UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/017
Judgment No.: UNDT/2025/061/Corr.1
Date: 5 September 2025
Original: English

Before: Judge Margaret Tibulya

Registry: Geneva

Registrar: Liliana López Bello

ISUFI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Halil Göksan, AS/ALD/OHR, UN Secretariat

Notice: This judgment has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. The Applicant, a former staff member of the United Nations Development Coordination Office ("UNDCO"), filed an application contesting the decision not to renew his fixed-term appointment beyond 9 February 2024 due to unsatisfactory performance.

2. For the reasons set forth below, the Tribunal partially grants the application.

Facts

3. The Applicant received the rating of "partially meets expectation" for the 2020-2021 performance cycle. He did not rebut this performance rating. He further received the rating of "partially meets expectation" for the 2021-2022 performance cycle, which he rebutted. The Rebuttal Panel upheld the rating.

4. On 9 November 2022, the Chief of Human Resources, Development Coordination Office ("CHR/DCO") informed the Applicant that his fixed-term appointment ("FTA") ending on 31 December 2022 would not be renewed due to unsatisfactory performance. Upon expiry of the FTA, the Applicant separated from service.

5. The Applicant requested management evaluation of the decision not to renew his FTA beyond 31 December 2022. On the recommendation of the Management Evaluation Unit ("MEU"), the Under-Secretary-General for Management, Strategy, Policy and Compliance ("USG/DMSPC") decided to reinstate the Applicant. This decision was based on the assessment that the Applicant had not been given a fair opportunity to improve his performance.

6. On 3 April 2023, the Applicant resumed his duties. In accordance with the USG/DMSPC's reinstatement decision, the Applicant's First Reporting Officer ("FRO"), in coordination with the Second Reporting Officer ("SRO"), placed him on a performance improvement plan ("PIP") for the period from 6 April to 14 July 2023.

7. On 4 July 2023, the Applicant's FRO informed him that he had not successfully completed the PIP, noting that "there are areas where [his] analysis and strategic thinking need to be further developed to meet the expectations".

8. On 12 July 2023, the FRO and the Applicant had the final PIP meeting. The Applicant received the final rating of "partially meets expectation" for the 2022-2023 performance cycle. The Applicant rebutted this performance rating, which the Rebuttal Panel upheld.

9. On 25 August 2023, the Applicant's FRO, in coordination with the SRO, placed the Applicant on a second PIP for the period from 28 August 2023 to 9 February 2024.

10. On 26 January 2024, the FRO informed the Applicant that the goals outlined in the second PIP had not been met and provided him with the final assessment of his performance during the second PIP process.

11. On 29 January 2024, the SRO confirmed in writing the recommendation for non-renewal of the Applicant's FTA beyond 9 February 2024.

12. On 1 February 2024, the Applicant filed a request for management evaluation against the contested decision.

13. On 9 February 2024, the Applicant separated from service.

14. On 8 March 2024, the USG/DMSPC upheld the contested decision following the recommendation of the Management Advice and Evaluation Section ("MAES").

15. On 21 May 2024, the Applicant filed the instant application.

16. On 24 June 2024, the Respondent filed his reply contesting, *inter alia*, the receivability of some of the Applicant's claims and part of his request for compensation.

17. By Order No. 94 (GVA/2024) of 20 August 2024, the Tribunal instructed the Applicant to file a rejoinder, and encouraged the parties to explore resolving their dispute amicably.

18. On 1 September 2024, the Applicant filed his rejoinder.

19. On 11 September 2024, the Respondent informed the Tribunal that the parties were unable to settle the dispute amicably.

20. On 1 April 2025, this case was assigned to the undersigned Judge.

21. On 2 April 2025, the Tribunal scheduled a Case Management Discussion ("CMD"), which took place via MS Teams on 9 April 2025.

22. By Order No. 34 (GVA/2025) of 11 April 2025, the Tribunal instructed the parties to further explore amicable settlement and revert in this respect by 25 April 2025. If no settlement could be reached, the parties were informed that case management would automatically proceed, and that they would be expected to file their respective closing submissions by 9 May 2025.

23. On 9 May 2025, the parties filed their respective closing submissions.

Consideration

Receivability

24. Citing sec. 15.7 of ST/AI/2021/4 (Performance Management and Development System), the Respondent claims that the Applicant is barred from making any claims regarding the rating of "partially meets expectation" from the 2020-2021 performance cycle, which he did not rebut.

25. The Applicant advances three arguments in support of the assertion that his claims about the 2020-2021 performance rating are receivable. The first argument is that he was not given prior notification about the performance shortcomings and was therefore unable to address any deficiencies in his performance. The second one is that the Respondent failed to implement remedial measures or a PIP during the evaluation cycle as is required under sec. 10.2 of ST/AI/2021/4. This, it is

argued, undermined the validity of the performance rating. The third one is that the absence of notification and failure to implement remedial measures amounted to procedural flaws.

