

2019-UNAT-951, Allen

UNAT Held or UNDT Pronouncements

UNAT held that UNDT did not err that, in the circumstances of the complaints made and the importance of the Appellant's role in a difficult duty station, the Respondent was entitled to place the Appellant on Special Leave with Pay while it investigated the allegations against him. UNAT held that UNDT ought not to have relied upon Morsy (judgment No. 2013-UNAT-298), Assale (judgment No. 2015-UNAT-534), and Sarwar (judgment No. 2017-UNAT-757) as it did. UNAT noted that in the Appellant's case, not only was there a performance-related justification required to be established but no proper evaluation of the Appellant's performance had ever been done. UNAT held that UNDT was not entitled to dismiss the Respondent's failure to address the Appellant's performance issues as inconsequential. UNAT held that the Respondent was wrong to decide that the Appellant should suffer the contemporaneous sanction of separation in the form of non-renewal of his appointment and that this was a serious breach of the Respondent's obligations to formally assess and monitor the Appellant's performance. UNAT held that the Respondent's obligation was to postpone any non-renewal decision until that performance management process was completed. UNAT held that UNDT incorrectly interpreted and applied the "no-difference" principle of law. UNAT held that UNDT exceeded its remit and erred in law by substituting its own determination on the issue of poor performance in determining that the non-renewal based on poor performance was lawful, purportedly under the no-difference principle. UNAT upheld the appeal and reversed the UNDT judgment. UNAT rescinded the Respondent's non-renewal of the Appellant's appointment, alternatively awarded compensation equivalent to six months' net base salary, and directed the removal of any information from the Appellant's personnel file that was inconsistent with the terms of its judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the Secretary-General's decision to place adverse material in his personnel file without providing him with the opportunity to refute it, to place him on Special Leave with Pay, and not to renew his appointment upon expiration. UNDT rejected the Applicant's appeal.

Legal Principle(s)

The “no difference” principle of law provides that if the Tribunal concludes to a high standard that the outcome would have been inevitable even if the employer had acted in a lawful and procedurally correct manner, then an absence of due process will not avail the employee. UNDT may reach its own conclusions concerning the performance of a staff member without usurping the role of the employer, but only where there is sufficient material on which to base such conclusions.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Allen

Entity

UNOPS

Case Number(s)

2019-1248

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Oct 2019

President Judge

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Special leave (with or without pay)

Non-renewal

Performance management

Performance evaluation

Separation from service

Expiration of appointment (see also, Non-renewal)

Applicable Law

Laws of other entities (rules, regulations etc.)

Related Judgments and Orders

UNDT/2019/029

2017-UNAT-757

2019-UNAT-916