

# UNDT/2023/022, Haydar

## UNAT Held or UNDT Pronouncements

The Tribunal's findings were as follows:

The impugned decision related to the use of the performance appraisal to penalize the Applicant.

It had jurisdiction to review an impugned decision which meets the requirements under art. 2.1(a) of the UNDT Statute.

The performance appraisal was conducted and completed with a "successfully meets expectations" rating by the Applicant's FRO and endorsed by her SRO. This was a unilateral decision made in a precise individual case. This decision was final and binding in accordance with sections 15.1 and 15.7 of ST/AI/2010/5 which precluded the Applicant from challenging the performance appraisal otherwise than by either informal or formal justice mechanism.

The content, nature and frequency of the negative comments outweighed, detracted from and were inconsistent with the positive rating. The narrative comments did not confirm, but quite conversely detracted from, the overall satisfactory performance appraisal of the Applicant as "successfully meets expectations", having present and direct legal consequences for the Applicant's terms of appointment.

The performance shortcomings as described by the Applicant's FRO were so fundamental that it was a procedural flaw to complete the final appraisal without any evidence that in the course of the performance cycle the FRO and the Applicant had identified and discussed these shortcomings in order to give the Applicant an opportunity to respond to them or to improve on them.

The presumption of regularity had been successfully rebutted by clear and convincing evidence showing that the Respondent violated ST/AI/2010/5 as read with ST/AI/292.

The Applicant adduced evidence to show that her FRO was in the habit of commenting negatively on her performance appraisal reports without giving her an opportunity to explain her side. The Applicant conceded that she did not make any formal complaint about these previous acts. They were outside the scope of this judicial review for purposes of determining compensation. The claim was therefore disallowed.

## Decision Contested or Judgment/Order Appealed

The Applicant was contesting a decision of 29 November 2021 that she described as:

"The FRO [First Reporting Officer] prepared a EPAS [electronic performance appraisal] offline instead of doing it in *INSPIRA* as is normally the case and did it in a manner that reflected negatively on the s/m [staff member] despite the fact she was not the cause of the delay. He rated her "successfully meets performance expectations", the comments and the majority of the individual elements rated make that rating a 'sham', only used to evade a rebuttal."

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

The application was partly granted. The filing of the Applicant's 2020/2021 performance appraisal in the Applicant's personnel or other records was rescinded to allow the MINUSCA Administration to give the Applicant an opportunity to be heard on the negative comments before an independent, impartial and objective panel to ensure that the performance rating of "successfully meets expectations" was consistent with the comments.

No damages were awarded for alleged repeated violations of due process rights.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Haydar

## Entity

MINUSCA

## Case Number(s)

UNDT/NBI/2022/049

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

30 Mar 2023

## Duty Judge

Judge Sikwese

## Language of Judgment

English

## Appeal Status

Appealed

## Issuance Type

Judgment

## Categories/Subcategories

Right to comment/respond

Performance evaluation

Performance management

Due process

## Applicable Law

Administrative Instructions

- ST/AI/292

Staff Rules

- Rule 11.2(a)

UN Charter

- Article 101

UNAT Statute

- Article 8.1(c)

## Related Judgments and Orders

2017-UNAT-765

2016-UNAT-611

2018-UNAT-876

2017-UNAT-768

2010-UNAT-058

2014-UNAT-481

2014-UNAT-404

2020-UNAT-1044

2011-UNAT-122

2022-UNAT-1204

2021-UNAT-1077

2017-UNAT-762

UNDT/2012/043

2013-UNAT-298

2010-UNAT-084

2012-UNAT-222