26. Section 15.7 of ST/AI/2021/4 provides that "[t]he rating resulting from an evaluation that has not been rebutted is final and not subject to appeal".

27. This Tribunal has interpreted the above section to mean that failure by a staff member to rebut a performance evaluation renders the evaluation binding on the staff member, the Administration, and the Tribunal (*Zhang* UNDT/2023/042, paras. 29-32).

28. The explanations offered by the Applicant are irrelevant to the receivability question, and could only be considered relevant in determining the fairness and objectivity of the ratings.

29. Since the Applicant does not explain the failure to rebut the performance rating, in line with *Zhang*, the Tribunal finds that the Applicant's failure to rebut the 2020-2021 performance rating rendered any claims relating to that evaluation not receivable.

30. Regarding the "partially meets expectation" ratings for the Applicant's 2021--2022 and 2022-2023 performance cycles, it is common ground that the Rebuttal panels upheld the ratings.

31. Section 15.5 of ST/AI/2021/4 provides that, "[t]he performance rating resulting from the rebuttal process shall be binding on the head of entity and on the staff member concerned, subject to the ultimate authority of the Secretary-General as Chief Administrative Officer of the Organization, who may review the matter as needed on the basis of the record".

32. Regarding the 2021-2022 rating, the Applicant argues that the delay of the rebuttal process until 9 November 2022 renders the decision challengeable before the UNDT on procedural grounds. To support, he cites *Kaddoura* 2021-UNAT-

1185, which, however, deals with separation from service of a staff member due to serious misconduct, and it does not relate to the issue of a timely rebuttal process.

33. He explains that during the 2022-2023 performance cycle, while the rebuttal process for the 2021-2022 rating was ongoing, he was left without a work plan for the cycle. Further, no remedial measures or PIP were implemented pending the delayed outcome of the rebuttal process.

34. In the Tribunal's view, the Applicant's explanations would be relevant in contesting the recommendations of the respective rebuttal panels. Absent evidence of such contests, the evaluation ratings bind the Applicant, the Administration, and the Tribunal. The Tribunal therefore finds that any claims relating to the 2021-2022 and 2022-2023 performance ratings are equally not receivable.

35. The Respondent further submits that issues relating to the decision to withhold the step increment retroactively are not receivable as well, since the decision was not subjected to management evaluation. The Applicant argues that the decision lacked a proper basis, since the second MEU review was overlooked. He argues that pursuing another MEU review amid PIP implementation was not feasible for him. Citing *El Sadek* 2019-UNAT-900, the Applicant argues that the decision to withhold the step increment retroactively, even covering the period of unlawful separation from service (January to March 2023), following the MEU's mootness decision and a PIP that had been imposed, violates employees' rights.

36. Staff Rule 11.2(a) provides that:

> Staff members wishing to formally contest an administrative decision alleging non-compliance with their contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

37. The Tribunal notes that the decision concerning the step increment was not subjected to management evaluation, which the Applicant does not contest. Since the requirement for management evaluation is mandatory, in the absence of

evidence of adherence to the law, the Applicant's claims regarding this decision are not receivable.

38. The Applicant further contests the decision not to renew his FTA beyond 9 February 2024 on the grounds that the performance evaluations were flawed and biased. Further, he claims that there were procedural flaws, delays, and irregularities in the performance management system. The Tribunal finds that the challenge of the non-renewal decision is receivable and merits a thorough judicial review.

The decision not to renew the Applicant's FTA for poor performance

39. In examining the lawfulness of a decision not to renew an Applicant's FTA for alleged poor performance, the starting point is the well-established principle that a fixed-term appointment does not bear any expectancy of renewal (e.g., staff regulation 4.5(c); staff rule 4.13(c); *Ncube* 2017-UNAT-721, para. 15).

40. However, it is also well established that the Organization must ensure that the non-renewal decision is made based on a fair and transparent process. The Appeals Tribunal has consistently ruled that even without a right to renewal, employees are entitled to a fair evaluation process (*Allen* 2019UNAT951, paras. 3435).

41. In other words, there should be sufficient proof of the alleged poor performance, usually on the basis of a procedurally fair assessment or appraisal establishing the staff member's shortcomings and the reasons for them (*Sarwar* 2017-UNAT-757, para. 72; *Ncube*, para. 17). If the Administration can present an e-PAS which is in full accord with the provisions of ST/AI/2021/4, it is then up to the staff member to prove that the content or the findings of the e-PAS are not correct (*Ncube*, para. 18).

42. If, on the other hand, the e-PAS suffers from procedural irregularities, an evaluation can only be upheld if it was not arbitrary and if the Administration proves that it is nonetheless objective, fair and well-based (*Ncube,* para. 18; *Tadonki* 2014-UNAT 400, para. 56).

43. Therefore, 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 was motivated by bias, prejudice or improper motive against the staff member". It is incumbent on the staff member to prove that such factors played a role in the non-renewal decision (*Said* 2015-UNAT-500, para. 34).

