

# **2023-UNAT-1364, Mustapha Guenfoudi**

## **UNAT Held or UNDT Pronouncements**

The UNAT concluded that as a long-serving member of the Secretariat, Mr. Guenfoudi was aware of the required standards of performance for his function as a Verbatim Translator. The UNAT also held that he had been given a fair opportunity to address his performance shortcomings, but he refused to participate in the two performance improvement plans. The UNAT found that the Organization's legal framework was clear that termination was a foreseeable action following two consecutive years of substandard performance ratings. The UNAT also found that Mr. Guenfoudi's allegations that his substandard ratings were a product of retaliation and that the rebuttal process was biased, were groundless.

The UNAT also rejected Mr. Guenfoudi's claim that the termination decision was not signed by an official with proper authority, and denied his request for compensation for the sick leave that he had not yet used when he was terminated. Lastly, the UNAT found that the UNDT did not err in failing to address Mr. Guenfoudi's various claims of harassment, unhealthy working conditions, and withholding of monies by the United Nations Federal Credit Union, when these had not been subjected to management evaluation or other review procedures.

In sum, the UNAT found no error by the UNDT in dismissing the application. The UNAT denied Mr. Guenfoudi's request for an oral hearing.

The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2022/076.

## **Decision Contested or Judgment/Order Appealed**

In Judgment No. UNDT/2022/076, the Dispute Tribunal rejected Mr. Guenfoudi's application challenging the termination of his appointment with the Organization due

to unsatisfactory performance.

Mr. Guenfoudi appealed.

## Legal Principle(s)

The UNAT has discretion to determine whether to hold an oral hearing or not with the aim to deal with the case efficiently and fairly.

Human resource management requires not only that the employer ensures the rights and benefits of the employees, but for employees to make every effort to maintain their technical or subject-matter competence and to finish their assigned work in compliance with the required standard.

There is no excuse for a staff member to give up on performing their inherent duties when they are dissatisfied with the Administration's decisions.

The Administration has the discretion to establish the criteria that a staff member should meet and to terminate the service of a staff member upon unsatisfactory performance of those prescribed criteria.

Performance standards generally fall within the prerogative of the Secretary-General and, unless the standards are manifestly unfair or irrational, the UNDT should not substitute its judgment for that of the Secretary-General.

Entitlement to sick leave is conditioned on the staff member having duties to perform and work to attend to. The entitlement to sick leave ceases with the date specified in a termination letter.

There is no acquired right to compensation for unused sick leave.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Mustapha Guenfoudi

## Entity

DGACM

## Case Number(s)

2022-1728

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

31 Jul 2023

## President Judge

Judge Gao

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Benefits and entitlements

Sick leave

Performance management

Procedure (first instance and UNAT)

Oral hearings

Termination (of appointment)

Unsatisfactory service

## Applicable Law

Administrative Instructions

- ST/AI/2010/5

Staff Regulations

- Regulation 1.3
- Regulation 9.3(a)

Staff Rules

- Rule 11.2(a)
- Rule 6.2(a)
- Rule 9.6
- Rule 9.11

UNAT RoP

- Article 18.1

UNAT Statute

- Article 8.3

## Related Judgments and Orders

2020-UNAT-1003

2017-UNAT-757

2015-UNAT-500

2020-UNAT-988

2021-UNAT-1173

UNDT/2022/076