

UNDT/2025/008, Ejidike

UNAT Held or UNDT Pronouncements

The Tribunal found the application to be receivable on the basis that a negative performance rating does produce legal consequences for the affected staff member and is reviewable.

In the Tribunal's view, the Respondent failed to show that the USG engaged the Applicant in a proper performance discussion or provided sufficient feedback of a performance shortcoming as required by secs. 7.1, 7.2 and 10.1 of ST/AI/2021/4. The Tribunal found no evidence of a discussion between the USG and the Applicant which could be classified as a performance milestone discussion, one which sets out clear targets and indicates the Applicant's performance in relation to that target. The Tribunal found no evidence that the USG, who was acting as both FRO and SRO, engaged in consultation with another appropriate manager. The Tribunal found no evidence that any remedial measures were put into place by the USG.

The Tribunal held that the contested decisions were unlawful and rescinded the performance assessment. Having reviewed the chronology of communications between the USG and the Applicant, as presented by the Respondent, the Tribunal was not satisfied that a good enough effort was made to conduct the Applicant's performance evaluation in a fair manner or in full compliance with the relevant provisions. For example, the record does not contain sufficient documentation of the required performance discussions between the USG and the Applicant or of any feedback that would have put the Applicant on notice regarding any perceived performance shortcomings on his part as required by secs. 7.1, 7.2 and 10.1 ST/AI/2021/4 (Performance Management and Development System).

Decision Contested or Judgment/Order Appealed

The Applicant contested: (a) the decision by the Under-Secretary-General and Special Adviser on the Prevention of Genocide to rate the Applicant's performance for the 2022-2023 performance cycle as "C – Partially meets expectations"; and (b) the decision by the rebuttal panel to maintain this performance rating.

Legal Principle(s)

A negative performance rating materially and adversely affects the Applicant's rights and has a direct legal effect in that the performance document forms part of the Applicant's personnel record and as such it may be referred to in the future to initiate administrative actions, such as the non-renewal of the Applicant's appointment. ST/AI/2021/4 expressly stipulates, at sec. 10, that a number of administrative actions may ensue from a negative performance rating, including the withholding of a within-grade salary increment, the non-renewal of an appointment or the termination of an appointment for unsatisfactory service in accordance with staff regulation 9.3. A negative performance rating may also have an adverse impact on the Applicant's applications for job openings within the United Nations common system, which request applicants to upload their last two performance documents to the job application.

Communications under sec. 10.1 which are aimed at identifying and addressing performance shortcomings and unsatisfactory performance are to be direct and constitute a clear message to the staff member that the FRO identifies a performance shortcoming. The contents of the disclosed communications do not clearly identify a performance shortcoming.

It is explicitly stipulated in sec. 7.2 of ST/AI/2021/4 that the FRO is under the obligation of documenting milestone discussions, just as all performance communications under sec. 10.1, whether verbal or written, should also be appropriately documented by the FRO. This formality is especially important as a finding of unsatisfactory performance may lead to termination or non-renewal of a staff member's appointment.

Section 10.1 requires the FRO, in consultation with the SRO, to proactively assist the staff member in remedying the shortcoming. This provision requires an FRO to engage in consultation with another manager if necessary.

Section 10.1 states that remedial measures may include counselling, transfer to more suitable functions, additional training and/or the institution of a time-bound performance improvement plan, which should include clear targets for improvement and a provision for coaching.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

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Full judgment

[Full judgment](#)

Applicants/Appellants

Ejidi

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2024/009

Tribunal

UNDT

Registry

New York

Date of Judgement

14 Feb 2025

Duty Judge

Judge Belle

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Rebuttal

Performance evaluation

Performance management

Applicable Law

Administrative Instructions

- ST/AI/2021/4

Staff Rules

- Rule 2.1

Related Judgments and Orders

2021-UNAT-1084

2014-UNAT-481

2024-UNAT-1465

2020-UNAT-1044

2018-UNAT-812

2010-UNAT-084

2017-UNAT-757

2015-UNAT-500

2014-UNAT-460

2010-UNAT-058