44. The Applicant has raised serious allegations of possible bias and lack of objectivity in the evaluation of his performance. In view of this, in determining the lawfulness of the contested decision, the Tribunal will examine whether:

a. The Applicant's performance was managed or evaluated in a fair and objective manner; and

b. The Administration failed to consider relevant information in making the contested decision.

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

45. The Tribunal recognizes that its role is not to conduct a *de novo* review of the Administration's evaluation of the Applicant's performance. Instead, it is tasked with determining whether the rules and procedures governing the performance evaluation process were adequately complied with, pursuant to sec. 2.1 of ST/AI/2021/4, which requires that staff members' performance be managed or evaluated in a "fair and equitable" manner.

46. The Applicant's arguments in support of the assertion that his performance was not managed or evaluated in a fair and objective manner fall under the following heads:

a. The recruitment process;

b. Issues concerning the first evaluation cycle;

c. Issues relating to the 2022-2023 performance cycle;

d. The context of unlawful separation, which allegedly casts doubt on the impugned decision; and

e. Inadequate MEU review.

a. The recruitment process

47. According to the Applicant, his recruitment involved the cancellation of the job vacancy followed by its re-advertising and eventual hiring. He maintains that the irregularities and delays in the hiring process raise concerns about the transparency and fairness of that process. These issues, he asserts, had lasting effects on his performance evaluations and overall experience in the role.

48. In the Tribunal's view, however, even absent a response from the Respondent regarding this point, the argument has no merit. There is no evidence that the cancellation of the job vacancy, its re-advertising and eventual hiring were ill-motivated.

49. Moreover, the Applicant does not substantiate the assertion that there were irregularities and delays in the hiring process, nor that there was no transparency. Crucially, there is no logical connection between the alleged anomalies and the impugned performance evaluations, including the Applicant's overall experience in the role.

50. There is, therefore, no rational or coherent basis for concluding that the alleged issues in the recruitment process had lasting effects on the Applicant's performance evaluations and his overall experience in the role. The Tribunal rejects the Applicant's claims for being speculative and irrelevant to the judicial review of the contested decision.

b. Issues concerning the first evaluation cycle

Lack of prior notification about the Applicant's performance shortcomings.

51. The Applicant maintains that in the 2020-2021 performance evaluation cycle, he was not given prior notification about any of the alleged performance shortcomings, that he was not offered any remedial measures nor a PIP. These omissions, he argues, were serious procedural flaws that prevented him from addressing the alleged performance shortcomings and, subsequently, undermined the validity of the performance rating in the first cycle.

52. The Respondent does not contest the above assertions. That the Applicant was not given prior notification about his performance shortcomings in the 2020-2021 performance cycle, and that remedial measures and a PIP were not implemented are, therefore, common ground.

53. Section 7.1 of ST/AI/2021/4 provides as follows:

> During the year, the first reporting officer and the staff member should have ongoing performance conversations, whether verbally or in writing, which should be used to acknowledge good performance and address any shortcomings.

54. Section 10.1 provides thus:

> During the performance cycle, the first reporting officer should continually evaluate performance. When a performance shortcoming is identified during the performance cycle, the first reporting officer, in consultation with the second reporting officer, should proactively assist the staff member in remedying the shortcoming. 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 and supervision by the first reporting officer in conjunction with performance conversations, which should be held on a regular basis.

55. While the Appeals Tribunal has held that the use of the non-peremptory word "should" confirmed that the provisions of ST/AI/2021/4 are directory and not mandatory (*Sarwar* 2017UNAT757, para. 86), it has also held that managers are

required to record unsatisfactory performance and bring it to the attention of the staff member in a timely manner, and to offer the staff member an opportunity to improve their performance.

56. Further, it is in the subsequent reporting cycle that the performance of the staff member should be assessed to determine whether there has been an improvement. If the staff member does not fully meet the expectations for the second time in succession, then the appointment may be terminated for unsatisfactory performance.

57. It has been held that the Administration's duty of care towards the Applicant is limited to ensuring that he was aware of the required performance standards and given a fair opportunity to meet those standards before terminating his appointment for unsatisfactory service (*Sarwar*, para. 87-88). While nothing on record suggests that the Applicant was not acquainted with what was expected of him, the uncontroverted evidence that his managers did not bring his unsatisfactory performance to his attention in a timely manner, and therefore did not offer him an opportunity to improve his performance means that he was not given a fair chance to meet the required standard.

Delays and irregularities in the performance management system.

58. The Applicant maintains that the agreed workplan for the 2020--2021 performance cycle was uploaded in Inspira only on 28 October 2020, thus with significant delay.

59. Section 3.2 of ST/AI/2021/4 provides as follows:

> When a staff member takes up new duties upon recruitment, transfer or assignment in the course of the cycle, an individual workplan should normally be established within the first two months of assumption of the new functions. If a staff member actively serves with a Secretariat entity for less than six months during the cycle, no performance document is required to be completed.

