

# 2014-UNAT-400, Tadonki

## UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT rejected the request for an oral hearing since the issues for decision had been clearly defined by the parties' submissions. UNAT held that the Secretary-General had failed to persuade it that UNDT erred on a question of fact resulting in a manifestly unreasonable decision. UNAT held that it was correct to conclude that the Administration had acted unlawfully when it did not renew the staff member's appointment because there was not enough evidence to support a determination that the staff member had failed to perform his functions. UNAT concluded that the Administration's decision became arbitrary. UNAT held that, even though it did not necessarily share all the arguments that UNDT adopted in support of the conclusion that the non-renewal was tainted by extraneous factors or improper motives, the conclusion was not absurd or unreasonable since it was mainly based on the unlawful performance procedure. Regarding the compensation for material damages, UNAT vacated the UNDT judgment because there was no relevant interruption between the staff member's end of service with OCHA and the commencement of his new appointment with UNOPS and he had not established that he had in fact suffered loss of earnings. UNAT held that the nature of the non-renewed position, the context in which it was taken and the fact that the staff member was appointed to a new position, indicated non-permanent damage whose relevance should not be considered out of proportion. UNAT reduced the sum awarded by UNDT for non-pecuniary damages to USD 10,000, finding the previous sum awarded excessive. UNAT granted the appeal in relation to the award of costs against the Administration since the impugned judgment erred on a question of law by qualifying as abuse the simple introduction of motions, irrespective of whether these were subsequently granted. UNAT affirmed the illegality of the performance appraisal for 2008-2009 and related statements in the personnel file as established by UNDT. UNAT upheld the appeal in part and vacated the UNDT judgment in part.

Accountability Referral: UNAT affirmed the UNDT referral for possible action to enforce accountability. UNAT held that there was no reason for UNAT to interfere

with UNDT's discretion regarding the referral of certain staff members or former staff members to the Secretary-General for accountability purposes.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to renew his appointment. UNDT found that the Office of Coordination of Human Affairs (OCHA) incorrectly considered a few unsubstantiated complaints made against the Applicant without investigating them and that there was no evidence that the Applicant had failed to perform his functions. UNDT found that the failure to follow performance appraisal rules had resulted in denial of due process. UNDT found that the decision of OCHA management not to renew the Applicant's contract was tainted by extraneous factors or improper motives and the non-renewal was unlawful. UNDT found that the requirements of due process and fairness had been disregarded by OCHA in relation to the way the Applicant was separated from service. UNDT ordered payment of compensation for material and moral damages and awarded costs against the Secretary-General in the amount of USD10,000. UNDT ordered the implementation of the recommendations of the Panel on Discrimination and Other Grievances' (PDOG), which were an official apology from senior OCHA management to the Applicant and the conduct of a formal investigation into the harassment exercised against the Applicant by the United Nations Resident Coordinator and Humanitarian Coordinator (RC/HC). UNDT also ordered that the Applicant's performance appraisal 2008-2009 be nullified and that all adverse material in relation to it be purged from the Applicant's personnel file.

## Legal Principle(s)

It is imperative that the Administration adheres to the rule of law and standards of due process in its decision-making. If the Administration does not follow the clear norms which apply to evaluate staff members' performance, it risks arbitrariness and bears the burden of proof that an evaluation reached after an irregular procedure is nonetheless objective, fair and well based. UNDT has a discretionary power to refer certain individuals to the Secretary-General for accountability purposes, but such an exercise of discretion cannot constitute a ground for appeal since the referral only implies a communication from UNDT to the Secretary-General for him or her to determine the course of action to adopt or not to adopt as a sequel

to the referral.

## Outcome

Appeal granted in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Tadonki

## Entity

OCHA

## Case Number(s)

2013-449

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

2 Apr 2014

## President Judge

Judge Simón

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Pecuniary (material) damages

Non-renewal

Performance management

Performance evaluation

Referral for accountability

## Applicable Law

UNAT Statute

- Article 2(e)

UNDT Statute

UNRWA DT Statute

- Article 10.8

## Related Judgments and Orders

UNDT/2013/032

2012-UNAT-266