

# UNDT/2010/107, Riquelme

## UNAT Held or UNDT Pronouncements

Outcome: On the balance of probabilities it appears that the applicant was unable to perform his duties at an adequate level and the most significant cause of this situation was not lack of training or assistance, but his own attitude. In fairness to the applicant, more should have been done to help his transition from his outside employment to the requirements of his new employment. In light of the rebuttal process being made available to the applicant, he did not suffer any actual detriment from the lack of an ePAS and had the benefit of a rebuttal process. The application is dismissed in its entirety.

## Decision Contested or Judgment/Order Appealed

The applicant was employed on a six month 100-series contract of limited duration as a Procurement Supervisor. He was informed by the Chief of Section during the selection process that he could expect that his contract would be renewed if his performance were adequate. The Chief of Section decided that the contract should not be renewed and completed a short-term appraisal to the effect that his performance was inadequate. The ePAS process had been initiated before but not completed when the decision was made not to renew the applicant's contract. After the applicant was informed of the non-renewal he challenged the appraisal. The expiration of his contract was delayed until the rebuttal panel had completed its consideration of the appraisal. It concluded that, with some qualifications which did not affect the substance of the appraisal, the view of the Chief of Section was correct. The applicant disputed the legality of non-renewal in the absence of the full ePAS and also contended that the short-term appraisal was invalid but sought to avoid entering into the question whether his performance was indeed inadequate, claiming that he had not been properly trained and was the victim of harassment.

## Legal Principle(s)

Non-renewal for inadequate performance: The crucial question is whether there was a sufficient basis to conclude that, because of performance shortcomings, it was appropriate not to renew the applicant's contract. If this decision was reasonably open on the material available and was not affected by any significant irrelevant matter or the omission of a significantly relevant consideration, the making of any significant error of fact or law, then it cannot be held to be made in breach of the contractual obligations of the Organization even if the Tribunal would have made a different decision. Obligation to train new staff member: The Chief was obliged to arrange for such training as was necessary to enable the applicant to perform his duties but how this should be done was a matter for managerial discretion. Use of ST/AI/2002/3 procedures for short-term staff: Although the undertaking of an ePAS appraisal where the staff member's term of employment is less than one year is "discretionary", this discretion is not to be exercised arbitrarily but in accordance with proper principles of managerial decision-making. If it is "appropriate" pursuant to sec 1 to undertake such an appraisal, then it must be undertaken. It would no doubt be useful to provide some guidelines to management as to when it will or might well be appropriate but, in the meantime, common sense and good judgment must be the guide. Consideration of aspects of a case: The Tribunal's jurisdiction to determine a case cannot be circumscribed by the way that a party seeks to put or limit its case though, of course, it must be answered by reference to the evidence that has been adduced and the inferences that fairly follow from that evidence.

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Riquelme

## Entity

UN Secretariat

## Case Number(s)

UNDT/NY/2009/UNDT/NY/2009/046/JAB/2008/089

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

9 Jun 2010

## Duty Judge

Judge Adams

## Language of Judgment

English

French

## Issuance Type

Judgment

## Categories/Subcategories

Appointment (type)

Temporary appointment

Non-renewal

Performance management

Performance evaluation

## Applicable Law

## Administrative Instructions

- ST/AI/2002/3