60. The above provision relates to the establishment of the workplan rather than uploading workplans on Inspira, which is what the Applicant's allegation is about.

The provision is therefore inapplicable to the situation at hand. In any event, the provision is directory and not mandatory as far as timelines are concerned. The complaint therefore lacks merit.

61. The Applicant further complains that the mid-point review was conducted with significant delay. Sec. 5.1(b) of ST/AI/2021/4, on which the Applicant relies, provides the following in its relevant parts:

> 5.1 A first reporting officer shall be designated for each staff member at the beginning of the performance management and development cycle. The first reporting officer is responsible for:
>
> […]
>
> (b) Conducting milestone discussions at a frequency agreed upon at the start of the cycle, and recognizing good performance and any shortcomings as they become apparent at any time during the cycle, as appropriate, in performance conversations outside the regular intervals set initially for the milestone discussions;

62. The above provision is directory and not mandatory (*Sarwar*, para. 86). It cannot, therefore, form the basis for the conclusion that the mid-point review was conducted with significant delay.

c. Issues relating to the 2022-2023 performance cycle.

Lack of workplan (2022-2023)

63. The Applicant argues that the Respondent's reliance on the 2022-2023 performance cycle is flawed, since he was not provided with a clear workplan. According to him, the absence of a workplan undermines the fairness of the evaluation.

64. In the Tribunal's view, the argument that the absence of a workplan undermined the fairness of the evaluation is without merit. As has been indicated above, what is relevant is whether the staff member was aware of the required standard and whether he/she was given a fair opportunity to meet it. Nothing on record suggests that the Applicant was not acquainted with what was expected of

him performance-wise, nor that he was not given a fair opportunity to meet the required standard.

65. The Appeals Tribunal has clarified that failure to generate a work plan at the commencement of a cycle is not a procedural flaw (*Sarwar*, para. 86).

66. The Applicant's argument therefore fails in this regard.

Issues concerning the implementation of the Performance Improvement Plan ("PIP")

67. The Applicant argues that since there was no written workplan for the 2022--2023 performance cycle, the only performance evaluation he was subjected to was the three-month PIP that began on 6 April 2023, on terms that were not even agreed upon beforehand.

68. However, the only legal requirement for the implementation of a PIP is that it shall be prepared in consultation with the staff member concerned and his/her SRO, pursuant to sec. 10.2 of ST/AI/2021/4:

> 10.2 If the performance shortcoming was not rectified following the remedial measures indicated in section 10.1 and if, at the end of the performance cycle, performance is appraised overall as "partially meets performance expectations", a written performance improvement plan **shall** [emphasis added] be prepared by the first reporting officer. This **shall** [emphasis added] be done in consultation with the staff member and the second reporting officer. The performance improvement plan may cover up to a six-month period.

69. The mandatory requirement for consultation between the FRO and a staff member was fulfilled as evidenced in the e-mail of 6 April 2023 from the FRO to the Applicant. In that email, the FRO stated:

> We are nearing the end of your first week in the office and I trust and hope that you feel that you have been welcomed by the whole team, including colleagues from the wider UNKT. Thank you for your constructive efforts in our initial discussions on the proposed workplan for three months that I shared with you, as well as our discussion on Tuesday and Wednesday about deliverables for the

> two week period until 24 April. I am grateful for your proactive approach in responding to the tasks we have been discussing.
>
> As part of this process, as you know, **we need to agree on a written PIP** [emphasis added]. Please find attached for your perusal a document which consists of:
>
> > • A "general" PIP outlining key areas for improvement in a general sense, based on the performance discussion we had in December and the areas identified for improvement (first four pages)
> >
> > • A "two-week" PIP for the period 5 to 24 April (bearing in mind the leave period in between), based on the general PIP areas for improvement, but outlining the concrete deliverables that we discussed.
> >
> > • [The idea is that the two-week PIP will be regularly updated with new deliverables.]
>
> The document also contains resources and areas of support. We have discussed most of these, and I am happy to walk you through some additional areas, such as resources on active listening or writing tools.
>
> I would appreciate if we could meet tomorrow at 9h00 to go through this (given that we have asked you to attend a meeting with WHO at 10h00). Should you require more time to review, please let me know and we can arrange a meeting later tomorrow. I just have some conflicting priorities regarding the Annual Results Report, so grateful if you could look at my calendar before making any suggestions.

70. The above demonstrates that the PIP in question was prepared by the Applicant's FRO and duly communicated to him. Since a staff member does not need to agree with a PIP for its implementation to be lawful, it furthermore nullifies the Applicant's argument vis-à-vis any illegality by lack of agreement.

