



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2018/068

Judgment No.: UNDT/2019/110

Date: 17 June 2019

Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

VEDEL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Mohamed Abdou, OSLA

Counsel for Respondent:
Bart Willemsen, UNICEF
Esther Uwazie, UNICEF

Introduction

1. On 23 January 2018, the Applicant, a Procurement Assistant at the GS-5 level, step 10 with the United Nations Children's Fund ("UNICEF"), filed an application contesting (a) "the decision to impose the disciplinary sanction of loss of two steps within-grade for failure to formally disclose a potential conflict of interest" and (b) "the subsequent decision to grant the Applicant a limited one-year appointment instead of a regular two-year extension".

2. The Respondent argues that the disciplinary decision against the Applicant was based on valid legal principles and that her misconduct was established by clear and convincing evidence. The Respondent further argues that the appeal against "the subsequent decision to grant the Applicant a limited one-year appointment instead of a regular two-year extension" is not receivable.

Facts and procedural history

3. The Applicant joined UNICEF on 23 October 2002 and has served in different capacities (as a General Service staff member) within the Supply Division in Copenhagen. The Applicant commenced service, first as a Technical Assistant in 2002, and has since served as a Shipping Assistant in 2005, a Contracts Assistant from 2006-2007, and as a Procurement Assistant from 2008-2018. The Applicant's functional title was changed to Logistics Assistant in October 2018.

4. The Applicant submitted a Conflict of Interest Disclosure Statement in the years 2008 to 2015 certifying that to the best of her knowledge, her spouse did not have any interest in, or association with, any entity with which the Applicant may be required, directly or indirectly, to have dealings on behalf of the Organization, or

which has any commercial interest in the work of UNICEF, or a common area of activity with UNICEF.

5. On 5 April 2016, the Supply Division sent a Memorandum to the Principal Advisor of UNICEF Ethics Office and the Director, Division of Human Resources requesting advice with respect to the allegations of conflict of interest against the Applicant.

6. On 14 April 2016, UNICEF Director of Supply Division referred the allegation of potential conflict of interest to the UNICEF Office of Internal Audit and Investigations (“OIAP”).

7. The Applicant’s access to files from the International Transport Unit was discontinued after the Supply Division became aware of the allegations of conflict of interest against the Applicant.

8. The investigation established that the Applicant’s husband had been employed by UNICEF vendors during the years 2000-2009, 2013-2014, 2014- until the date that the investigation was concluded. The investigation noted that the Applicant’s husband held various roles with the UNICEF vendors during these periods ranging from Sales Manager to Senior Strategic Sales Director Nordics.

9. The investigation found that the Applicant did not disclose these roles to the Ethics Office, and that the non-disclosure amounted to potential conflict of interest. The investigation further established that the Applicant misrepresented the facts about her husband’s employment when completing and submitting the annual Conflict of Interest Disclosure Statements to the Ethics Office.

10. On 20 July 2017, the Applicant was charged with misconduct for failing to formally disclose her husband’s employment with vendors who were in contractual relationships with UNICEF.

11. On 29 September 2017, the Applicant submitted her response to the charges.
12. On 25 October 2017, UNICEF issued a disciplinary measure letter which found that there was clear and convincing evidence that the Applicant failed to fully and accurately disclose her husband's contractual relationship with UNICEF. The Applicant was informed that her conduct resulted in breach of her duty to disclose potential or apparent conflicts of interest and to meet her disclosure obligations during the periods 2008-2009, 2013-2014 and 2014-March 2016 under the applicable staff regulations and rules, and the UNICEF Executive Directive on Financial Disclosure and Declaration of Interest Statements (CF/EXD/2007-002 and CF/EXD/2012-003).
13. On the basis of the findings in the disciplinary measure letter dated 25 October 2017, the Applicant was sanctioned with loss of two steps within grade.
14. On 25 October 2017, the Applicant was informed that she would be granted a limited one-year extension of appointment instead of the standard two-year extension.
15. On 24 November 2017, the Applicant was formally notified that her contract would be extended for one year.
16. On 23 January 2018, the Applicant filed the present application.
17. The present case was reassigned to Judge Alexander W. Hunter, Jr. on 1 January 2019.
18. On 25 February 2019, the parties filed their respective closing submissions.

