

# **UNDT/2019/134, Fairweather**

## **UNAT Held or UNDT Pronouncements**

An inordinate delay in the rebuttal process of an appraisal may be a receivable ground for contesting an administrative decision, but is not an administrative decision, unless the Applicant demonstrates that it had, by itself, a direct and negative impact on a staff member's conditions of service. Thus, the Applicant needed to show that the delay in conducting the rebuttal process on her rating "partially meets performance expectations", by itself, had a direct and negative impact on her conditions of service. In this regard, the Applicant claimed that this delay negatively affected her eligibility for the long-service step and for the YPP exam, but the Tribunal rejected the Applicant's claims. Concerning eligibility for the long-service step, the relevant policy provides that the decision whether to grant or deny the long-service step is not part of the rebuttal process and its denial is a separate administrative decision that should be contested separately. Since there was no evidence that the Applicant proceeded to challenge such decision concerning the long-service step at the relevant time, this claim was considered not receivable as time-barred. With regard to the Applicant's eligibility for the YPP exam, under the relevant administrative instructions, any decision to find a staff member ineligible for the YPP exam also constitutes a separate administrative decision that should be contested separately. Since there was no evidence that the Applicant challenged such decision timely, this claim was also found to be not receivable as time-barred. Except the Applicant's eligibility for long-service step and for the YPP exam, the Applicant did not clearly identify any other direct consequences stemming from her performance appraisals and therefore, the Tribunal considered that there were no other issues for the Tribunal to review.

## **Decision Contested or Judgment/Order Appealed**

The decision not to take a timely action to complete the rebuttal process in a reasonable timeframe.

## Legal Principle(s)

The key characteristics of an administrative decision subject to judicial review is that the decision must “produce direct legal consequences” affecting a staff member’s terms or conditions of appointment. The delay in the completion of certain procedures in itself is not an administrative decision subject to judicial review. The Appeals Tribunal distinguished the absence of a response to a staff member’s request, which could constitute an implied administrative decision, from the case in which the requested process began and yet suffered inordinate delay. An overall satisfactory performance appraisal, despite the inclusion of some negative comments, does not constitute an administrative decision subject to judicial review since such performance appraisal, by itself, does not have a direct and negative impact on a staff member’s rights. It is only the “administrative decisions that stem from any final performance appraisal and that affect the conditions of service of a staff member” that are reviewable by the Tribunal.

## Outcome

Dismissed as not receivable

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Fairweather

## Entity

OHCHR

## Case Number(s)

UNDT/NY/2017/101

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

5 Aug 2019

## Duty Judge

Judge Adda

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

## Applicable Law

Administrative Instructions

- ST/AI/2010/5

Information Circulars

Staff Rules

- Rule 11.2(c)

UNDT Statute

UNAT Statute

- Article 2.1(a)

## Related Judgments and Orders

2014-UNAT-460

2014-UNAT-481

2017-UNAT-786

UNDT/2018/010

2018-UNAT-865

2011-UNAT-152

2015-UNAT-546