

UNDT/2024/114, Mehta

UNAT Held or UNDT Pronouncements

Receivability

The Applicant alleged that she was required to work during July and August 2022, before the beginning of her appointment, on the assurances that she would be compensated for the said period. However, she did not receive such compensation.

First, the Tribunal noted that the Applicant was not a staff member in July and August 2022, when she claims that she was required to work as her appointment with UNDP only started on 1 September 2022. Therefore, the Applicant had no standing to contest such a decision at the time.

Second, even considering that the Applicant could have contested the decision not to compensate her for the previous work done after joining UNDP, she failed to do so within the mandatory time limits, as it seems from the record that she only raised this issue for the first time in her request for management evaluation of 6 September 2023. As a result, her request for management evaluation was found time-barred in this respect, and her application was similarly not receivable *ratione materiae* on this matter.

Merits

Whether the Administration followed a proper procedure in making the contested decision

The entire process followed all required steps of the Probation Policy. Additionally, although not expressly required under the Probation Policy, the Applicant's first-level supervisor held follow-up discussions with the Applicant during the period between her first and second appraisal meetings. There are minutes on record of such meetings held on 1 February 2023, 23 March 2023, 5 April 2023 and 18 May 2023. The appraisal meetings and all follow-up discussions were also attended by the Deputy Director, IDE who, though not a signatory to the official appraisals, played an active role in the performance management process concerning the Applicant.

The Tribunal thus found that the Applicant failed to establish her first contention that the proper procedure was not followed.

Whether the Applicant's performance was evaluated in a fair and objective manner

The evidence on record showed that concerns about the Applicant's performance started with her not reporting to the duty station while telecommuting. However, the Tribunal found that these concerns lack sound basis. The Tribunal noted that the telecommuting documentation concerning the Applicant did not include any end date. No document on record indicated that the Applicant was ever informed that her period of telecommuting was to last for only 30 days.

Although there were other concerns about the Applicant's performance, the evidence showed that her telecommuting status was the unfounded initial issue raised with her performance. The Applicant contended that she was not informed initially that telecommuting was authorized for 30 days only. The Respondent's reply did not deny this point.

It was clear from the extent to which it was repeatedly raised in subsequent discussions that unfounded views regarding the initial duration of the Applicant's telecommuting status tainted the assessment of the Applicant's performance by the Director and Deputy Director, IDE. Furthermore, the tone and substance of some of the correspondence by the Deputy Director, IDE to the Applicant gave an appearance of bias against her that is more probable than not to have permeated the appraisal process as alleged by the Applicant.

Some of the other concerns raised in the appraisals may have merit. However, the Tribunal found that disaggregation of any valid concerns from the supervisors' biased perspective against the Applicant was not possible in all circumstances of this case.

In view of the foregoing, the Tribunal decided to rescind the decision to terminate the Applicant's fixed-term appointment.

Remedies

The Tribunal found that the Applicant was not entitled to moral damages under art.10.5(b) of the Tribunal's Statute.

The Applicant's award was limited under art. 10.5(a) of the Tribunal's Statute to reinstatement or payment of compensation in lieu in the amount equivalent to her net base salary from the moment of her separation, that is, on 19 September 2023, to the expiry of her two-year fixed-term appointment on 31 August 2024.

The Tribunal denied all other claims.

Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member of the United Nations Development Programme ("UNDP"), filed an application contesting the decision not to confirm her probationary period and, as a result, to terminate her fixed-term appointment.

Legal Principle(s)

The Appeals Tribunal stated in Said 2015-UNAT-500, para. 40, that 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. 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 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 (see Sarwar at para. 74).

The Appeals Tribunal recalled that in examining the validity of the Administration's exercise of discretion, the Dispute Tribunal's scope of review is limited to determining whether the exercise of such discretion is legal, rational, reasonable and procedurally correct to avoid unfairness, unlawfulness or arbitrariness (see Abusondous 2018-UNAT-812, para. 12). In this regard, the Dispute Tribunal can "consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General" (see Sanwidi 2010-UNAT-084, para. 40).

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Mehta

Entity

UNDP

Case Number(s)

UNDT/GVA/2024/002

Tribunal

UNDT

Registry

Geneva

Date of Judgement

31 Dec 2024

Duty Judge

Judge Honeywell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Unsatisfactory service

Termination (of appointment)

Applicable Law

Laws of other entities (rules, regulations etc.)

- The UNDP Probation Policy

Staff Regulations

- Regulation 9.3(a)(ii)

Related Judgments and Orders

2017-UNAT-757

2015-UNAT-500

2018-UNAT-812

2010-UNAT-084

UNDT/2014/046

UNDT/2014/006