Consideration

19. The key issues arising for determination in this case are:

- a. Whether the decision to impose on the Applicant the disciplinary sanction of loss of two steps within-grade for failure to formally disclose a potential conflict of interest was lawful;
- b. Whether the subsequent decision to grant the Applicant a limited one-year appointment instead of a regular two-year extension was lawful.

The disciplinary sanction for failure to disclose a potential conflict of interest

Scope of review

20. The consistent jurisprudence of the Appeals Tribunal in cases concerning the imposition of a disciplinary measure is that the Dispute Tribunal must verify if a three-fold test is met as follows: (1) whether the facts on which the disciplinary measure was based have been established; (2) whether the established facts qualify as misconduct; and (3) whether the sanction is proportionate to the offence (*Abu Hamda* 2010-UNAT-022; *Haniya* 2010-UNAT-024; *Wishah* 2015-UNAT-537; *Portillo Moya* 2015-UNAT-423). It is also incumbent on the Tribunal to determine if any substantive or procedural irregularity occurred (*Maslamani* 2010-UNAT-028; *Hallal* 2012-UNAT-207), either during the conduct of the investigation or in the subsequent procedure.

Have the facts on which the disciplinary measure is based been established?

21. The Tribunal finds that the following material facts on which the disciplinary measure is based have been sufficiently established and are not in dispute between the parties.

22. The Applicant joined UNICEF on 23 October 2002 and has served in different capacities within the Supply Division, including as a Procurement Assistant from 2008-2018. The Applicant's husband had been employed by UNICEF vendors in the years 2000-2009, 2013-2014 and 2014 until the date the investigation was concluded. The Applicant did not disclose this information to the Ethics Office, including in the mandatory annual Conflict of Interest Disclosure Statement signed by her in the years 2008 to 2014.

23. On 3 March 2016, the Applicant first wrote to UNICEF about a possible conflict of interest, and subsequently disclosed her husband's employment in her 2015 disclosure form that was signed on 10 May 2016.

Did the established facts amount to serious misconduct under the applicable staff regulations and rules?

24. The essence of the Applicant's claim is that her conduct was incorrectly determined by the Administration to amount to misconduct. The Applicant argues that the sanction was based on a flawed understanding of what constitutes a potential conflict of interest. In particular, she argues that the Administration erred in finding that the allegations of "apparent conflict of interest" amount to misconduct for which a disciplinary sanction may be imposed. The Applicant contends that staff rules and regulation only prohibit "actual" or "potential" conflicts of interest.

25. The Applicant's case must be assessed under the applicable legal framework which was in force during her position as a Procurement Assistant from 2008 to March 2016.

26. Staff rule 101.2 on Basic rights and obligations of staff (applicable during 2008-2009) provides:

Conflict of interest

(n) A staff member who has occasion to deal in his or her official capacity with any matter involving a profit-making business or other concern in which he or she holds a financial interest, directly or indirectly, shall disclose the measure of that interest to the Secretary-General and, except as otherwise authorized by the Secretary-General, either dispose of that financial interest or formally excuse himself or herself from participating with regard to any involvement in that matter which gives rise to the conflict of interest situation.

27. Staff Rule 1.2 on Basic rights and obligations of staff (applicable during 2010-2016) provides:

Conflict of interest

(q) A staff member whose personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member's status as an international civil servant shall disclose any such actual or possible interest to the head of office and, except as otherwise authorized by the Secretary-General, formally excuse himself or herself from participating with regard to any involvement in that matter which might give rise to a conflict of interest situation.

(r) Pursuant to staff regulation 1.2 (n), the Secretary-General shall establish procedures for the filing and utilization of financial disclosure statements.

28. Staff regulation 1.2(m) adds that a conflict of interest “occurs when, by act or omission, a staff member's personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member's status as an international civil servant. When an actual or possible conflict of interest does arise, the conflict shall be disclosed by staff members to their head of office, mitigated by the Organization and resolved in favour of the interests of the Organization”.

29. According to the Standards of Conduct for the International Civil Service (2001):

... Conflict of interest includes circumstances in which international civil servants, directly or indirectly, would appear to benefit improperly, or allow a third party to benefit improperly, from their association in the management or the holding of a financial interest in an enterprise that engages in any business or transaction with the organization.