71. The Applicant further complains that the PIP's rationale was ignored by his supervisors. He seeks to support this assertion by the e-mail communication of 8 April 2023, in which he stated the following to his FRO:

> Allow me to intervene with my perspective and avoid eventual biases, while trying to be not too long:

Please refrain from alluding to a lack of willingness to reflect and learn when you speak about a learner and seasoned educator. That aspect has already been proven, even at the UN, with my first cycle evaluation. Humbly, but factually, I have been the champion in the office on that matter.

You seem to mix up root causes and 'remedies'. I am questioning many of the foundations and substance, which in your draft PIP are listed in the first column on the left of the document: "Defining the task, skill, or the competence that needs to be reviewed and improved".

You seem to mix up the different cycles of evaluation and maneuver between them with a lack of adequate links. For instance, even if that were to be true, are those areas relevant yet for the upcoming three months and/or two weeks? A reference to the MEU decision may help you to make some reasoning for the PIP, instead of insisting on covering previous mistakes with another one.

You seem to imply that I am refusing PIP. Let me be clearer: PIP is an instrument imposed on me, and that is how I will treat it.

In connection, a bit of a reminder, saying it in a soft way, you made a biased statement to the rebuttal panel, which led to the intended separation, for reasons and circumstances best known to you. That matter has not been dealt with so far.

In your last year's evaluations, done in December, despite my constructive input, you did not make a single comma change to your own document, but instead relying on the number of people who have signed it, as a proof of legitimacy and accuracy, by also using inappropriate metaphor to me "if four people say you are a horse, basically are a horse"!.

Remember – am not referring to our situation - a number of persons involved in something wrong, could be called 'organized crime', irrespective of the numbers.

In your PIP, despite our conversations and my input, you did not make a single reflection or amendment. … And yet, I am the one being criticized for not listening and not taking feedback. Meaningful conversation and reflection must be a two-way process. By conversing and listening meaningfully to each other, we will all benefit instead of embarrassing ourselves.

As a staff member and someone who is being evaluated, a bit of a humble and unsolicited piece of advice: when you do assess and qualify someone else, think how much you are describing yourself

> vs. how much you are referring to the root causes and providing constructive feedback.
>
> Also, instead of attempting to threaten myself with actions against me, about why I write such emails, you could use them to assess some of my writing skills, as you keep referring to...in PIP.
>
> Further, to the listening skills, and in connection with learning and reflecting, please find enclosed my certificate of this morning's course, which I admit was quite eye-opening and would suggest you find little time to listen to it also, at least the parts when it refers to managers. I trust it would facilitate some of your needed reflection…"

72. Section 10.2 of ST/AI/2021/4 requires that the staff member concerned be consulted. However, it does not oblige the supervisor to adopt the staff member's views regarding the rationale for the PIP. Once the Respondent fulfilled the procedural requirement of consulting the Applicant and informing him of the PIP's conditions and expectations, the Administration fully discharged its duty. Accordingly, the allegation that the Applicant's views on the PIP's rationale were disregarded lacks merit.

73. In relation to the PIP process, the Applicant contends that due to an extended period of certified sick leave ("CSL") from 29 September to 8 December 2023, the second PIP originally intended to span three months was effectively extended to nearly six months, covering the period between 28 August 2023 and 9 February 2024. As a result of both the delays in initiating the second PIP and the Applicant's medical absences, the Applicant remained under PIP for over ten months (i.e., from 6 April 2023 to 9 February 2024). The Applicant further asserts that this prolonged period under performance monitoring adversely impacted his mental health, compromised the integrity of the evaluation process, and raised concerns regarding adherence to applicable guidelines and overall fairness.

74. Section 10.2 above provides that "the performance improvement plan may cover up to a six-month period".

75. Clearly, sec. 10.2 is directory and not mandatory. The section cannot be the basis for a conclusion that the extended period of the PIP, which was justified in this case due to the Applicant's CSL, affected the evaluation process.

76. Based on the foregoing considerations, the complaint about the length of the PIP period must fail.

d. The context of the Applicant's previous "unlawful" separation, which allegedly casts doubt on the fairness of the impugned decision.

77. The Applicant asserts that the context of his previous unlawful separation casts doubt on the fairness of the impugned decision. He raised several issues under this head.

78. The first is that after the "partially meets expectation" rating for the 2021-2022 performance cycle, the FRO intended to initiate a PIP for six months. The PIP, however, was not implemented. Instead, the Applicant was separated.

79. In the Tribunal's view, the intention to implement a PIP after the 2021-2022 cycle, which was ultimately not carried out without any apparent justification, casts doubt on the fairness of the decision to separate the Applicant. Accordingly, this claim is upheld.

80. The second allegation is about the premature evaluation of the Applicant in the 2023-2024 performance cycle. There is evidence that the second PIP was meant to run from 28 August 2023 to 9 February 2024. However, as admitted by the Respondent, the Applicant was informed on 26 January 2024 that the goals outlined in the second PIP had not been met. This means that the Applicant was provided with the final assessment of his performance before the end of the intended PIP period.

