

# 2014-UNAT-420, Oummih

## UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that UNDT erred in excluding documents from the OSF and by ordering compensation for alleged damages not related to any established illegality. UNAT held that, even if the irregularities and delays in the appraisal procedure were so serious that they rendered the ... evaluations meaningless, it did not mean that they should not be kept in the OSF. UNAT held that they, together with the corrective substitute reports or decisions, should all be kept in order to explain the whole process. UNAT, therefore, held that UNDT had erred in excluding the initial evaluations from the staff member's OSF based on its conclusion that they did not legally exist, despite acknowledging that the applicable administrative instructions required their inclusion. UNAT held that UNDT did not establish that the administrative instructions, which required the inclusion of the evaluation reports and documents prepared by supervisors, were in breach of higher norms. UNAT held that UNDT should not have refused to apply them, and, as such, its decision to remove those reports and documents could not be maintained. UNAT upheld the appeal and vacated the UNDT judgment.

## Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant contested her performance evaluations for the periods 2009-2010 and 2010-2011, as well as the decisions to place those evaluations on her OSF. UNDT held that ST/AI/2002/3 required the inclusion of the brief written response of the head of department or office to the rebuttal statement submitted by the staff member, the evaluation report, and the panel report, whereas for 2010-2011, ST/AI/2010/5 specified only that the rebuttal panel report and the original evaluation are to be placed on the file. Accordingly, UNDT found that the Applicant was entitled to request that no other documents concerning her evaluation should be placed on her OSF. With respect to the two initial, unsatisfactory ratings, UNDT ordered their removal, together with related documents prepared by the Applicant's supervisors, from her OSF, stating that only the rebuttal panel reports should remain, as the delays and irregularities in the procedure meant the initial appraisals had no legal existence. UNDT held, with respect to moral damages, that the rebuttal panel's satisfactory ratings compensated the Applicant in part, but that the uncertainty she was left with as to the quality of her work, and the resultant strain on her relationship with her first reporting officer, justified further monetary compensation.

## Legal Principle(s)

Under the applicable legislative framework as set out in ST/AI/2002/3 and ST/AI/2010/5, it is mandatory for the Administration to keep in the personnel file both the impugned appraisal and reports and the rebuttal outcome. The placement on the Official Status File (OSF) of impugned evaluations that are subsequently declared illegal or vacated cannot harm a staff member, since the corrective and complementary rebuttal report is simultaneously filed. In so doing, the entire administrative history relating to the evaluation is set out chronologically.

## Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Oummih

Entity

OAJ

Case Number(s)

2013-473

Tribunal

UNAT

Registry

New York

Date of Judgement

2 Apr 2014

President Judge

Judge Simón

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Performance management

Performance evaluation

Rebuttal

Applicable Law

Administrative Instructions

- ST/AI/2002/3
- ST/AI/2010/5

Related Judgments and Orders

UNDT/2013/044

2010-UNAT-095