

UNDT/2017/086, Lewis

UNAT Held or UNDT Pronouncements

The Tribunal held that the Applicant's claims relating to the performance evaluation of his FRO and his SRO's theoretical negative influence of future performance appraisals to the Applicant's detriment were not receivable because they either did not form part of the terms and conditions of his employment or had no direct legal consequences on his terms and conditions of employment. With respect to the negative comments and rating of the SRO in his 2015-2016 e-PAS, the Tribunal noted the successful roll-back of the e-PAS and concluded that there no longer existed a live issue because he had been granted the remedy he sought. Further, since the Applicant failed to substantiate his allegation that his SRO had created a hostile working environment, the Tribunal dismissed this claim.

Decision Contested or Judgment/Order Appealed

The Applicant contested the negative "rating and comments" of his Second Reporting Officer in his 2015-2016 e-PAS.

Legal Principle(s)

1) Contestable decisions within the meaning of art. 2.1 of the UNDT Statute must form part of the terms and conditions of employment of an applicant and must have direct legal consequences on those terms and conditions of employment. 2) Where the Administration rescinds the contested decision during the proceedings, the applicant's allegations may be 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. 3) An application should set out clearly the facts upon which an applicant is relying when he/she claims that there was "animus", "bad faith maneuvers" and a "hostile working environment". An applicant cannot, at a later

stage, bring in witnesses during a hearing to speak to facts that he/she has not pled in his/her application.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Lewis

Entity

UNSMIL

Case Number(s)

UNDT/NBI/2017/002

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

16 Nov 2017

Duty Judge

Judge Izuako

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Performance management

Applicable Law

Administrative Instructions

- ST/AI/2010/5

UNDT Statute

UNAT Statute

- Article 2.1(a)