

# 2014-UNAT-483, Mashhour

## UNAT Held or UNDT Pronouncements

UNAT considered the Secretary-General's appeal. UNAT held that UNDT erred by concluding that ST/AI/2002/3 applied to UNICEF, as the UNICEF Handbook establishes the procedure that a staff member must follow should they wish to rebut the content of their performance report. UNAT noted that the principle articulated in *Villamorán v. Secretary-General of the United Nations* (2011-UNAT-160), which holds that administrative issuances have greater legal authority over manuals such as the UNICEF Handbook, only where there is a conflict between guidelines and manuals and a properly promulgated administrative issuance, was not applicable in this case. UNAT also held that UNDT erred by concluding that the rights of Ms Mashhour to a rebuttal, as set forth in ST/AI/2002/3, were unduly restricted by UNICEF. UNAT noted that, as Ms Mashhour elected not to file a formal complaint of harassment and/or abuse of authority, the Administration's conduct was legal, rational and correct. UNAT held that the procedure in the UNICEF Manuals did not violate the due process of Ms Mashhour's right to rebuttal. UNAT also held that UNDT erred in finding that the Ad-hoc Panel failed to properly address Ms Mashhour's claim of discrimination, noting that the Ad-hoc Panel properly investigated the allegations in accordance with their understanding of discrimination. UNAT held that UNDT erred in finding that Ms Mashhour was a victim of workplace harassment, as UNDT's conclusion was not supported by the evidence and that UNICEF's Deputy Executive Director properly exercised his discretion to accept the recommendations of the Ad-hoc Panel. UNAT upheld the appeal and set aside the UNDT judgment, including setting aside the order to expunge Ms Mashhour's 2008 PER and 2009 PER from her personnel file.

## Decision Contested or Judgment/Order Appealed

Ms Mashhour claimed that her 2008 Performance Evaluation Report (PER) and the rebuttal procedure violated her right to due process and requested that it be expunged from her personnel file. She also submitted a formal rebuttal of her 2009 PER, referencing issues of harassment and abuse of authority. UNDT found that Ms

Mashhour was denied due process when she sought to rebut her 2008 PER and 2009 PER. UNDT also found that the rebuttal process was “flawed,” noting that the Ad-hoc Panel, established to review the Performance Evaluation Rebuttal Statements of Ms Mashhour, the Child Protection Officer and the Egypt Country Office, in line with Settlement Agreement UNDT/NBI/2009/45, failed to address the issue of discrimination. UNDT found that Ms Mashhour had been subjected to a “hostile and harassing” work environment and “poor and objectionable” management on the part of her first reporting officer. UNDT ordered the Secretary-General to pay Ms Mashhour material and moral damages and to expunge her 2008 and 2009 PERs from her personnel records.

## Legal Principle(s)

Administrative issuances have greater legal authority over manuals such as the UNICEF Handbook, only where there is a conflict between guidelines and manuals and a properly promulgated administrative issuance. Neither UNDT nor UNAT have the authority to amend any regulation or rule of the Organisation which it finds restrictive, though it may comment on it. It is within the competence of the UNDT to examine allegations of harassment, but not embark on a de novo investigation into a complaint of harassment.

## Outcome

Appeal granted

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Mashhour

## Entity

UNICEF

## Case Number(s)

2014-557

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

17 Oct 2014

## President Judge

Judge Adinyira

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Investigation (see category: Investigation)

Investigation

Performance management

Rebuttal

## Applicable Law

Administrative Instructions

- ST/AI/2002/3

Secretary-General's bulletins

- ST/SGB/2009/4

UNAT Statute

- Article 2

## Related Judgments and Orders

UNDT/2013/133

2011-UNAT-123

2010-UNAT-033

UNDT/2013/063

2013-UNAT-385

2011-UNAT-160

UNDT/2011/126