

UNDT/2023/079, LE BAILLY DE LA FALAISE

UNAT Held or UNDT Pronouncements

The application fails in its entirety.

Legal Principle(s)

In general, applications challenging comments in the performance appraisal are not reviewable administrative decisions within the meaning of art. 2.1(a) of the UNDT Statute.

Pursuant to section 15.7 of ST/AI/2010/5, an Applicant may only challenge an administrative decision that stems from a final performance appraisal and that affects his conditions of service. Instead, a staff member may not challenge the intermediate or preparatory steps of an administrative decision, as only the “final decision,” which carries direct legal consequences for the staff member’s legal rights and obligations is receivable before the Dispute Tribunal.

A rebuttal of a performance evaluation requested by the staff member is not permissible under the applicable Administrative Instruction if it does not seek to challenge the overall performance rating.

In some cases, comments in the e-PAS can be autonomously relevant owing to their specific content, which contrasts with the rate of the performance assessment and undermines the latter, so having an impact in the conditions of service of the staff member in question.

In such cases, where comments essentially prevail on the performance assessment, they could be challenged as such by the staff member, who has the interest to have those comments removed.

Comments must be consistent with the conclusions of the performance evaluation; therefore, while comments on shortcomings are in general allowed, they cannot have a negative content to the extent that they absorb (and substantially annul) the positive rating, having so an impact on the conditions of service of the staff member.

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

LE BAILLY DE LA FALAISE

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2022/063

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

28 Jul 2023

Duty Judge

Judge Buffa

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Performance evaluation

Performance evaluation

Performance management

Applicable Law

Secretary-General's bulletins

- ST/SGB/2019/8

UNDT Statute

- Article 1

Related Judgments and Orders

2010-UNAT-085

2014-UNAT-460

2015-UNAT-546

2020-UNAT-1044