30. The Report of the Secretary-General on Personal conflict of interest dated 27 June 2011 (A/66/98) states:

... II. Personal conflict of interest

A. Definitions and types of conflict of interest

4. Risks of conflict of interest can generally be found at two levels: (a) as organizational conflict of interest; and (b) as personal conflict of interest. An organizational conflict of interest arises where, because of other activities or relationships, an organization is unable to render impartial services, the organization's objectivity in performing mandated work is or might be impaired, or the organization has an unfair competitive advantage. A personal conflict of interest may generally be understood as a situation where a person's private interests interfere or may be perceived to interfere with his/her performance of official duties. The present report focuses on personal conflict of interest, in accordance with the emphasis on this subject matter in the request by the General Assembly in its resolution 65/247.

5. In general, the need to address and manage conflict of interest results from a risk assessment of staff members' potential exposure to competing interests through their work and status as United Nations officials. Certain functional areas, such as procurement, may provide greater potential for exposure to possible conflict of interest. However, other types of conflict of interest result from the risks inherent in all functions of an international civil servant, independent of any particular authority or position held by the staff member.

6. The definition of conflict of interest in the Staff Rules and Regulations stems, in essence, from the written declaration (also referred to as the "Oath of Office") mandated for all staff members under staff regulation 1.1 (b) (see ST/SGB/2011/1):

I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me as an international civil servant of the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of my duties from any Government or other source external to the Organization.

7. This declaration sets forth the principle that the interests of the Organization not only prevail over all other interests, but are to be the only interests a staff member should consider when discharging his or her functions.

....

5. Conflict of interest and the financial disclosure programme

29. The financial disclosure programme began in 1999. In 2006, with the issuance of Secretary-General's bulletin ST/SGB/2006/6, it was primarily expanded to include staff members at the D-1 level and above. The obligation is enshrined in staff regulation 1.2 (n). The primary goal of the financial disclosure programme is to manage risks facing the United Nations, including its staff, and protect its reputation and interests. As such, the programme seeks to ensure that potential conflicts of interest arising from staff members' private holdings, affiliations or activities can be identified, mitigated and managed in the best interests of the Organization.

A personal conflict of interest is a situation where a person's private interests — such as outside professional relationships or personal financial assets — interfere or may be perceived to interfere with his/her performance of official duties.

As staff, we should always strive to avoid situations where we benefit personally or allow others to benefit personally from the decisions we make for the [United Nations]. We need to be aware of how our actions, in the absence of an explanation, may appear or be interpreted by others. Sometimes, the perception of a conflict of interest raises as much ethical concern as does an actual conflict of interest. Conflict of interest situations do not necessarily imply wrongdoing. However, if they are not identified and managed appropriately, they can compromise our work and the Organization's integrity. When each of us avoids the perception and the reality of a conflict of interest, we can help preserve our independence and impartiality. One of the key steps in avoiding or resolving a conflict of interest is to ensure that we place the [United Nations'] interests above our own.

...

31. The Applicant contends that staff rules and regulation only prohibit “actual” or “potential” conflicts of interest and the Administration wrongly found an “apparent” conflict of interest in her case. The Applicant maintains that she did not breach her duty to report situations of potential conflict of interest. She states that she acted reasonably, diligently and in accordance with the applicable legal framework.

32. The Applicant submits that neither the Applicant nor her spouse were directly involved in procurement activities and it was therefore unreasonable to expect the Applicant to immediately identify all potential interests and foresee the situation that led to the institution of disciplinary proceedings against her.

33. The Applicant states that there was informal knowledge among the Applicant’s colleagues of her spouse’s employment in the transportation business with UNICEF vendors.

34. Although the Applicant does not dispute that she had access to confidential information that was potentially valuable to an outsider, including the vendors whom her spouse was employed by at the relevant times, she appears to argue that a conflict of interest would have only arisen if she had the ability to manipulate procurement processes by accessing the information in question and using it to her advantage. The Applicant maintains that she did not access any confidential information in question and notes that OIAI was unable to verify which files, if any, the Applicant had in fact accessed.

35. She argues that the mere passive access to electronic resources is insufficient to establish that the Applicant was aware of the details of ongoing procurement processes or had gained specific knowledge of the contractual situation of relevant contractors.

36. The Applicant states that a potential conflict of interest only arose in March 2016 when the Applicant was requested by another staff member to informally provide her opinion on a draft request for proposal (“RFP”) for service. The Applicant thereafter acted diligently and raised her concerns about the potential conflict in relation to her husband’s employment with a UNICEF vendor with her supervisor and later with the Ethics Office, prior to the start of the bidding process and prior to the receipt of any application or proposal from the vendors.

