

UNDT/2010/213, Jennings

UNAT Held or UNDT Pronouncements

The Applicant asserts, *inter alia*, that she was harassed and discriminated against and that her performance evaluation process was not in accordance with the established procedures. UNDT found that the decision not to renew the Applicant's contract was based on lawful grounds and was not vitiated by any improper considerations or procedural errors. UNDT found, however, that there was an unreasonable delay in the rebuttal process. Although this delay had no bearing on the lawfulness of the contested decision, it caused emotional distress to the Applicant, for which she shall be compensated. Outcome: Respondent was ordered to pay USD6,000 as compensation for emotional distress caused by delay in the rebuttal process. All other pleas were rejected.

Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member in the Procurement Division of the Department of Management, contests the decision to separate her from service following the non-renewal of her fixed-term appointment.

Legal Principle(s)

Requests for management evaluation: Requests for administrative review and management evaluation are mandatory first steps in the appeal process.

Performance-based non-renewal: If the Administration decides not to renew an appointment on the grounds of poor performance, the Tribunal has to verify if the Administration has complied with the relevant procedures and whether there was sufficient basis for the decision. If this decision was reasonably made on the material available and was not affected by any significant irrelevant matter or the omission of a significantly relevant consideration or by 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 Organisation. Application of ST/AI/2002/3 to staff on contracts of less than one year: Although the Administration is not required to evaluate performance of staff on appointments of less than one year under the provisions of ST/AI/2002/3, once the procedures under ST/AI/2002/3 are triggered, they must be followed through. Performance shortcomings: As soon as performance shortcomings are identified, appropriate steps to rectify the situation should be taken, in consultation with the staff member. Accordingly, performance improvement measures may be instituted based on the ongoing performance evaluation, including mid-point review, and prior to the finalisation of the e-PAS report. Rebuttal: Rebuttal proceedings constitute part of the performance evaluation process and must be completed with maximum dispatch. Outcome of the rebuttal process: Rebuttal panels make a binding determination of the appropriate performance rating and make a notation on the final appraisal section of the e-PAS form, marking any change in the rating as a result of the rebuttal. The rebuttal panel's report is placed on the staff member's file and the rating resulting from the rebuttal process cannot be appealed.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Jennings

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2009/097

Tribunal

UNDT

Registry

New York

Date of Judgement

9 Dec 2010

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Non-renewal

Performance management

Performance evaluation

Applicable Law

Administrative Instructions

- ST/AI/2002/3

UNDT RoP

- Article 28

UNDT Statute

- Article 2.1

Related Judgments and Orders

UNDT/2009/002

UNDT/2009/080

UNDT/2010/107

UNDT/2010/133

UNDT/2010/161

UNDT/2010/193

2010-UNAT-061