

UNDT/2009/076, Miyazaki

UNAT Held or UNDT Pronouncements

The suspension of action was granted and the adverse report ordered to be removed from the applicant's official status file pending the outcome of the substantive proceeding.

Decision Contested or Judgment/Order Appealed

The applicant filed an application seeking to contest a decision not to allow her a formal rebuttal process in relation to a short-term staff performance report which made adverse findings in relation to her performance ("Report"). Interim relief was sought pursuant to Article 10.2 of the Statute of the Tribunal and Article 14.1 of the Rules of Procedure, via which the applicant sought removal of the Report from her official status file pending the Tribunal's determination of the substantive proceeding.

Legal Principle(s)

The first of the three criteria required by this article is that the contested decision "appears prima facie to be unlawful". The combination of the words "appears" and "prima facie" indicate that the threshold required to be met by the apparent unlawfulness is commensurate to that which has been required in different national jurisdictions for similar applications. That is, in the context of an application for interim relief pending the outcome of the substantive application, what is required is the demonstration of an arguable case of unlawfulness, notwithstanding that this case may be open to some doubt. In the context of an application for interim relief pending the outcome of the substantive application, what is required is the demonstration of an arguable case of unlawfulness, notwithstanding that this case may be open to some doubt. ST/AI/292 requires that the placement of adverse material on a staff member's file may only occur after the staff member has been

given an opportunity to make comments on the material. To be in any way meaningful within the spirit of paragraph 2 of ST/AI/292 this "opportunity" must be more than a mere technical satisfaction of procedure.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The suspension of action was granted and the adverse report ordered to be removed from the applicant's official status file pending the outcome of the substantive proceeding.

Full judgment

[Full judgment](#)

Applicants/Appellants

Miyazaki

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2009/137

Tribunal

UNDT

Registry

New York

Date of Judgement

17 Nov 2009

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Suspension of action / interim measures

Applicable Law

UNDT RoP

- Article 14.1

UNDT Statute

- Article 10.2