

2014-UNAT-421, Das

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that, at the time UNICEF sought to make the correction from termination to non-renewal, the staff member was already separated from service, and it was, therefore, too late to reverse the decision. UNAT affirmed UNDT's finding that the staff member's separation from service was termination on grounds of alleged unsatisfactory performance and that the Administration's decision to reverse the decision was untimely and ineffective. UNAT held that there was no reason to reverse UNDT's finding that the staff member had been deprived of a meaningful opportunity to rebut her PER for 2010 and that, therefore, the PER could not be relied on. UNAT affirmed UNDT's finding that the termination of staff member's appointment was unlawful because her unsatisfactory performance had not been established. UNAT affirmed UNDT's conclusion that no proper investigation into the complaints of harassment and abuse of authority had taken place. UNAT held that there was no error in UNDT's decision that the circumstances of the case merited a compensatory award. UNAT, however, held that the complaint of harassment should not be treated as a separate circumstance and set aside the compensation granted for emotional distress. UNAT held that there was no provision for rescission or removal of a PER in the Staff Regulations and Rules and, therefore, set aside the orders of rescission and removal of the 2010 PER. Subject to the variations in damages, UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant contested the decision to terminate her appointment and challenged UNICEF's inaction on her complaints of harassment and abuse of authority. UNDT ordered that the Applicant's PER for 2010 be rescinded and removed from her personnel files, that she be paid a total compensation for the unlawful termination of her service and for the emotional distress she suffered and that she be paid any outstanding termination benefits and entitlements with

retroactive interest.

Legal Principle(s)

In situations where the Administration finds that it has made an unlawful decision or an illegal commitment, it is entitled to remedy that situation, but it must be timely done. Termination can only be based on unsatisfactory performance if the staff member was granted a meaningful opportunity to rebut the Performance Evaluation Report (PER). There is no provision in the Staff Regulations and Rules that allows removing a PER from a staff member's personal file.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Das

Entity

UNICEF

Case Number(s)

2013-475

Tribunal

UNAT

Registry

New York

Date of Judgement

2 Apr 2014

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Performance management

Performance evaluation

Rebuttal

Termination (of appointment)

Unsatisfactory service

Applicable Law

UNICEF Administrative Instructions

- CF/AI/2010-001

Related Judgments and Orders

UNDT/2013/051

2012-UNAT-266

UNDT/2011/062

2013-UNAT-367