

# **UNDT/2022/042, Yazbek**

## **UNAT Held or UNDT Pronouncements**

Performance evaluation: The Tribunal must accord deference to the Administration's appraisal of the Applicant's performance, and considering that the Applicant mostly does not dispute the underlying facts of the finding of poor performance, the Tribunal finds that the finding of poor performance is supported by evidence.

Performance standards: the record does not support the Applicant's claim that he was given "too many tasks too fast" as the tasks assigned to him were consistent with his job responsibilities as HR Analyst. In addition, the record does not support his argument that the assigned tasks were below his level as they were related to recruitment, management of contracts, HR data, benefits and earnings, separations, etc. which fall under the duties of a HR Analyst. The Tribunal, therefore, finds that the amount and types of tasks assigned to the Applicant are not manifestly unfair or irrational. Accordingly, the Tribunal finds that performance standards required of the Applicant were not unreasonable. Procedural fairness: While some procedural irregularities were committed in this case, the finding of procedural irregularities does not inevitably make the contested decision unlawful. As the Appeals Tribunals stated in Sarwar, "the ultimate question of procedural fairness is whether the staff member was aware of the required standard and was given a fair opportunity to meet it". Considering a number of emails exchanged between the Applicant and his managers, numerous meetings held to discuss his performance, two performance evaluations, and two PIPs, there is no question that the Applicant was made aware of the required performance standard. The record also shows that managers listened to the Applicant's concerns about workload and reduced his workload and provided him with an opportunity to receive additional refresher on-the-job training and referred him to SOPs that could help him understand the processes better. The Tribunal, therefore, considers that the Applicant was given a fair opportunity to meet performance standards. In sum, the Tribunal finds that the procedural non-compliance did not materially and adversely affect the rights of the Applicant so as to deny him a proper performance assessment. Ill-motivation or bad faith: The Tribunal finds that the Applicant failed to prove that the contested decision was

tainted by ill-motivation or bad faith.

## Decision Contested or Judgment/Order Appealed

The non-renewal of a fixed-term appointment for performance issues

### Legal Principle(s)

A fixed-term appointment does not carry any expectancy of renewal and expires automatically without prior notice on the expiration date. The Administration is, nevertheless, required to provide a reason for such a non-renewal upon the affected staff member's request or the Tribunal's order, and, when a justification is given by the Administration for the exercise of its discretion it must be supported by the facts. If the applicant claims that the decision was ill-motivated or based on improper motives, the burden of proving any such allegations rests with the applicant. To review an administrative decision based on performance evaluation, the Dispute Tribunal must give deference to the Administration's appraisal of a staff member's performance and decide whether there is a rational objective connection between the information available and the finding of unsatisfactory work performance. Performance standards generally fall within the prerogative of the Secretary-General and, unless the standards are manifestly unfair or irrational, other bodies should not usurp the function of setting performance standards. If there is a procedural deficiency in the performance evaluation process, the Dispute Tribunal needs to decide whether the procedural non-compliance materially and adversely affected the rights of a staff member so as to deny him or her a proper performance assessment. The ultimate question of procedural fairness is whether the staff member was aware of the required standard and was given a fair opportunity to meet it.

### Outcome

Dismissed on merits

### Outcome Extra Text

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Yazbek

## Entity

UNDP

## Case Number(s)

UNDT/NY/2021/050/T

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

10 May 2022

## Duty Judge

Judge Adda

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Non-renewal

## Applicable Law

Staff Regulations

- Regulation 4.5(c)
- Regulation 9.4

## Related Judgments and Orders

2012-UNAT-201

2011-UNAT-115

2013-UNAT-311

2010-UNAT-081

2017-UNAT-757