

# **2012-UNAT-253, Gehr**

## **UNAT Held or UNDT Pronouncements**

UNAT held that UNDT had not erred in concluding that the Administration's decision, to take into consideration in the context of the Appellant's 2009-2010 performance appraisal events post-dating 31 March 2010, was superseded by the Administration's subsequent change of approach. UNAT held that UNDT had correctly determined that the Appellant's claims in this regard had become moot. UNAT held that, in rendering the Appellant's complaint about the rebuttal issue moot considering the subsequent reversal of the decision of 24 November 2010, UNDT had failed to give sufficient weight to a central issue, namely the denial to the Appellant, for a period of time, of the right to engage in a rebuttal process. UNAT awarded the Appellant compensation for the period he was denied his right of rebuttal. UNAT held that there was no merit in the contention that UNDT "dodged" its obligation to determine the single appraisal issue. On the manner in which UNDT dealt with claims of harassment, UNAT held that UNDT did not fail to exercise the jurisdiction vested in it, but rather acted within its jurisdiction in adopting such an approach, effectively leaving the door open to the Appellant to raise such matters before UNDT in the future. UNAT held that the Appellant had not put forward any argument sufficient to warrant consideration by UNDT (or by UNAT) that the contested decisions were taken based on or motivated by ill will or bad faith towards him or with the intention to harass him. UNAT held that UNDT's approach, in not considering further the issue regarding the Management Evaluation Unit's failure to comply with the 45-day period since it did not affect the Appellant rights or prejudice him, was not indicative of bias against the Appellant. UNAT held, regarding the claim of procedural flaw in UNDT's rejection of the Appellant's request to file additional information, that UNDT had broad discretion in ruling on the relevance of that evidence and that UNDT had committed no error. UNAT rejected the Appellant's claim that the proceedings before UNDT were not heard in public. UNAT held that the allegations of bias on the part UNDT were entirely without merit. The appeal was upheld only on the rebuttal issue to order the Secretary-General to pay the Appellant compensation equivalent to one month of his net base salary. UNAT affirmed the

UNDT judgment except with regard to the rebuttal issue.

## Decision Contested or Judgment/Order Appealed

The Applicant contested a number of decisions taken in relation to his 2009-2010 performance appraisal, namely the decision to carry out a single appraisal, the decision to take into consideration events which post-dated 31 March 2010, the failure to answer his queries concerning the applicable provisions and the decision not to allow him to rebut his appraisal. UNDT found, considering the Administration's rescission of the contested decision relating to the inclusion of events post-dating 31 March 2010 in the Applicant's 2009-2010 performance appraisal as well as the decision that the Applicant was not entitled to rebut his performance appraisal, that the Applicant's claim in these respects had become moot. UNDT considered the Applicant's claim regarding the Administration's decision to carry out a single performance appraisal for 2009-2010 and to apply ST/AI/2002/3 to this appraisal prematurely and rejected it as not receivable as the rebuttal process regarding his performance appraisal was still pending. UNDT rejected the Applicant's claim that the Administration had failed to answer his queries concerning the applicable procedures. Regarding the Applicant's harassment claim, UNDT noted that the Applicant's complaints were based on the performance appraisals that had been superseded and that his claim had, accordingly, become moot. UNDT also noted that the Applicant could not challenge the comments or the individual ratings given by his reporting officers in support of an overall rating that might be modified as a result of the rebuttal process. UNDT dismissed the Applicant's claim that he had been prejudiced by the Administration's failure to provide a timely response to his request for management evaluation. UNDT rejected the application, without prejudice to the Applicant's right to file a new application at a later stage upon the conclusion of the performance appraisal rebuttal process.

## Legal Principle(s)

An employee has the fundamental right to be heard in the context of a performance evaluation process. Irrespective of whether the appraisal is conducted inside or outside of ST/AI/2002/3, an employee has a fundamental right to put his/her case, in response to an employer's assessment of his/her performance. The right to have a rebuttal process is not mere procedural courtesy but a substantive right that all

employees are entitled to invoke.

## Outcome

Appeal granted in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Gehr

## Entity

UNODC

## Case Number(s)

2012-285

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

1 Nov 2012

## President Judge

Judge Faherty

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Harassment (non-sexual)

Non-renewal

Performance management

Performance evaluation

Rebuttal

Suspension of action / interim measures

Mootness

## Applicable Law

Administrative Instructions

- ST/AI/2002/3

Staff Rules

- Rule 11.2(d)

UNDT RoP

- Article 15.7
- Article 18.1

UNDT Statute

## Related Judgments and Orders

UNDT/2011/211

UNDT/2011/013

UNDT/2011/178