

# **2018-UNAT-865, Gnassou**

## **UNAT Held or UNDT Pronouncements**

UNAT considered whether UNDT erred in law or fact resulting in a manifestly unreasonable decision when it found that i) there was no error of procedure stemming from the delay in completing the comments on the Appellant's rebuttal statement; and ii) the Appellant's claim regarding the assessment and findings of the rebuttal panel together with her final performance appraisal did not result in a challengeable administrative decision. UNAT found that, because no explanation was provided for the initial and relevant delay, UNDT erred in concluding that the reasons given by the administration constituted a satisfactory explanation and that the excessive delay was a violation of the Appellant's rights. However, UNAT noted that the violation of the Appellant's rights did not, of itself, entitle her to an award of damages. UNAT held that there was no evidence that the Appellant suffered any harm as a result of the violation and accordingly there are no legal grounds that can justify an award of compensation. UNAT noted that the Appellant never previously challenged her placement on a PIP and agreed with the Secretary-General that this ground of appeal was not receivable. UNAT agreed with UNDT's decision not to order the removal of the documents from the Appellant's OSF but on different reasoning. UNAT noted that an appealable administrative decision does not require an element of discretion and that it was mandatory for the administration to keep the impugned appraisal and reports and the rebuttal outcome in the personnel file. UNAT found the application receivable, but not meritorious. UNAT further held that the Appellant made an unsupported request for relief and did not demonstrate any exceptional circumstances justifying the removal of the relevant documents from her OSF. UNAT denied her request and dismissed the appeal in its entirety.

## **Decision Contested or Judgment/Order Appealed**

The Applicant contested the findings of the rebuttal panel concerning her 2014-2015 performance appraisal and MONUSCO's decision to place the report of the rebuttal panel in her OSF. UNDT rejected the Applicant's contention that the delay, in this

case, constituted an error of procedure. UNDT also rejected the Applicant's challenge to the assessment and findings of the rebuttal panel on the ground that she had not shown that the findings of the rebuttal panel together with her final performance appraisal resulted in an administrative decision to her detriment. UNDT held that the act of placing the rebuttal report in the Applicant's OSF was an administrative requirement and not an appealable administrative decision. UNDT dismissed the application in its entirety.

## Legal Principle(s)

Not every violation of a staff member's right will give rise to an award of compensation and a staff member is entitled to compensation only where they have suffered damage as a result of the violation. A PIP is merely a preliminary step instituted to address a staff member's shortcomings during a performance cycle and such actions are not administrative decisions subject to appeal. The act of placing the rebuttal report in a staff member's official status file was an administrative requirement and not an appealable administrative decision. An appealable administrative decision does not require an element of discretion and may be receivable by UNAT.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Gnassou

## Entity

MONUSCO

## Case Number(s)

2018-1155

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

26 Oct 2018

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Jurisdiction / receivability (UNAT)

Appeal

Performance management

Rebuttal

## Related Judgments and Orders

UNDT/2018/010