37. She states that the disciplinary measure imposed is unlawful in that it fails to identify a situation of actual or potential conflict of interest.

38. The Respondent, on the other hand, contends that the Applicant was in breach of her duty to disclose potential and apparent conflict of interest that arose from the Applicant’s husband’s employment by the UNICEF vendors during the period 2008-2018 when she worked as Procurement Assistant.

39. The Respondent notes that it is not in dispute that the Applicant did not disclose to UNICEF, when she should have, that her spouse was employed by UNICEF’s vendors. It is also not in dispute that the Applicant had access to confidential information that would have benefitted these vendors had the information been released to her spouse, which were, no doubt, potential and apparent conflicts that should always have been disclosed.

40. The Respondent argues that there is no requirement to demonstrate actual use of confidential information or direct personal interest in any transaction, although, in the case of the Applicant, it was established that she had a familial interest in the form of her spouse’s employment by vendors, which should have been disclosed.

41. Furthermore, it was established that between February and March 2016 (up to April 2016), the Applicant had access to the draft tender documents that formed part

of the final RFP for Services for the provision of logistics/freight forwarding services, involving a vendor the Applicant's spouse worked for.

42. The Applicant only wrote to UNICEF on 3 March 2016, and subsequently disclosed the relationship in her 2015 disclosure form that was signed on 10 May 2016.

43. The Tribunal is of the view that the legal framework is sufficiently clear in determining that a conflict of interest may exist even where there is only the possibility that the staff member or the private business with which he or she may have association could benefit from such association. The Tribunal finds that the Administration properly defined and applied the legal framework.

44. By its plain meaning, an "apparent" conflict of interest falls under the meaning of a "potential" conflict of interest. The purpose of the financial disclosure programme regime is to manage risks facing the United Nations, including its staff, and protect its reputation and interests.

45. The legal framework also emphasizes that the mere perception of a conflict of interest could compromise trust in the Organization's work and its independence and impartiality.

46. It is also clear that the perception of a staff member is not the determining factor in establishing whether there may be a conflict of interest.

47. The Tribunal finds no merit in the Applicant's arguments. The Applicant seems to misunderstand the conflict of interest regime and her obligations under the financial disclosure programme. She perceives the case from her personal point of view. The Applicant's obligations to make accurate disclosures of potential or actual conflict of interest are not determined by whether she and her spouse had actual involvement or accessed information which could manipulate procurement processes.

48. The Applicant worked in procurement as Procurement Assistant from 2008-2016, a functional area which may provide greater potential for exposure to possible conflict of interest. Her role required her to work closely, and on a daily basis, with the UNICEF vendors. The investigation determined that her spouse was employed with various UNICEF vendors who were three of the four UNICEF global freight forwarders during the relevant period.

49. Although the Applicant states that her spouse was not directly involved in any service provision to UNICEF, his employment by the vendors who provide substantial commercial services to UNICEF does reasonably give rise to a situation where the Applicant's private interests may be perceived to interfere with her performance of official duties.

50. The Tribunal further notes that UNICEF's procurement from the global freight forwarders was significant in value, being USD135 million in 2014 and therefore even the appearance of a conflict of interest in such transactions would expose the Organization to reputational risk. The Applicant was obligated to disclose this potential conflict of interest and by doing so would have allowed UNICEF, at the outset, to manage the situation and mitigate any actual or perceived risks for the best interests of the Organization.

51. The Applicant appears to further argue that her actions could not amount to misconduct as she was not obligated to file the annual Conflict of Interest and Financial Disclosure Statements as a designated person pursuant to UNICEF's Financial Disclosure policies (CF/EXD/2007-002 and CF/EXD/2012-003) and therefore, she could not be in breach of the obligations. This argument is unpersuasive.

52. The fact is that Applicant did indeed file Conflict of Interest Disclosure Statements in the years 2008-2014 and by doing so, she had the obligation to certify

full and accurate information. The Conflict of Interest Disclosure Statement signed by the Applicant in the years 2008, 2009, 2013 and 2014 (being the years her spouse was employed with UNICEF vendors) required the Applicant to respond to the following question:

To the best of your knowledge, does your spouse and/or dependent child(ren) have any interest in, or association with, any entity with which you may be required, directly or indirectly, to have dealings on behalf of the Organization, or which has any commercial interest in the work of UNICEF, or a common area of activity with UNICEF?

