

2019-UNAT-900, El Sadek

UNAT Held or UNDT Pronouncements

With respect to the Appellant's appeal as it pertained to his 2016 performance evaluation and OTI, UNAT held that UNRWA DT did not err on a question of law or fact resulting in a manifestly unreasonable decision, nor did it commit an error in procedure such as to affect the outcome of the case. UNAT held that the issue of the e-PERs of the other staff members was not raised before UNRWA DT and, therefore, was not receivable. UNAT held that the reopening of the 2016 e-PER did not affect the overall performance evaluation, which was maintained as "fully meets" expectations, and therefore this decision did not affect the terms and conditions of the Appellant's contract and it was therefore not an administrative decision subject to judicial review. UNAT held that UNRWA DT was correct in finding that the procedural irregularities were not serious enough to vitiate the outcome of the process. UNAT held that UNRWA DT did not err when it found that UNRWA had reasonably and adequately exercised its discretion in terminating the Appellant's appointment. UNAT dismissed the appeal and affirmed the UNRWA DT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested: (i) the decision to reopen his 2016 electronic Performance Evaluation Report (e-PER) and place him on an Opportunity to Improve (OTI) process, which UNRWA DT found not to be receivable; and (ii) the decision to terminate his appointment for poor performance, which UNRWA DT dismissed as based on well-documented performance issues.

Legal Principle(s)

An appellant cannot introduce, for the first time on appeal, an issue that was not raised either in his request for decision review or before the first instance tribunal. If a downgrade of one or more competencies in a performance appraisal does not

detract from the overall satisfactory rating, it does not affect the terms or conditions of employment.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

El Sadek

Entity

UNRWA

Case Number(s)

2018-1191

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Mar 2019

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Performance management

Performance evaluation

Separation from service

Termination of appointment (see also, Termination of appointment)

Termination (of appointment)

Unsatisfactory service

Applicable Law

UNRWA Personnel Directives

- PD A/23