

# 2024-UNAT-1428, Jerome Pascal

## UNAT Held or UNDT Pronouncements

The UNAT held that the UNDT properly applied the legal framework governing the termination of appointments for unsatisfactory performance. The UNAT found that the staff member was aware of the required performance standard for his post and that he had been given a fair opportunity to meet this standard. The UNAT observed that he had received “partially meets performance expectations” for two performance cycles, and “does not meet expectations” for the most recent performance cycle. He had also been placed on a performance improvement plan, but failed to meet all of the objectives of the PIP.

The UNAT rejected the staff member’s argument that he was deserving of the same level of protection that is afforded to staff members who are terminated due to abolition of post. This is a different context; moreover, even in instances of abolition of post, the staff member must still be competent to be placed in an alternative post, and the staff member in this case had not demonstrated the required competencies. The UNAT also rejected as irrelevant the staff member’s other arguments for not terminating his appointment, which included his proximity to retirement, the Covid-19 pandemic, and his long service.

The UNAT concluded that in view of the seriousness of the staff member’s performance deficiencies, and the Organization’s accountability to uphold the highest standards of competence for its staff, it was not unreasonable for the Administration to terminate the staff member’s appointment. The UNAT held that the UNDT did not err in concluding that the contested termination decision was lawful.

The UNAT also found that the UNDT did not err in finding his application for suspension of action to be not receivable. The staff member’s termination had already been implemented when he filed his application, thus there was no action for the UNDT to suspend.

Finally, the UNAT rejected the staff member’s claim that the UNDT Judge who denied his suspension of action application should have recused herself. The UNAT stated that recusal is not warranted merely because the UNDT Judge has decided some preliminary issues against the litigant.

The UNAT dismissed the staff member’s appeal and affirmed Judgment No. UNDT/2023/017.

## Decision Contested or Judgment/Order Appealed

In Judgment No. UNDT/2023/017, the UNDT dismissed the staff member's application challenging the termination of his permanent appointment due to unsatisfactory performance.

The former staff member appealed.

## Legal Principle(s)

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.

The Organization’s legal framework clearly provides that the Secretary-General may terminate the appointment of a staff member who holds a continuing or permanent appointment on the ground of unsatisfactory service.

The jurisprudence of the Appeals Tribunal establishes that appeals from the Dispute Tribunal on suspension of action decisions will be receivable only if that Tribunal, in adjudicating on such applications, exceeded its competence or jurisdiction.

The Appeals Tribunal has held that recusal is not warranted merely because the UNDT Judge may have decided some preliminary issues against the litigant.

Outcome

Appeal dismissed on merits

Outcome Extra Text

Judgment No. UNDT/2023/017 is affirmed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Jerome Pascal

Entity

UN Secretariat

Case Number(s)

2023-1797

Tribunal

UNAT

Registry

New York

Date of Judgement

2 May 2024

President Judge

Judge Gao

Judge Ziadé

Judge Savage

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Judges

Recusal

Performance management

Suspension of action / interim measures

Receivability

Termination (of appointment)

Unsatisfactory service

Applicable Law

Administrative Instructions

- ST/AI/2010/5
- ST/AI/222

Secretary-General's bulletins

- ST/SGB/2011/7

#### Staff Regulations

- Regulation 9.3(a)(ii)

#### Staff Rules

- Rule 13.1
- Rule 9.6(c)(ii)

#### UNDT Statute

- Article 10.2
- Article 2.2

#### Related Judgments and Orders

UNDT/2023/017

2018-UNAT-847

UNDT/2009/092

2015-UNAT-500

2017-UNAT-757

2017-UNAT-721

2023-UNAT-1364

2013-UNAT-300

2013-UNAT-330

2021-UNAT-1159

2018-UNAT-818