

UNDT/2023/113, Abdellaoui

UNAT Held or UNDT Pronouncements

It is within the discretion of the Applicant's SRO to make comments on her performance. "[M]aking comments in an ePAS about the need for a staff member to improve performance in certain core values and competencies is an important tool for the managers to carry out their functions in the interest of the Organization and, hence, their willingness to do so need to be supported and boosted". It represents a legitimate exercise of administrative hierarchy evaluating employees.

The comments in question do not detract from the overall satisfactory performance appraisal. They are constructive, reasonable, and have been balanced by other comments that provide a positive perspective supporting the overall rating.

As an integral part of an overall positive performance appraisal, the comments of the Applicant's SRO cannot be examined independently from the rest of the document and, as such, they cannot be characterised as stand-alone adverse material under ST/AI/292. Finally, there is no evidence of retaliation due to the Applicant engaging in staff representation activities.

The comments at issue are not retaliatory. Also, while little reference was made to emails that the Applicant sent in her capacity as a staff representative, the comments of her SRO are largely based on her performance of the functions of the post she encumbers. Accordingly, the Applicant has not established any direct legal consequences resulting from her performance appraisal in question.

Decision Contested or Judgment/Order Appealed

The Applicant seeks rescission of certain comments that her Second Reporting Officer ("SRO") made in her 2021-2022 Performance Document.

Legal Principle(s)

The key characteristic of an administrative decision subject to judicial review is that the decision must produce direct legal consequences affecting a staff member's terms and conditions of appointment and have a direct impact on the terms of appointment or contract of employment of the individual staff member (Lee 2014-UNAT-481, para. 49). "What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision" (Ngokeng 2014-UNAT-460, para. 27). A performance appraisal with a good final rating does not constitute an "administrative decision" able, by itself, to have a direct and negative impact on a staff member's rights. Nevertheless, "when the reasoning detracts from the overall favourable conclusion, such as to affect the terms and conditions of the staff member's contract", the decision may become a reviewable one (Handy 2020-UNAT-1044, para. 34). As such, the decisive factor in determining whether a negative comment in a positive performance appraisal constitutes a reviewable administrative decision is the "direct legal consequences" flowing from that comment (Handy, para. 34, 40; Ngokeng, para. 31).

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Abdellaoui

Entity

UNOG

Case Number(s)

UNDT/GVA/2022/038

Tribunal

UNDT

Registry

Geneva

Date of Judgement

10 Oct 2023

Duty Judge

Judge Sun

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Subject matter (ratione materiae)

Performance evaluation

Jurisdiction / receivability (UNAT)

Performance management

Applicable Law

UNAT Statute

- Article 2.1(a)

Administrative Instructions

- ST/AI/2021/4
- ST/AI/292

UNDT Statute

Related Judgments and Orders

2014-UNAT-481

2014-UNAT-460

2020-UNAT-1044

2015-UNAT-546

2018-UNAT-840

2022-UNAT-1231