

UNDT/2009/028, Crichlow

UNAT Held or UNDT Pronouncements

The applicant's supervisor should have recused himself from the Management Review Group (MRG) that reviewed the performance reports to avoid conflict of interest. However, this procedural irregularity was mitigated by the subsequent report of the Rebuttal Panel. Outcome: Respondent to pay the applicant the equivalent of one-month net base salary for suffering and stress.

Decision Contested or Judgment/Order Appealed

The applicant, a G-5 office assistant, received two poor performance reviews and subsequently lost some of her job responsibilities and was reassigned to a different post that was scheduled to be abolished. The applicant claimed that the poor performance and reassignment stemmed from her refusal to comply with her supervisor's instructions to mark some absent staff members as present in the office. The applicant also alleged that the administration had failed to comply with the established performance evaluation and rebuttal procedures.

Legal Principle(s)

Scope of review: The Tribunal will limit its review to the decisions previously contested by the applicant as part of the administrative review (management evaluation) process. Performance evaluation: Concerns with performance must be dealt with in a fair and transparent manner. Burden of proof: Where a staff member alleges that actions have been taken against her which have disadvantaged her in her employment, it is for the administration to explain and justify those actions by providing balanced and objectively verifiable reasons. Compensation, emotional suffering and distress: Non-statutory principles for calculation of compensatory damages for emotional suffering and stress include: (a) damages may only be awarded to compensate for negative effects of a proven breach, (b) award of

damages is not punitive, (c) award should be proportionate to the established damage suffered by the applicant. Costs: Legal costs will be awarded if the Tribunal finds that in the course of the proceedings there has been an abuse of the process by a party. However, there may be other instances when the Tribunal will feel compelled to order award of costs.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Crichlow

Entity

UNFPA

Case Number(s)

UNDT/NY/2009/009/JAB

Tribunal

UNDT

Registry

New York

Date of Judgement

5 Oct 2009

Duty Judge

Judge Shaw

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Annual leave

Performance management

Performance evaluation

Reassignment or transfer

Applicable Law

Staff Regulations

- Regulation 11.1

Staff Rules

- Rule 105.1(c)
- Rule 111.2(a)

UNDT Statute

- Article 10.5(b)
- Article 8