

# UNDT/2016/068, Akhtab

## UNAT Held or UNDT Pronouncements

The Tribunal found that after a first positive evaluation in 2012, the Applicant's first reporting officer had put the Applicant on notice in respect of what she perceived as shortcomings in the Applicant's performance, at the beginning of the performance cycle 2013/14. It found, however, that the Rebuttal process was marked by serious procedural flaws and ruled that the final decision on the rebuttal, confirming the Applicant's PAS rating for the cycle 2013, was illegal and could not stand. Therefore, and since the decision not to extend the Applicant's appointment beyond 30 June 2014 was taken on the basis of the outcome of a fundamentally flawed rebuttal process, the Tribunal concluded that the non-renewal decision on the grounds of the Applicant's poor performance was equally illegal, and decided to rescind it. The Tribunal set the amount of alternative compensation at six months net base salary and awarded USD3000 for moral damages. It further ordered that the rebuttal and the Applicant's Performance Evaluation Report be expunged from the Applicant's Official Status File. Right to effective rebuttal: The right to an effective rebuttal is an integral part of the performance evaluation process and the Administration cannot place reliance on a PAS if an Applicant has been deprived of a meaningful opportunity to rebut it. Under the applicable (UNICEF) administrative instruction, the authority to determine whether a rebuttal statement fulfills the formal requirements under the terms of the instruction lies exclusively on the Secretary of the Rebuttal Panel. A determination made by the Rebuttal Panel that the formal requirements were not met is, thus, ultra vires. Rebuttal process and principle of natural justice: To allow an Applicant to exercise an effective rebuttal, it is essential that she/he have been given all pertinent documents provided to the Rebuttal Panel, and thus to give the staff member the possibility to respond to all relevant material before the Rebuttal Panel. This is even more so when the reason for a Rebuttal Panel to uphold the rating given by a supervisor is that the staff member did not provide enough evidence to allow a conclusion to the contrary. However, if an administrative instruction does not foresee that the supervisor's response to the rebuttal statement be shared with the staff member, this is an express regulatory exclusion of a due process right to answer matters that may be said against a person. Being thus expressed, the failure to provide such to a staff member cannot be the subject of a complaint. On the other hand, however, for reasons of due process, procedural fairness and natural justice, any relevant documents referring to the Applicant's performance, that were established prior to the rebuttal statement, and which were made available to the Rebuttal Panel, had to be shared with the Applicant for the purpose of the rebuttal. Non-renewal based on the outcome of a rebuttal marked by serious procedural flaws: The final decision on a rebuttal marked by serious procedural flaws is illegal and cannot stand. Therefore, a non-renewal decision taken on the basis of the outcome of such a fundamentally flawed rebuttal process is equally illegal, and has to be rescinded.

## Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member of UNICEF contests the decision not to renew her fixed-term appointment on the grounds of poor performance. The Applicant filed a rebuttal against the performance evaluation and the Administration extended the Applicant's appointment pending its finalization. The Rebuttal Panel found that the Applicant had not provided sufficient information to allow it to change the rating given by the FRO.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Both financial compensation and specific performance.

Full judgment

[Full judgment](#)

Applicants/Appellants

Akhtab

Entity

UNICEF

Case Number(s)

UNDT/GVA/2014/68

Tribunal

UNDT

Registry

Geneva

Date of Judgement

6 Jun 2016

Duty Judge

Judge Downing

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-renewal

Reason(s)

Performance management

Performance evaluation

Rebuttal

Applicable Law

Staff Regulations

- Regulation 4.5(c)

Staff Rules

- Rule 4.13

UNDT Statute

- Article 10.5

UNICEF Administrative Instructions

- CF/AI/2009-005
- CF/AI/2010-001
- CF/AI/2011-001

Related Judgments and Orders

2013-UNAT-298

2011-UNAT-153

2015-UNAT-500

2015-UNAT-534  
2014-UNAT-421  
2011-UNAT-155  
2015-UNAT-501  
2013-UNAT-387