

UNDT/2022/076, Guenfoudi

UNAT Held or UNDT Pronouncements

The scope of judicial review in termination cases due to unsatisfactory service is limited to reviewing whether the appointment was lawfully terminated based on the applicable rules. It is not the role of the Tribunal to conduct a review of the performance evaluation process or to determine a different performance rating. In this case, the Applicant was notified that based on the 2020-2021 overall rating of “does not meet performance expectations” and the 2019-2020 “partially meets performance expectations”, the Administration decided to terminate his continuing appointment. Having examined the evidence on record, the Tribunal considered the relevant facts, including the Applicant’s performance evaluations, the exchange of emails between the Applicant and his FRO and SRO regarding performance, the suggested PIPs as remedial measures, and the rebuttal process of the 2019-2020 performance evaluation, which was upheld by an independent rebuttal panel. Documentary evidence shows that the Applicant was given several opportunities to address the performance shortcomings raised by his FRO and SRO, and to engage in the remedial measures that were proposed. However, the Applicant refused to do so and, as a result, his performance did not improve. Therefore, the two consecutive underperformance ratings alongside the Applicant’s refusal to engage with his supervisors in improving his performance through the available remedial measures, left the Administration with the lawful option of terminating the Applicant’s appointment. The unsatisfactory service is well substantiated and the procedure adopted by the Secretary General, as a result, was in no way flawed based on the information before the Tribunal. Furthermore, the Applicant argued that his contract should not have been terminated given his medical condition and not before he had exhausted all of his sick leave entitlements. However, documentary evidence on record show that the Applicant only applied to sick leave after he was informed that the Administration was seeking to terminate his appointment. The Applicant cannot now argue that on becoming ill and seeking sick leave, the process that had been set in train as a result of his performance in the previous two performance cycles should have brought the termination to a halt. In addition, the applicant had no right

under the applicable rules to continue working in the Organization after a termination decision had been lawfully made simply because he had not yet exhausted his sick leave quota. Under staff rule 9.11(a)(v), a termination is effective on the date specified in the letter of termination and entitlement to sick leave ceases on the same date. There is no requirement under the applicable rules to extend a terminated continuing appointment for the purpose of sick leave.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision to terminate his continuing appointment on the basis of unsatisfactory performance, and before he could exhaust all of his sick leave entitlements.

Legal Principle(s)

Outcome

Dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Guenfoudi

Entity

DGACM

Case Number(s)

UNDT/NY/2021/043

Tribunal

UNDT

Registry

New York

Date of Judgement

24 Aug 2022

Duty Judge

Judge Belle

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Unsatisfactory service

Termination (of appointment)

Applicable Law

Administrative Instructions

- ST/AI/2010/5

Secretary-General's bulletins

- ST/SGB/2019/8

Staff Regulations

- Regulation 9.3(a)(ii)

Staff Rules

- Rule 6.2
- Rule 9.11
- Rule 9.6(c)(ii)

Related Judgments and Orders

2010-UNAT-084

2015-UNAT-500