

UNDT/2022/088, Dragnea

UNAT Held or UNDT Pronouncements

The Notice and its placement in the Applicant's personnel file Noting that the decision at issue is a written reprimand imposed to address a staff member's unsatisfactory conduct following an investigation of an altercation, the Tribunal considers that the decision at issue constitutes an administrative measure under sec. 2.1(d) of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process). The fact that a reprimand is not a disciplinary measure "does not mean that a reprimand does not have legal consequences, which are to the detriment of its addressee, especially when the reprimand is placed and kept in the staff member's file. The reprimand is, by definition, adverse material" (United Nations Administrative Tribunal Judgment No. 1176, Parra (2004), para. IV). In the present case, the reprimand materially and adversely affects the Applicant's rights and is of direct legal effect in that the Notice explicitly states that "[t]his reprimand will be placed in [the Applicant's] personnel file" and as such it may be referred to in the future. Indeed, the Appeals Tribunal in Akyeampong 2012- UNAT-192 clarified that "[a] reprimand is recorded in the staff member's file to serve as a reminder, should the staff member misconduct herself again. In such an event, the Administration may administer a harsher sanction". Moreover, the evidence on record shows that based on the Notice on the Applicant's personnel file, she was placed on a PIP and received a rating of "partially meets performance expectations" for the 2020-2021 performance cycle, and consequently her fixed-term contract was renewed by only four months and twenty-five days as opposed to similarly situated staff members who received extensions of twenty-four months. As such, the Notice and its placement in the Applicant's personnel file did produce direct legal consequences affecting the Applicant's terms and conditions of appointment. Accordingly, the decisions to issue the Applicant the Notice and to place it in her file are subject to legal challenge and, thus, the application is receivable in this respect. The decision to place the Applicant on a PIP In relation to the Applicant's placement on a PIP, the Tribunal is not persuaded by the Applicant's contention that the PIP constitutes a disguised disciplinary measure. In this respect, the Applicant clearly

misinterpreted the nature of the PIP, which is a remedial measure relied upon by the Administration to “proactively assist the staff member in remedying [a performance] shortcoming” under sec. 10.1 of ST/AI/2021/4 (Performance Management and Development System). Also, while it is true that the Administration informed the Applicant of the decision to reprimand her and of the decision to place her on a PIP in the same memorandum, these two decisions are not inseparable from each other. In particular, the evidence on record shows that the PIP sought to address more performance shortcomings than the reprimanded conduct itself. Moreover, the order to place a staff member on a PIP is not an appealable final administrative decision. The PIP is merely a preliminary step instituted to address a staff member’s shortcomings during a performance cycle. Therefore, the decision to place the Applicant on a PIP is not an appealable administrative decision.

Decision Contested or Judgment/Order Appealed

By application filed on 17 November 2021, the Applicant, a staff member of the United Nations Department for Safety and Security (“UNDSS”), contests: a. The issuance to her of a notice of reprimand (“Notice”); b. The placement of said notice in her file; c. Her placement under a performance improvement plan (“PIP”); and d. The outcome of the Management Evaluation Unit’s (“MEU”) review of the above decisions.

Legal Principle(s)

“[T]he key characteristic of an administrative decision subject to judicial review is that the decision must ‘produce [] direct legal consequences’ affecting a staff member’s terms and conditions of appointment” (see, e.g., Najjar 2021-UNAT-1084, para. 29; Lee 2014-UNAT-481, para. 49). “What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision” (see, e.g., Najjar, para. 29; Andati-Amwayi 2010-UNAT-058, para. 19).

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Dragnea

Entity

DSS

Case Number(s)

UNDT/NY/2021/058

Tribunal

UNDT

Registry

New York

Date of Judgement

23 Sep 2022

Duty Judge

Judge Belle

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Administrative Instructions

- ST/AI/2017/1
- ST/AI/2010/5
- ST/AI/2021/4

UNDT Statute

- Article 2

Related Judgments and Orders

2021-UNAT-1084

2014-UNAT-481

2010-UNAT-058

2021-UNAT-1176

2012-UNAT-192

2018-UNAT-865