appellant.

93. In this case, Mr. Guenfoudi was informed of DGACM's intention to seek termination on 6 May 2021. The Organization had essentially terminated the appointment in question from that time even if the official notice of termination of the appointment was made by the letter dated 30 July 2021. Despite having been encouraged by his managers to take sick leave at earlier

²¹ *Archana Patkar v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1173, paras. 43-44.

periods, Mr. Guenfoudi had refused.²² It was only after receiving the notice of intent to terminate did Mr. Guenfoudi request and receive his first sick leave medical certification on 17 May 2021 (for the period 12 May 2021 to 31 May 2021). This suggests that perhaps Mr. Guenfoudi did not take the sick leave in good faith. In any event, Mr. Guenfoudi was able to use considerable amounts of sick leave before his termination, because he was on certified sick leave through 30 July 2021. Then, in accordance with Staff Rule 9.11(a)(v), his entitlement to sick leave ceased with the date specified in his termination letter.

94. As the UNDT correctly found:²³

This is not a case where the Administration made an allegation against the Applicant while he was on sick leave and, consequently, he was unable to mount a defence or make himself available for an interview that may have affected the outcome of the matter. The Applicant was given resources and the opportunity to improve his performance. On his performance being found unsatisfactory, the process was put in train for his termination. There was therefore no good reason for the Administration not to proceed with the action of termination.

95. We also agree with the Secretary-General's argument that there is no "acquired right" to unused sick leave. Thus, the UNDT did not err in not granting Mr. Guenfoudi's request for compensation for unused sick leave.

Did the UNDT err in failing to address Mr. Guenfoudi's claims related to his unhealthy working conditions, the alleged harassment by the Chief/AVRS, his medical issues, and payments from the UNFCU?

96. Our analysis of Mr. Guenfoudi's remaining claims begins from the well-settled rule that the first step to challenging an administrative decision begins with management evaluation. Specifically, Staff Rule 11.2 provides:

Management evaluation

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment,

²² See, e.g., 2 September 2020 e-mail from SRO to Mr. Guenfoudi ("I am sorry to hear that you are unwell and should you need to take sick leave please do so. (...) However, please note, that when you are present at work you will be expected to participate in (...) the meetings scheduled in relation to your performance improvement plan (PIP).").

²³ Impugned Judgment, para. 33.

including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

97. Mr. Guenfoudi identifies the contested decision as the decision to terminate his continuing appointment in this case, which is also confirmed in his request for management evaluation. However, Mr. Guenfoudi's other allegations about unhealthy working conditions at the UNITAR building and harassment by the Chief/AVRS are not the subject of this case, and were never subject to management evaluation. Mr. Guenfoudi thus has no standing to claim any compensation.

98. The UNDT was right to conclude that "the outcome of the investigation of prohibited conduct against the Applicant's FRO was not subject to management evaluation. Accordingly, the Tribunal will not undertake a judicial review of the outcome of the investigation into the Applicant's FRO".²⁴

99. We also agree with the UNDT's conclusion that "the issues with the alleged delay in payment of the separation benefits, and the remittance of part of the amount to the UNFCU, were not subject to management evaluation and, therefore, cannot be addressed by the Tribunal in the context of the instant application".²⁵

100. Mr. Guenfoudi's final submission is that the UNFCU has wrongfully withheld certain sums from him, that no one told him to file a request for management evaluation with respect to the UNFCU's acts, and now it is too late. Mr. Guenfoudi has only himself to blame. As a United Nations staff member, he is obliged to know the staff rules and regulations. Moreover, Mr. Guenfoudi clearly understands the management evaluation process, as he filed a management evaluation request in this case.²⁶

101. In conclusion, Mr. Guenfoudi's submissions are without merit. We find no error by the UNDT in dismissing his application.

²⁴ *Ibid.*, para. 14.

²⁵ *Ibid.*

²⁶ See *supra*, para. 21.

Judgment

102. Mr. Guenfoudi's appeal is dismissed, and Judgment No. UNDT/2022/076 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 30th day of June 2023 in New York, United States.

(Signed)

Judge Gao, Presiding

(Signed)

Judge Knierim

(Signed)

Judge Halfeld

Judgment published and entered into the Register on this 31st day of July 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar