

UNDT/2024/040, Suarez Liste

UNAT Held or UNDT Pronouncements

The dispute between the parties relates to whether the Applicant met the condition of satisfactory service during his probationary period to warrant a contractual right to have his FTA converted into a CA. In this context, the Applicant claims that his FRO and SRO did not identify any performance shortcomings during the performance cycle, including at the two “landmark” performance discussions they had previously to the contested decision. Allegedly, the first time he heard about any dissatisfaction with his performance was when he was informed that he would not receive a CA and, instead, would have his FTA extended for another year.

Having reviewed the evidence on record, the Tribunal did not see any unlawfulness or unreasonableness in the contested decision. Indeed, there is sufficient evidence on record showing that the Applicant's performance was not satisfactory during the second year of his probationary period, and that he was made aware of performance shortcomings through the ongoing feedback provided by his FRO and the section's revisers throughout the year. The fact that the Applicant's FRO did not properly record the performance shortcomings discussions after the landmark performance conversations is not probative that such discussions did not occur nor that the Applicant was unaware. Instead, based on the feedback that the FRO was receiving from revisers, the Respondent's allegation that the FRO talked to the Applicant about the performance issues during the aforementioned conversation is more credible than the Applicant's version that nothing of the sort ever came up.

For the purpose of triggering the conversion of an FTA to a CA, the only requirement concerning the staff member's performance is that it is deemed “satisfactory”. In view of the foregoing, the Tribunal finds that it was not unreasonable for the decision-maker to conclude that the Applicant's service was unsatisfactory at the time of the contested decision.

Sec. 6.3 of ST/AI/2020/3 provides that a staff member “shall be granted a continuing appointment after two years on a fixed-term appointment, subject to satisfactory service”. Since the Applicant's service was not deemed “satisfactory”, there was no

legal basis to grant a CA to him at the time of the contested decision.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision not to convert his two-year fixed term appointment (“FTA”) to a continuing appointment (“CA”) after the end of his probationary period as language staff, extending it instead.

Legal Principle(s)

In reviewing performance-related decisions, it is relevant to look at whether “the staff member was aware, or could reasonably be expected to have been aware, of the required standard”.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Suarez Liste

Entity

UNOG

Case Number(s)

UNDT/GVA/2023/035

Tribunal

UNDT

Registry

Geneva

Date of Judgement

28 Jun 2024

Duty Judge

Judge Sun

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Continuing appointment

Subject matter (*ratione materiae*)

Performance evaluation

Appointment (type)

Jurisdiction / receivability (UNDT or first instance)

Performance management

Applicable Law

Administrative Instructions

- ST/AI/2020/3
- ST/AI/2021/4

Staff Rules

- Rule 4.14 (b)
- Rule 4.16

Related Judgments and Orders

2017-UNAT-757

2016-UNAT-696

UNDT/2016/016