

UNDT/2011/211, Gehr

UNAT Held or UNDT Pronouncements

The Tribunal observes that the Applicant's claims concerning the decision to take into consideration events post-dating 31 March 2010 and the decision not to allow him to rebut his performance appraisal became moot and it considers that he failed to show that he was still suffering any injury because of these reversed decisions. It further notes that the rebuttal process is still pending and it therefore rejects as premature the Applicant's claims concerning the decision to apply ST/AI/2002/3 and the decision to carry out a single appraisal. It also rejects his claims of bad faith, abuse of authority, harassment and retaliation given that these claims are based on comments or individual ratings contained in his performance appraisal, which cannot be deemed final. Lastly, the Tribunal rejects as unsubstantiated the Applicant's contention that he was not informed about the applicable procedure. Management evaluation: The Administration's non-compliance with the 45-day period does not affect an applicant's right to file an application with the Tribunal. Mootness: In cases where the Administration reverses the contested decision during the proceedings before the Tribunal, the applicant's allegations may become moot. This is normally the case if the alleged unlawfulness is eliminated and, unless the applicant can prove that he or she still sustains an injury for which the Tribunal can award relief, the case should be considered moot. Receivability/administrative decision: It would be inconsistent with its standard of review to allow the Tribunal to interfere with the review of a performance appraisal before a final rating resulting from the rebuttal process has been given.

Decision Contested or Judgment/Order Appealed

The Applicant challenged a series of decisions taken in relation to his 2009-2010 performance appraisal, namely, the decision to carry out a single appraisal, the decision to take into consideration events post-dating 31 March 2010, the decision not to allow him to rebut his performance appraisal and the failure to answer his queries concerning the applicable procedure. He also alleged bad faith, abuse of

authority, harassment and retaliation on the part of his reporting officers. After he filed his application with the Tribunal, the Administration prepared a revised version of his performance appraisal, which no longer referred to matters post-dating 31 March 2010, and gave the Applicant an opportunity to rebut the appraisal.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Gehr

Entity

UNODC

Case Number(s)

UNDT/GVA/2011/004

Tribunal

UNDT

Registry

Geneva

Date of Judgement

13 Dec 2011

Duty Judge

Judge Laker

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Subject matter (ratione materiae)

Performance management

Performance evaluation

Standard of review (judicial)

Applicable Law

Administrative Instructions

- ST/AI/2002/3

Staff Rules

- Rule 11.2(d)

UNDT Statute

- Article 10.6
- Article 2.1
- Article 8.1(d)(i)(b)

Related Judgments and Orders

2010-UNAT-013

2010-UNAT-030

2010-UNAT-084

UNDT/2010/180

UNDT/2011/013

UNDT/2011/142

UNDT/2011/178