

UNDT/2024/113, Sellami

UNAT Held or UNDT Pronouncements

A staff member's duty to abide by managerial instruction lies at the heart of employment relationships and the Tribunals are expected to accord a measure of deference to managerial authority, including in setting performance standards (see, *Applicant* 2020-UNAT-1030, para. 34).

The Applicant has not demonstrated any procedural or substantive breach of his rights. In the absence of any evidence that the performance standards applied by UNICEF are manifestly unfair and irrational, the Tribunal cannot substitute its decision for that of the decision-maker to overturn the contested decision.

Accordingly, having established that UNICEF followed the proper procedures under CF/AI/2011-001 Amend. 2, the Tribunal also found that the performance improvement plan and the contested decision were lawful

Decision Contested or Judgment/Order Appealed

The Applicant filed an application contesting the non-renewal of his fixed-term appointment.

Legal Principle(s)

As the Appeals Tribunal held in *Ashgar* 2020-UNAT-982, para. 43, “[w]here evidence has been obtained in an improper or unfair manner it may still be admitted if its admission is in the interests of the proper administration of justice”.

The Appeals Tribunal has recognised that whereas underperformance is a lawful reason for not renewing a fixed-term appointment, the alleged underperformance must be adequately documented (see, *Allen* 2019-UNAT-951, para. 35, as well many other judgments). This means a non-renewal decision must be made on a rational basis, and the Administration is required to properly articulate the reasons for a non-renewal in order to ensure that the Tribunals can judicially review the validity of the decision, and this reason must be lawful and supported by the facts (see, for instance, *Nouinou* 2019-UNAT-902, para. 50; *He* 2018-UNAT-825, para. 46; *Obdeijn* 2012-UNAT-201, paras. 33-39; *Islam* 2011-UNAT-115, paras. 29-32).

A non-renewal decision can be challenged on the grounds that the Administration has not acted fairly, justly, or transparently with the staff member or that the non-renewal decision was motivated by bias, prejudice or improper motive. It is incumbent on the staff member to prove that such factors played a role in the non-renewal decision (see, *Porrás* 2020-UNAT-1068, para. 24; *Nouinou*, para. 47; *He*, para. 43; *Said* 2015-UNAT-500, para. 34).

The Appeals Tribunal has held that when assessing an administrative decision resulting from a performance appraisal, the role of the Dispute Tribunal is not to conduct a *de novo* review of the performance appraisal or to place itself in the role of the decision-maker. Rather, the Dispute Tribunal’s role 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” (see, *Sarwar* 2017-UNAT-757, para. 74, citing *Said*, para. 40)

Outcome

Dismissed on merits

Outcome Extra Text

Since the contested decision was lawful, there was no basis for the Tribunal to consider the Applicant's request for compensation or damages

Full judgment

[Full judgment](#)

Applicants/Appellants

Sellami

Entity

UNICEF

Case Number(s)

UNDT/NY/2023/036

Tribunal

UNDT

Registry

New York

Date of Judgement

18 Dec 2024

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Due process

Burden of proof

Reason(s)

Performance evaluation

Separation from service

Rebuttal

Non-renewal

Performance management

Applicable Law

Staff Regulations

- Regulation 4.5(c)

Staff Rules

- Rule 1.2(a)
- Rule 11.2
- Rule 4.13(c)
- Rule 4.14(b)

UNDT RoP

- Article 18.1

UNICEF Administrative Instructions

- CF/AI/2011-001/Amend.2

Related Judgments and Orders

2020-UNAT-982

2019-UNAT-951

2019-UNAT-902

2018-UNAT-852

2012-UNAT-201

2011-UNAT-115
2020-UNAT-1068
2015-UNAT-500
2017-UNAT-757
2020-UNAT-1030
2020-UNAT-1049
UNDT/2022/111
2011-UNAT-119
2017-UNAT-788