

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