53. The Applicant failed to fully and accurately disclose her spouse's relationships in her financial disclosures forms by responding with a "No" to the above question in each instance, even though her spouse was employed by a UNICEF vendor at the time of her signing the statement. Her response was in breach of her obligation as an international civil servant to provide full and accurate information in forms certified by her.

54. The Appeals Tribunal held in *Rajan* 2017-UNAT-781 that failure by a staff member to comply with his or her disclosure of information obligation under the Charter of the United Nations, the Staff Regulations and Rules or other relevant administrative issuances, or to observe the standard of conduct expected of an international civil servant, is undeniably misconduct.

55. Staff regulation 1.2(b) states that, as a "core value" of the Organization, staff members shall uphold the highest standards of integrity. This concept includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.

56. For the reasons noted above, the Tribunal is satisfied, having regard to the contents of the evidence on file, that the established facts considered in their entirety amount to misconduct. The Applicant breached her obligations of disclosure of

conflict of interest by failing to disclose her spouse's employment with UNICEF vendors, including in the mandatory annual Conflict of Interest Disclosure Statement signed by her in the years 2008, 2009, 2013 and 2014, being the years her spouse was employed with UNICEF vendors.

Was the disciplinary measure imposed proportionate to the misconduct?

57. The jurisprudence on proportionality of disciplinary measures provides that the Tribunal will give due deference to the Secretary-General unless the decision is manifestly unreasonable, unnecessarily harsh, obviously absurd or flagrantly arbitrary. Should the Dispute Tribunal establish that the disciplinary measure was disproportionate, it may order imposition of a lesser measure.

58. However, it is not the role of the Dispute Tribunal to second-guess the correctness of the choice made by the Secretary-General among the various reasonable courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General (see *Sanwidi* 2010-UNAT-084; *Said* 2015-UNAT-500; *Hepworth* 2015-UNAT-503; *Portillo Moya* 2015-UNAT-523).

59. The Tribunal notes that the Applicant does not contest the proportionality of the sanction imposed (loss of two-steps within grade). She contends that the sanction was unwarranted as she did not breach her obligations of disclosure of conflict of interest.

60. Having determined that the Applicant was in breach of her obligations and her actions amounted to misconduct, the Tribunal finds that the sanction imposed (loss of two-steps within grade) was proportionate to the Applicant's misconduct.

61. In particular, the Tribunal notes that the Administration took mitigating circumstances into account by acknowledging that there was informal knowledge

among the Applicant's colleagues of her spouse's employment in the transportation business with UNICEF vendors. The Tribunal agrees that although these mitigating circumstances existed, they were insufficient to absolve the Applicant from the obligation to make accurate disclosures in her financial disclosure forms. The Tribunal reiterates that informal disclosures made by a staff member do not absolve the staff member from his or her obligations to file accurate Conflict of Interest Disclosure Statements.

62. In light of the above, the Tribunal finds that the disciplinary measure of loss of two steps within-grade was proportionate to the misconduct that the Applicant committed and was consistent with the practice of the Secretary-General in similar cases.

The subsequent decision to grant the Applicant a limited one-year appointment instead of a regular two-year extension

63. The Applicant argues that the one-year renewal of her appointment instead of the standard two-year appointment is a veiled sanction which affects the proportionality of the sanction imposed.

64. The Respondent submits, on the other hand, that the appeal in respect of the one-year renewal of the Applicant's fixed term-appointment is not receivable since renewal decisions, no matter the length of time, are considered decisions in a staff member's favor. Staff members cannot challenge the renewal decision even when the duration of the renewal, as offered, is not to his/her satisfaction.

65. Without prejudice to the foregoing, the Respondent states that the decision was not a veiled sanction, but arose out of the need to ensure the Applicant's reintegration into her unit within the Supply Division, in combination with the limited performance metrics that were available to her supervisors in 2017. In these contexts,

UNICEF submits that whilst the former was informed by the need to mitigate the risk to UNICEF from potential conflict of interest, which measure resulted in the modification of some of the Applicant's tasks, the latter was caused by the Applicant's refusal to perform the new tasks that were assigned to her during the investigation and disciplinary processes.