81. In a fair process, the Applicant should have been evaluated at the end of the PIP period in accordance with sec. 10.5 of ST/AI/2021/4, which provides:

> 10.5 Should unsatisfactory performance be the basis for a decision for non-renewal of a fixed-term appointment, and should the appointment expire before the end of the period covering a performance improvement plan, the appointment should be renewed for the duration necessary for the completion of the performance improvement plan.

82. Since the FRO informed the Applicant on 26 January 2024 that the goals of the second PIP had not been met, before its natural conclusion on 9 February 2024, and since the Respondent did not provide any reason for the premature evaluation, the Tribunal accepts the assertion that the performance evaluation of the second PIP lacked fairness and objectivity.

83. The Applicant further contends that his SRO disclosed to the FRO his request for a change of supervisor, which, he maintains, influenced the FRO's conduct and resulted in biased performance evaluations.

84. The fact that the disclosure occurred—an act for which the SRO later apologized—is not in dispute. While the disclosure alone does not constitute definitive evidence of bias, the Tribunal considers that the possibility of bias on the part of the FRO cannot be excluded. In light of this uncertainty, and particularly given the irregularities previously identified in the PIP process, the benefit of the doubt must be given to the Applicant.

85. The Applicant further argues that the PIP process was initiated without the implementation of prior remedial measures. While section 10.1 of ST/AI/2021/4 does not make such measures mandatory, the cumulative effect of procedural omissions, including the imposition of the PIP following what this Tribunal previously found to be an "irregular" separation (*Isufi* UNDT/2023/117, para. 40), undermines confidence in the objectivity of the process. This, in turn, lends support to the Applicant's claim that the performance evaluations were neither fair nor impartial.

General issues relating to work relations between the Applicant and his supervisors.

86. The Applicant alleges that he received inconsistent, vague, and at times contradictory guidance from his supervisors. In support of this claim, he refers to the conclusion of the 2020–2021 performance cycle, during which he submitted his self-assessment in Inspira. He states that he had an initial conversation with his FRO via MS Teams on 29 March 2021, during which no negative feedback was provided. Subsequently, during a discussion with his SRO on 28 April 2021, the feedback

was largely positive, with the only suggestion being to make greater efforts to engage with the private sector.

87. The Applicant maintains that he was first made aware of the "partially meets expectations" rating on 10 May 2021, when it appeared in Inspira. He notes that the rating consisted primarily of "BFully Competent" marks, with only one "CRequires Development," which he argues was inconsistent with UN guidelines requiring evaluations to be balanced, transparent, and free of surprises.

88. Taken aback by the rating, the Applicant sought clarification from both the FRO and SRO. He reports that the FRO reassured him there was no cause for concern, stating that "we rate a little low to motivate staff to do more," and further indicated that no remedial measures were necessary. Relying on this assurance, the Applicant chose not to rebut the evaluation.

89. Save for the evidence that the Applicant indeed communicated his disagreement with the assessment to his supervisors, the assertion that the FRO told him not to worry is unsupported. It is, however, instructive that the Respondent did not dispute the Applicant's account; the reason the Tribunal accepts it.

90. The Applicant's other allegations are similarly unsubstantiated. For example, he claims that although the FRO had previously encouraged him to "increase engagement with the private sector," in 2022, he banned collaboration with the Kosovo Chamber of Commerce, citing alleged corruption involving the newly elected Chairman. The Applicant argues that this decision disrupted ongoing engagement and led to the self-isolation of UNKT. However, he provides no evidence that the FRO had instructed or supported the termination of the partnership with the Kosovo Chamber of Commerce.

91. Concerning the allegation related to the end-of-cycle evaluation, the Applicant states that he submitted the report and discussed it with the FRO on 7 April 2022. He claims that during this discussion, he was confronted with three false accusations, which he refuted with supporting evidence. These included: (a) an allegation that he failed to prepare talking points for an event with the UN Global Compact; (b) claims related to his illness two days prior to the UN Global

Compact event, which allegedly disrupted work processes; and, (c) a criticism that the draft of the Partnerships and Resource Mobilization Strategy was of poor quality, which he clarified was actually prepared by another team member.

92. The Applicant does not, however, provide evidence before the Tribunal to prove that the allegations were made, and that he debunked them.

93. He asserts, again without furnishing proof, that the Respondent's assessment of his "analysis and strategic thinking" contradicts a prior rebuttal confirming his analytical skills.

94. With regard to the "Toolkit" task referenced by the Respondent, the Applicant explained that the FRO initially led it during her tenure as an Economist. He noted that the task had been delayed and remained incomplete for several months. It was later assigned to him by the FRO, with the instruction: "Sharing Jim's comments on the checklist. Would be great to get your initial feedback on this".

