

UNDT/2012/192, Gakumba

UNAT Held or UNDT Pronouncements

The events leading up to the Applicant's separation from service do not amount to a termination. The Applicant was in fact wrongly placed on Special Leave With Full Pay from 21 May 2004 to 31 December 2004. UNDP guidelines on Results and Competency Assessment do not confer any power on the Resident Representative to place a staff member on special leave with full pay for unsatisfactory performance as was done by the RR in this case. Not only was the decision to place the Applicant on SLWFP illegal, it was a disguised disciplinary measure designed to humiliate and embarrass the Applicant to the greatest extent possible. UNDP rules provide clear procedures which must be adhered to in determining the veracity of any allegations of misconduct made against a staff member. Where these procedures have not been complied with, there can be no basis for concluding that such allegations have been substantiated. The Tribunal finds that there were due process and procedural violations in the Applicant's performance evaluations leading up to the decisions to downgrade his performance evaluation from "fully met expectations" to "unsatisfactory" and in the RCA Panel's decision to give the Applicant a rating of "partially met expectations" which provided the basis for not renewing his appointment. The RR abused his authority to arbitrarily influence the non-renewal of the Applicant's fixed-term appointment.

Decision Contested or Judgment/Order Appealed

In a letter to the Applicant and to all UNDP Rwanda staff members dated 21 May 2004 the UNDP Resident Representative (RR), terminated the Applicant's employment effective immediately. From that date the Applicant was not allowed to access the UNDP Rwanda offices but he continued to receive his salary and entitlements until the expiry of his contract on 31 December 2004. The Applicant is challenging the decision not to renew his appointment which he argues legally amounts to a termination of contract.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Gakumba

Entity

UNDP

Case Number(s)

UNDT/NBI/2010/19/UNAT/1587

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

6 Dec 2012

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Abuse of authority

Non-renewal

Performance management

Performance evaluation

Separation from service

Applicable Law

Former Staff Regulations

- Regulation 5.2

Former Staff Rules

- Rule 105.2

Other UN issuances (guidelines, policies etc.)

- UNDP Policy on Workplace Harassment, Sexual Harassment and Abuse of Authority (2005)