66. UNICEF submits that rather than to perform the tasks assigned during these periods, the Applicant expressed her preference to continue working on the tasks she was most comfortable with and knowledgeable in. However, her request could not be granted given the potential risk to UNICEF.

67. Without prejudice to the foregoing, the Respondent notes that the Applicant's appointment was recently renewed from 1 January 2019 to 31 December 2019. As such, any argument that the Administration supplemented the Applicant's disciplinary sanction with an administrative measure is without merit.

68. The Appeals Tribunal has on many occasions affirmed that the Secretary-General has a broad discretion in decisions regarding promotions and appointments. Nonetheless, the discretion is not unfettered, and is subject to judicial review.

69. When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate (*Nwuke* 2015-UNAT-506).

70. The Tribunal notes from the foregoing that the Administration gave reasons for the decision to grant the Applicant a limited one-year extension of appointment instead of the standard two-year appointment. The Tribunal finds that the reasons given are therefore subject to judicial review.

71. The Tribunal notes that on 25 October 2017, the Applicant was informed that she would only receive a limited one-year extension of appointment. On 9 November 2017, the Applicant sent an email to Mr. RM of UNICEF in regard to the renewal of her contract:

...

Dear [Mr. RM]

I thank you very much for initiating the process for my contract renewal as confirmed below. As advised by [Ms. H] in meeting of October 27, 2017 the reason for the limited one-year extension of appointment is the disciplinary case against me and the fact I was under investigation. Now that the disciplinary process has been concluded, I would like you to reconsider your decision and issue a standard two-year renewal.

Thank you.

...

72. On 17 November 2017, Mr. RM responded as follows:

...

Dear [Applicant]

Please note your meeting with [Ms. H] and [Ms. A] on 27 October was in follow-up to the June meeting between you, [Ms. H], [Ms. J] and [Mr. I] concerning the continuous contract. In both meetings the focus was on your transition back into the Shipping and Logistics Unit as there was a long period of time since you had worked as part of that team, and a development plan to ensure the duties, tasks and deliverables and reintegration into the team was managed as best possible. There was also discussion on the challenges with managing and evaluating your performance over the past two years, and the need to improve your performance including your attitude to work, e.g., your repeated refusal to accept alternative work assignments in the Center. The disciplinary case only came up in the context of the revised tasks expected from you during this time.

You were clearly informed that once the investigation is completed, and its consequences on your scope of work is determined, there will be a need for a performance development plan to guide the transition

back into the Shipping and Logistics Unit in the Vaccine Centre. This will happen in a transparent way and progress will be assessed every three months.

Thank you & best regards,

...

73. The record does not support the Applicant's contention that the Administration departed from the practice of providing two-year contract renewals due to the disciplinary investigation. It is apparent from the Respondent's submissions and the record that UNICEF refused to grant the Applicant the standard two-year contract in response to performance management challenges in respect of the Applicant's new duties.

74. For the reasons stated above, this decision is reviewable by the Tribunal. It is trite law that whenever the Administration decides not to renew an appointment on the grounds of poor performance, the Tribunal has to verify if it has complied with the relevant procedures (*Jennings* UNDT/2010/213; *Eldam* UNDT/2010/133; *Berger* UNDT/2011/134).

75. Similarly, if the Administration decides to vary a staff member's contract renewal for reasons related to performance management, as was done in this case, the Administration is required to comply with the relevant performance management procedures.

76. The Applicant states in her request for management evaluation dated 22 December 2017 that her "performance was never assessed in accordance with the rules during the relevant period". The Respondent provides no submissions on this allegation leaving the Tribunal unable to assess whether the Respondent duly complied with its performance evaluation process. Therefore, the Tribunal cannot conclude that the Respondent's decision to reduce the term of the Applicant's standard two-year renewal was lawful.

77. Without prejudice to the foregoing, the Tribunal finds that since the Applicant's appointment was recently renewed from 1 January 2019 to 31 December 2019, the issue of the two-year renewal is now moot as the Applicant has been granted a second year on her contract.

Conclusion

78. In light of the foregoing, the application is dismissed.

(Signed)

Judge Alexander W. Hunter, Jr

Dated this 17th day of June 2019

Entered in the Register on this 17th day of June 2019

(Signed)

Nerea Suero Fontecha, Registrar, New York