

UNDT/2023/053, Hampstead

UNAT Held or UNDT Pronouncements

To determine 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 performance cycles of 2018-2019, 2019-2020, and 2020-2021. The Applicant received a rating of "partially meets performance expectations" for the 2018-2019 and 2019-2020 cycles and a rating of "does not meet performance expectations" for the 2020-2021 cycle.

The Tribunal reviewed the Applicant's performance evaluations for the cycles of 2018-2019, 2019-2020, and 2020-2021 and noted that even if the Applicant rebutted each of these evaluations, the ratings were maintained by the Rebuttal Panel.

The evidence on record showed that the Applicant's First Reporting Officer, his Second Reporting Officer, and other senior colleagues provided him with performance guidance and feedback. The evidence also showed that the Administration assisted the Applicant to improve his performance by calling his attention to performance shortcomings, providing advice, and on-the-job training in line with sec. 10.1 of ST/AI/2010/5 and by implementing two PIPs as required by sec. 10.2 of the same administrative instruction.

Under such 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 Tribunal reviewed the process followed for the termination of the Applicant's permanent appointment and was satisfied that it was conducted fairly and in accordance with ST/SGB/2011/7 and ST/AI/222. The Applicant's due process rights were respected, he was aware of the required standards of performance and was given reasonable guidance and opportunities over three performance cycles to meet those standards. Nevertheless, the evidence showed that his performance did not improve.

The Tribunal also reviewed the Applicant's claims in relation to the contested decision and found that none of them was substantiated.

The Tribunal found that the Administration properly followed the relevant procedures to address performance shortcomings and for the termination of the Applicant's permanent appointment for unsatisfactory service. Consequently, the Tribunal determined that the contested decision was lawful, and as such, the Applicant was not entitled to the remedies claimed.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision to terminate his permanent appointment for unsatisfactory service.

Legal Principle(s)

Whenever the Secretary-General is called upon to decide if a valid and fair reason exists to terminate an appointment for poor performance, he should consider whether the staff member failed to meet the performance standard and if so whether: i) the staff member was aware, or could reasonably be expected to have been aware, of the required standard; ii) the staff member was given a fair opportunity to meet the required standard; and iii) termination of appointment is an appropriate action for not meeting the standard in the circumstances (Sarwar 2017-UNAT-757).

The UNDT must accord deference to the Administration's appraisal of the performance of staff members, and cannot review de novo a staff member's appraisal, or place itself in the role of the decision-maker and determine whether it

would have renewed the contract, based on the performance appraisal (Said 2015-UNAT-500).

The primary task is to decide whether the preferred and imposed performance standard was not met and to assess whether an adequate evaluation was followed to determine if the staff member failed to meet the required standard. There must be a rational objective connection between the information available and the finding of unsatisfactory work performance (Sarwar 2017-UNAT-757).

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Hampstead

Entity

DGACM

Case Number(s)

UNDT/NY/2022/024

Tribunal

UNDT

Registry

New York

Date of Judgement

13 Jun 2023

Duty Judge

Judge Hunter Jr.

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Unsatisfactory service
Termination (of appointment)

Applicable Law

Administrative Instructions

- ST/AI/222

Secretary-General's bulletins

- ST/SGB/2011/7

Former Staff Regulations

- Regulation 9.3

Staff Rules

- Rule 9.6(c)(ii)

Related Judgments and Orders

2017-UNAT-757

2015-UNAT-500

2018-UNAT-812

2010-UNAT-084

UNDT/2016/069

2011-UNAT-122