

UNDT/2010/105, Koumoin

UNAT Held or UNDT Pronouncements

The Tribunal found that the performance appraisal followed by the rebuttal process had been done in respect of the rules and procedures applicable to UNDP. Based on the documentary evidence, it was the view of the Tribunal that, as a matter of fact, the Management went out of his way to afford the Applicant with as much latitude as possible to comment and challenge the rating of “partially met expectations”. With regards to the Applicant’s allegations of harassment, retaliation and discrimination, the Tribunal found that both the UNDP Ethics Office and the UN Central Ethics Office followed the applicable rules by reviewing the Applicant’s case. The Tribunal observed that the Applicant did not actually report retaliation to the competent authorities during his time of employment with UNDP until he knew that his contract would not be extended beyond 31 December 2006. Finally, on the expectancy of renewal of contract under 200-series, the Tribunal recalled former Staff Rule 204.3, which provides that this type of contract is temporary and does not carry any expectancy of renewal. Despite the Applicant’s claims, the Tribunal found that he was not entitled to a permanent contract pursuant to former Staff Rule 204.3 (c). JudgmentThe Tribunal concluded that the Applicant was afforded a fair review of his performance for the year 2005 and that his right for protection from the UN Ethics Office was not violated. The Tribunal did not consider that the Applicant’s allegations of discrimination, harassment and retaliation were substantiated. Regarding the Applicant’s motion for summary judgment, the Tribunal recalled that Article 9 of the Rules of Procedure clearly states that a party may move the Tribunal for summary judgment when there is no dispute as to the material facts. Any party is entitled to a judgment as a matter of law. However, the Applicant had not shown in any way that there was no dispute on the facts and thus entitled to summary judgment. The Tribunal therefore did not give any consideration to the motion.

Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member of UNDP at the P-5 level, contested the decision made by the Respondent not to renew his 200-series contract beyond 31 December 2006 on the ground of non-performance for the year 2005.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Koumoin

Entity

UNDP

Case Number(s)

UNDT/NBI/2009/034

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

7 Jun 2010

Duty Judge

Judge Boolell

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Retaliation

Discrimination and other improper motives

Non-renewal

Arbitrary or improper motive

Applicable Law

Administrative Instructions

- ST/AI/371

Former Staff Rules

- Rule 204.3

Other UN issuances (guidelines, policies etc.)

- UNDP Results and Competency Assessment Guidelines (RCA)

Secretary-General's bulletins

- ST/SGB/2005/21
- ST/SGB/2005/22