95. The Applicant further asserts that what was initially intended as preliminary feedback on the task later became the FRO's definitive assessment and a major expectation. He claims that the FRO ultimately evaluated his work as "superficial and generic, without […] applying [his] knowledge of the situation or the wider context". He also contends that his sick leave, which prevented him from completing the task, was disregarded.

96. The Tribunal notes that there is no evidence to support the above assertions. However, the evidence demonstrates that the Applicant brought this issue to the FRO's attention by e-mail dated 6 July 2023, in which he asserted:

> […] on some occasions assessment is done on drafts rather than on the final products coming out of the processes/NDP, which in fact contains many of the critical analyses, suggestions, and recommendations within, a key one also mentioned yesterday at the JSC by Minister of Trade and Industry, being the support in developing and aligning the sectorial strategies […]

97. The FRO's silence about the Applicant's concern must be taken to have been an admission of the facts as relayed by the Applicant. The Tribunal concludes, therefore, that the evaluation was not fair and objective in this regard.

98. The Applicant further contends that the FRO had a tendency to evaluate his performance based on draft submissions rather than finalized work. In relation to the National Development Plan analyses, he states that he submitted a first draft for the FRO's review on 27 June 2023. However, instead of receiving constructive feedback and guidance to finalize the task, the FRO allegedly treated the draft as the final product and submitted her assessment on 4 July 2023. The Applicant, however, does not provide evidence to substantiate these claims. The document he relies upon does not support the allegation as presented.

99. The Tribunal also finds that there is no evidence that the FRO retrospectively criticized tasks already completed by the Applicant that had been positively assessed by the SRO, as the Applicant claims.

100. With respect to the Applicant's allegation that he was not provided with the statements of the FRO and those of the others who were interviewed by the rebuttal panel, and, thus, he was prevented from commenting on them, the Tribunal finds that this allegation lacks merit.

101. It is on record that the Applicant only requested to be provided with the FRO's statement. Section 15.3 of ST/AI/2021/4, on which he bases this claim provides as follows:

> 15.3 After receiving a copy of the rebuttal statement, the head of entity or his or her representative shall, within 14 days, prepare and submit to the rebuttal panel a brief written statement in reply to the rebuttal statement submitted by the staff member. A copy of the reply to the rebuttal statement shall be given to the staff member. Unless geographical location makes it impractical, the panel shall hear the staff member, the first and second reporting officers and, at the discretion of the panel, other individuals who may have information relevant to the review of the appraisal rating. Telephone statements may also be taken where geographical separation so dictates.

102. Under this provision, the Applicant was entitled to the statement of the head of entity or his/her representative; not that of the FRO. This claim, therefore, fails.

103. The Applicant's grievance that he was reinstated with the same FRO, despite having requested a change, also fails in view of the established legal position that staff members have no right to a particular FRO.

v. The issue of inadequate MEU review.

104. Issues touching on MEU review are not reviewable by this Tribunal.

105. Therefore, the Tribunal finds that the Applicant's performance was not managed or evaluated in a fair and objective manner based on the following findings:

a. During the 2020-2021 performance cycle, the Applicant was not given an opportunity to improve his performance;

b. A PIP which had been intended to be implemented in the 2020-2021 performance cycle was not implemented without reason;

c. The Applicant was prematurely evaluated in the 2023-2024 performance cycle;

d. The Applicant's request for a change of FRO was disclosed to said FRO resulting in biased evaluation, among other failures;

e. The Applicant's reinstatement after the previously irregular separation acknowledged that he was not given a fair opportunity to improve his performance prior to that separation;

f. The FRO misled the Applicant not to rebut the 2020-2021 rating when she told him not to worry about it; and

g. An initial feedback on the toolkit task became the FRO's definitive assessment of the Applicant's performance without proper communication.

106. Based on the Tribunal's findings above, and on the rather serious uncontroverted evidence that the FRO misled the Applicant into not rebutting the "partially meets expectations" rating of the 2020-2021 performance cycle, the Tribunal finds sufficient evidence in support of the conclusion that the Applicant's evaluation lacked fairness and objectivity.

Whether the Organization failed to consider relevant information in making the contested decision.

107. The Tribunal recalls that in determining the lawfulness of an administrative decision, it should "consider whether relevant matters have been ignored and irrelevant matters considered".

108. The Organization's duty of care towards its staff members and the purpose of ST/AI/2021/4 require the Organization to make every effort to consider in good faith all relevant performance information prior to its decision not to renew a fixed-term appointment on grounds of unsatisfactory performance.

109. As has been found, the Applicant's performance was not managed or evaluated in a fair and objective manner, and the Administration failed in its duty of care in relation to the issues referred to in para. 105 above.

110. The Tribunal therefore finds that the Administration failed to consider relevant information in making the contested decision. As it follows, the decision not to renew the Applicant's fixed-term appointment for alleged unsatisfactory performance is unlawful.

