

# UNDT/2021/080, Mbogol

## UNAT Held or UNDT Pronouncements

The Applicant's challenge against her first reporting officer's refusal to amend her ePAS was found to be an administrative decision because the contradictions between some of the ratings and comments in the e-PAS were of such gravity that the decision would have merited rescission under Handy (UNDT/2020/030 and 2020-UNAT-1044). However, this claim failed for the lack of a timely management evaluation request. The Applicant's challenge against the non-renewal of her fixed-term appointment was found receivable. The Applicant's performance evaluation for 2016-2017 had an adverse effect on her conditions of employment in that it effectively eliminated her from the competition for an additional available post. Specifically, the rating given to her for the core value of "respect for diversity" was responsible for the non-renewal of the Applicant's appointment. However, notwithstanding reservations about the inconsistencies within other areas of the e-PAS, there was no basis to reject the rating for "respect for diversity" because the Applicant failed on the prong of "works effectively with people from all backgrounds". The oral and documentary evidence from the Applicant, her first reporting officer and other witnesses showed that her team was dysfunctional and that she was unable to work with the members of her team, nor with her supervisors. It was clear that in the face of work disagreements the Applicant took an intolerant and militant stance. Even though the Applicant denied the factual basis for a written complaint filed against her, including inappropriate tone and language, the tone of her communications lent credence to these allegations. The Tribunal found the tone of these communications undignified and unbecoming of a team leader at the P-4 level. Further, documents authored by the Applicant and submitted to the Tribunal employed the same inflammatory language and included attribution of falsification, fabrications and ulterior motives on the part of the FRO and the team members. These insinuations, which were not supported by objective facts, as well as the expressions used, showed disrespect for persons and fundamental disregard for differing points of view. It was therefore believable that during the period in question the Applicant had acted in a dismissive and disrespectful fashion toward her colleagues. The rating for respect for diversity, that the Applicant partially met performance expectations rightly indicated the existence of performance shortcomings. The Applicant failed to substantiate the claim that the Respondent failed to provide an alternative position for her.

## Decision Contested or Judgment/Order Appealed

The Applicant challenged: her first reporting officer's refusal to amend her e-PAS; the non-renewal of her contract; and the administration's failure to provide her with alternative employment.

## Legal Principle(s)

It would not be in accord with the regulatory framework if the Secretary-General was forced to renew the appointment of an unqualified staff member merely because there are procedural errors in the evaluation process, provided that the procedural errors are not so serious and substantial as to render the evaluation process unlawful or unreasonable or as to violate the due process rights of the staff member in question. The Tribunals are not limited to examining the process by which it was determined that performance was unsatisfactory; nor is it quite correct to contend that the UNDT may not reach its own conclusions concerning the performance of a staff member and to suggest that such would be "usurping the role" of the rebuttal panel. This review must accord deference to the Administration's appraisal of the performance of staff members, and cannot review de novo a staff member's appraisal, or place itself in the role of the decision-maker and determine whether it would have renewed the contract, based on the performance appraisal. The primary task is to decide whether the preferred and imposed performance standard was not manifestly unfair or irrational, whether it was known to the staff

member, whether the standard was not met and whether an adequate evaluation was followed to determine if the staff member failed to meet the required standard. There must be a rational and objective connection between the information available and the finding of unsatisfactory performance.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Mbogol

Entity

UNAMID

Case Number(s)

UNDT/NBI/2018/088

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

1 Jul 2021

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Performance management

Separation from service

Expiration of appointment (see also, Non-renewal)

Applicable Law

Administrative Instructions

- ST/AI/2010/5

UNDT Statute

UNAT Statute

- Article 2.1(a)