

2015-UNAT-571, Weerasooriya

UNAT Held or UNDT Pronouncements

UNAT held that the UNDT's finding regarding the application of ST/AI/2002/3, namely that as the provisions of the UNFPA Separation Policy contravened the ones in ST/AI/2002/3, the latter should apply, was an error of law and fact as ST/AI/2002/3 was not applicable to UNFPA. UNAT rejected UNDT's finding that the timing of the decision to terminate the Appellant's permanent contract for unsatisfactory service meant that a new procedure should have been initiated based on the new period of reference. UNAT held that it would be unreasonable to require the Administration to restart the termination process if a new performance appraisal is completed before a final termination decision is taken, which would potentially place the Administration in an endless cycle where it could never be in a position to terminate the appointment of a staff member. UNAT further held that legal certainty required administrative issuances to be applied in a predictable manner and once the procedure foreseen in the UNFPA Separation Policy was initiated, it should be followed through. UNAT held that UNDT erred in finding that the separation was unlawful as there was no formal request for rebuttal or formal report of harassment to be resolved. Noting that the Appellant was given a reasonable opportunity to improve her performance and that her performance ratings from 2006 to 2008 justified her separation from service, UNAT held that the impugned decision constituted a reasonable and lawful exercise of discretion in accordance with the UNFPA Separation Policy and that due process was adhered to by the Administration. UNAT held that the separation was lawful and UNDT erred in rescinding the termination of the Appellant's appointment and awarding compensation. UNAT allowed the appeal and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the termination of her appointment for unsatisfactory performance. UNDT found for the Applicant.

Legal Principle(s)

Administrative issuances shall not apply to the separately administered funds, organs and programmes of the UN, unless otherwise stated therein, or unless the separately administered funds, organs and programmes have expressly accepted their applicability.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Weerasooriya

Entity

UNFPA

Case Number(s)

2014-663

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Oct 2015

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Termination (of appointment)

Unsatisfactory service

Applicable Law

Administrative Instructions

- ST/AI/2002/3

Other UN issuances (guidelines, policies etc.)

- UNFPA Staff Separation Policy

Secretary-General's bulletins

- ST/SGB/2009/4

Staff Regulations

- Regulation 9.3(a)(ii)

Staff Rules

- Rule 9.6(c)(ii)
- Rule 9.6(h)

Related Judgments and Orders

UNDT/2014/110

2015-UNAT-500

2014-UNAT-421