Remedies

111. The Applicant seeks the following remedies:

a. Cancellation of the performance assessments between 2021 and 2023;

b. Recission of the non-renewal decision on the grounds of unsatisfactory performance with immediate reinstatement. Alternatively, compensation for the material damages suffered, in the sum of two years' salary;

c. Compensation for withholding one step increment to NOB-8, during the period between 1 January 2023 and 9 February 2024; and

d. Compensation for unlawful actions and moral damage, including damages to health, medically certified, and damages to professional reputation, in the total amount of USD18,000.

112. Under art. 10.5 of the Tribunal Statute, the Tribunal may award the following remedies:

> (a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;
>
> (b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

Cancellation of the performance assessments between 2021 and 2023

113. This remedy is untenable given the Tribunal's findings on the non--receivability of claims relating to the performance ratings for the 2020-2021, 2021-2022 and 2022-2023 performance cycles.

Recission of the non-renewal decision on the grounds of unsatisfactory performance with immediate reinstatement.

114. Since it has been found that the non-renewal decision was unlawful, the Tribunal finds it appropriate to rescind it and to determine that the Applicant be reinstated.

115. In keeping with art. 10.5(a) of the Tribunal's Statute, the Respondent may elect to pay as an alternative to the rescission of the contested decision and in lieu of the reinstatement, an amount of six months net base salary.

Compensation for withholding one step increment to NOB-8

116. Based on the conclusion that this claim is not receivable, the Applicant is not entitled to any remedy.

Compensation for harm

117. The purpose of compensation is to place the staff member in the same position he or she would have been in had the Organization complied with its contractual obligations.

118. The Tribunal "may award compensation for actual pecuniary or economic loss, including loss of earnings, as well as non-pecuniary damage, procedural violations, stress, and moral injury" (*Harris* 2019-UNAT-896, para. 61).

119. The Appeals Tribunal has consistently held that "compensation must be set by the [Tribunal] following a principled approach, and on a case-by-case basis". Further, that "[t]he Dispute Tribunal is in the best position to decide on the level of compensation given its appreciation of the case" (*Mihai* 2017-UNAT-724, para. 15; *Krioutchkov* 2016-UNAT-691, para. 28; *El-Awar* 2022-UNAT1265, para. 70).

120. Under art. 10.5(b) of the Tribunal's Statute, the Applicant may be awarded compensation for damages, such as stress, anxiety, and reputational harm, provided that harm is supported by evidence.

121. The Appeals Tribunal has also consistently held that "an entitlement to moral damages may arise where there is evidence produced to the Tribunal, predominantly by way of a medical or psychological report of harm, stress or anxiety caused to the employee, which can be directly linked, or reasonably attributed, to a breach of his or her substantive or procedural rights and where the Tribunal is satisfied that the stress, harm or anxiety is such as to merit a compensatory award" (*Ashour* 2019-UNAT-899, para. 31; *Coleman* 2022-UNAT-1228, para. 42).

Compensation for unlawful actions and moral damage in the total amount of USD18,000.

122. In support of his claim for moral damages, the Applicant argues that the biased evaluations hindered his career and professional reputation within the Organization. Further, he claims that the perceived bias and lack of support led to frustration and demoralization, which negatively affected his mental health, and that the unlawful non-renewal decision caused him reputational harm, anxiety, and distress.

123. Furthermore, the Applicant provided *ex parte*, a medical certificate from his treating physician, attesting a diagnosis of anxiety and depression, and the respective approval of certified sick leave ("CSL") by the Organization's Medical Services. According to the Applicant, said illness was a direct result of work-related stress.

124. The Tribunal has consistently held that the concerned staff member's testimony by itself is not sufficient to establish that he suffered compensable harm for moral damages. There must be reliable and independent evidence linking the alleged damage to mental or physical health to the contested decision.

125. While the Tribunal acknowledges the evidence that the Applicant was on CSL for a certain period due to anxiety and stress, it does not consider that the evidence meets the threshold of reliable and independent evidence to support an award of moral damages. This is because there is no confirmed *causal link* between the mental illness and the contested decision other than the Applicant's own assertion. The request for moral damages must, therefore, be rejected.

Conclusion

126. In view of the foregoing, the Tribunal DECIDES:

a. The application succeeds in part;

b. The contested decision is hereby rescinded;

c. The Applicant is to be reinstated, with all his benefits and entitlements, from the date of separation;

d. Should the Respondent elect to pay financial compensation instead of effectively rescinding the decision, the Applicant shall be paid a sum equivalent to six months' net base salary, based on his salary at the time of his separation;

e. The aforementioned compensation amount shall bear interest at the United States of America prime rate with effect from the date this Judgment becomes executable until payment of said compensation. An additional five per cent shall be applied to the United States prime rate 60 days from the date this Judgment becomes executable.

(Signed)
Judge Margaret Tibulya
Dated this 5th day of September 2025

Entered in the Register on this 5th day of September 2025
(Signed)
Liliana López Bello, Registrar, Geneva