

UNDT/2013/051, Das

UNAT Held or UNDT Pronouncements

The Tribunal rejected the Respondent's argument that this was a case of non-renewal and found that the Applicant's fixed-term contract was terminated on the grounds of alleged unsatisfactory performance for the period of 2007 to 2010. The UNDT found that the performance evaluation report ("PER") for 2010 cannot be lawfully relied upon to justify the finding of unsatisfactory performance as the Applicant had no opportunity of a meaningful rebuttal. Therefore, the termination of the Applicant's contract on the basis of poor performance was unlawful. The UNDT also found that no proper investigation was carried out regarding the Applicant's claims of harassment and abuse of authority. The UNDT ordered rescission of the Applicant's PER for 2010 and ordered its removal from her personnel files. The UNDT ordered that the Applicant shall be paid USD20,000 as compensation for unlawful termination, loss of chance of further employment, and emotional distress. The UNDT further ordered that the Applicant shall be paid any remaining termination benefits and entitlements, plus retroactive interest from 1 August 2010.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to end her employment with the United Nations Children's Fund ("UNICEF"). The Applicant submitted that she was subjected to harassment and abuse of authority and that the decision to end her employment based on allegedly poor performance was improper.

Legal Principle(s)

Termination and non-renewal: Non-renewal and termination are two distinct procedures resulting in different implications and consequences for the affected staff member, including consequences relating to future employment. Once management puts into effect, applies, and completes the termination procedures, it

is inappropriate to attempt to reverse the course of action ex post facto. Performance-based ending of a contract, performance issues as misconduct: The ending of a contract based on poor performance may be dealt with in different ways depending on the culpability of the staff member. One may view poor performance as fault-based or even as misconduct where an employee may be culpable, or as incapacity due to other reasons over which a staff member may have little control (cf UNDT/2011/104). Rebuttal of performance evaluation: Effective rebuttal mechanism is an integral part of the performance evaluation process and, in the absence of meaningful access to such mechanism, no reliance can be placed on the performance evaluation.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Das

Entity

UNICEF

Case Number(s)

UNDT/NY/2011/003

Tribunal

UNDT

Registry

New York

Date of Judgement

14 Mar 2013

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-renewal

Performance management

Performance evaluation

Rebuttal

Separation from service

Applicable Law

UNICEF Administrative Instructions

- CF/AI/2010-001

Related Judgments and Orders

UNDT/2010/044

UNDT/2010/148

UNDT/2010/194

UNDT/2010/213

UNDT/2011/104

UNDT/2013/006

UNDT/2013/038

UNDT/2013/039

2010-UNAT-059

2010-UNAT-095

2011-UNAT-184