

2024-UNAT-1511, Naima ABDELLAOUI

UNAT Held or UNDT Pronouncements

The Appeals Tribunal found that the UNDT correctly held that it was within the SRO's discretion to make comments on Ms. Abdellaoui's performance, that the SRO's disputed comments were reasonable and balanced by other comments that provided a positive perspective supporting the overall rating, and that as such they did not detract from the overall satisfactory appraisal. Accordingly, the Appeals Tribunal concurred with the UNDT's determination that the challenged performance evaluation was not an "administrative decision" and agreed that the application was therefore not receivable *ratione materiae*.

Turning to Ms. Abdellaoui's contention that the UNDT erred in determining that it was appropriate for the First Reporting Officer and the SRO to comment on actions taken in her capacity as a staff representative, the Appeals Tribunal found that the challenged comments did not even approach, much less exceed, those bounds.

The Appeals Tribunal also found no merit in Ms. Abdellaoui's contention that the SRO's comments (to the extent they were critical of her performance) constituted "adverse material" which should be removed pursuant to ST/AI/292 (Filing of Adverse Material in Personnel Records).

The Appeals Tribunal dismissed the appeal and affirmed the UNDT Judgment.

Decision Contested or Judgment/Order Appealed

Before the UNDT, Ms. Abdellaoui challenged, and sought rescission of, certain comments that her Second Reporting Officer (SRO) had made in her 2021-2022 Performance Document (ePas) in which she was rated as having fully met performance expectations. The UNDT found that the inclusion of the comments in Ms. Abdellaoui's ePas was not an appealable administrative decision under Article 2(1)(a) of its Statute and accordingly dismissed the application as not receivable

ratione materiae.

Ms. Abdellaoui appealed

Legal Principle(s)

For a performance evaluation to be an appealable administrative decision, it must have as its key characteristic the capacity to produce direct legal consequences affecting a staff member's terms and conditions of employment.

In appropriate circumstances, even a performance rating which is technically positive and therefore not rebuttable nor appealable, may nonetheless be reviewable if it has the capacity to produce direct legal consequences. In general, this inquiry requires examination of the underlying context of the challenged action. When examining a nominally positive performance evaluation, we look to the "actual character" of the evaluation, in particular to whether the comments made in connection with the rating, taken as a whole, are negative such that they fundamentally undermine a facially favorable rating and therefore have a direct adverse impact on the terms and conditions of the staff member's employment.

A staff representative – while guaranteed great latitude in their freedom of expression and advocacy – remains under a special obligation not to abuse his/her rights by using expressions or resorting to behaviour incompatible with the decorum appropriate to his/her status both as an international civil servant and as an elected staff representative.

Critical comments in an otherwise positive evaluation, which do not rise to the level which would render the evaluation reviewable, do not constitute "adverse material" pursuant to ST/AI/292 for which a rebuttal must be allowed.

Moral damages are not available where there is no underlying finding of illegality.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Naima ABDELLAOUI

Entity

UNOG

Case Number(s)

2023-1872

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Dec 2024

President Judge

Judge Ziadé
Judge Sandhu
Judge Gao

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Definition

Jurisdiction / receivability (UNDT or first instance)

Performance evaluation

Administrative decision

Performance management

Applicable Law

Administrative Instructions

- ST/AI/2010/5
- ST/AI/2021/4
- ST/AI/292

UNDT Statute

- Article 2
- Article 2.1(a)

Related Judgments and Orders

UNDT/2023/113

2024-UNAT-1434

2020-UNAT-1044

2014-UNAT-460

2022-UNAT-1231

2016-UNAT-685

2022-UNAT-1228