

UNDT/2009/088, Nogueira

UNAT Held or UNDT Pronouncements

Admissibility: The parameters of what is admissible before this court is provided for in Article 18 of the UNDT Rules of Procedure. In relevant part, the Article states that the Tribunal shall determine the admissibility of any evidence; and that it may exclude evidence which it considers irrelevant, frivolous or lacking in probative value. Workplan/EPAS: It is the responsibility of the first reporting officer to set out the work plan with the Applicant; to conduct the mid-point review and the final appraisal; and to provide supervision on the overall work of the Applicant during the course the reporting period; in other words, to implement all aspects of the PAS in a timely manner. That meant that all the PAS forms should have been duly completed. It is imperative that a supervisor is seen to have met his share of the duties and tasks incumbent on him as supervisor and as detailed in the Administrative Instruction on PAS. From a reading of the relevant provisions relating to the PAS, it cannot be disputed that this mechanism exists in the interest of staff members, management and of the Organisation. For the staff members, PAS procedures ensure that the members of the staff are rated fairly, guided in case of shortcomings and have an opportunity of challenging a rating that they do not agree with. For Management, PAS procedures enable it to enhance the work of its respective departments or sections by placing on them the onus of devising a work plan and making sure that the highest standard of efficiency is achieved through guidance and dialogue. For the Organisation, PAS procedures ensure that the aim and purpose of the Organisation as set out in Article 101(3) of the Charter is complied with. In the case of a shortcoming in the performance of a staff member, the first reporting officer should have discussed the situation with the latter and taken steps to rectify the situation, such as the development of a performance improvement plan, in consultation with the staff member. While the Respondent seems to allege incompetence and shortcomings on the part of the Applicant in several instances, the record is silent as to what remedial action was taken to address those shortcomings. Discretion: It is trite law that any discretion conferred on a public body or authority must be exercised in a judicious manner. In this regard, the

Tribunal finds the Wednesbury principle (as it has come to be known) instructive. The court held: A failure by a public authority to have regard to matters which ought to have been considered, which is to be derived either expressly or by implication from the Statute under which it purports to act, will be an abuse of its discretion. Similarly, if certain matters are considered, which from the subject matter and the general interpretation of the Statute are held by the court to be irrelevant, then this will amount to a defect in the decision-making process. The burden of proof is of course on the Applicant to establish that the discretion has been exercised injudiciously. Once the Applicant has stated his case, it remains open to the Respondent to rebut the Applicant's contentions or to state their own case. The Tribunal must then consider the evidence in its entirety and determine if he who avers has made out a case on a balance of probabilities.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to extend his fixed-term appointment.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Outcome Extra Text

The Tribunal ordered the Respondent to pay to the Applicant 24 months net base salary, at the level he was entitled to before his appointment was not renewed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Nogueira

Entity

UNEP

Case Number(s)

UNDT/NBI/2009/01

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

16 Dec 2009

Duty Judge

Judge Boolell

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Non-disciplinary

Compensation

Non-pecuniary (moral) damages

Applicable Law

Former Staff Rules

- Rule 104.12(b)

UN Charter

- Article 101.3