

UNDT/2023/017, Jerome Pascal

UNAT Held or UNDT Pronouncements

In determining the lawfulness of the contested decision, the Tribunal examined the following issues:

a) Whether the Applicant's performance was evaluated in a fair and objective manner.

The Tribunal noted that the contested decision was based on the Applicant's records for the 2019-2020 and 2020-2021 performance cycles.

The Tribunal reviewed the evidence on record and noted that during the 2019-2020 performance cycle, the Applicant was advised on multiple occasions to improve his work ethic and productivity. At the end of the 2019-2020 performance cycle, the Applicant was assessed as meeting only two of his four goals, and he was rated "unsatisfactory" in the core value of Professionalism and "requires development" in the core competency of Teamwork. He obtained an overall rating of "partially meets expectations".

During the 2020-2021 cycle, the Applicant's performance continued to deteriorate. The evidence showed that his work required multiple corrections. At the midpoint review of the 2020-2021 performance cycle, the Applicant was placed on a PIP which included seven areas for improvement divided into 23 specific target actions. However, since the Applicant only met six of the 23 target actions, the PIP was deemed unsuccessful.

At the end of the 2020-2021 performance cycle, the Applicant was assessed as only achieving one of his four goals, partially achieving another one, and not achieving the two other goals. He was rated "unsatisfactory" in the core value of Professionalism as well as in the core competencies of Communication and Teamwork. He was rated "requires development" in the core competency of Client Orientation. The Applicant obtained an overall rating of "does not meet expectations".

The Tribunal noted that the Applicant did not rebut his performance evaluations for the 2019-2020 and 2020-2021 cycles.

The evidence showed that the Administration assisted the Applicant to improve his performance by calling his attention to performance shortcomings, undertaking performance discussions, providing advice, and coaching on performance issues in line with secs. 10.1 and 10.2 of ST/AI/2010/5 and by implementing a PIP as required by secs. 10.2 and 10.4 of the same AI.

Under the circumstances and based on the evidence on record, the Tribunal was satisfied that the Applicant's performance was evaluated in a fair and objective manner in accordance with sec. 10 of ST/AI/2010/5 and that the Applicant's due process rights were respected.

b) Whether the Administration followed a proper procedure in making the contested decision.

The procedure to be followed in cases of termination of the permanent appointment of a staff member for unsatisfactory services is set forth in ST/AI/222, as amended by ST/SGB/2011/7, particularly sec. 4.10. In fact, following the abolition of the Appointment and Promotions Board, the relevant Central Review Bodies ("CRBs") carry out the review of proposals for the termination of permanent appointments for unsatisfactory service under staff regulation 9.3 (a)(ii) and staff rule 13.1(b)(i), and advise the Secretary-General as to whether the conditions for such termination are met.

The Tribunal reviewed each step of the procedure from the submission of the proposal for termination to the CRBs to the decision of the Under-Secretary-General, DMSPC to terminate the Applicant's appointment for unsatisfactory service and considered that the Administration followed the proper procedure in deciding to terminate the Applicant's permanent appointment for unsatisfactory service.

Consequently, the Tribunal determined that the contested decision was lawful.

Decision Contested or Judgment/Order Appealed

The decision to terminate the Applicant's permanent appointment due to unsatisfactory service.

Legal Principle(s)

The Tribunal recognizes that its role is not to review de novo the Administration's evaluation of the Applicant's performance but rather to determine whether the rules and procedures governing performance evaluation were complied with (see Ncube UNDT-2016-069, para. 127).

The Appeals Tribunal has recalled that in examining the validity of the Administration's exercise of discretion, the Dispute Tribunal's scope of review is limited to determining whether the exercise of such discretion is legal, rational, reasonable and procedurally correct to avoid unfairness, unlawfulness or arbitrariness (see Abusondous 2018-UNAT-812, para. 12). In this regard, the Dispute Tribunal can "consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General" (see Sanwidi 2010-UNAT-084, para. 40).

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Jerome Pascal

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2022/010

Tribunal

UNDT

Registry

New York

Date of Judgement

21 Mar 2023

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Unsatisfactory service

Termination (of appointment)

Applicable Law
Administrative Instructions

- ST/AI/2010/5

Secretary-General's bulletins

- ST/SGB/2011/7

Staff Regulations

- Regulation 9.3(a)(ii)

Staff Rules

- Rule 9.7(d)

Related Judgments and Orders

2018-UNAT-812

2010-UNAT-084

UNDT/2016/069