

Case No.:

Case No. UNDT/NY/2009/100

Judgment No. UNDT/2009/004

expectancy of renewal”. The latest period of employment was to expire on 31 July 2009.

5. The applicant’s performance was assessed in November 2008 and in May 2009. He signed off his last end-of-cycle electronic Performance Appraisal System (“e-PAS”) report on 13 May 2009 but advised that he wished to rebut the overall rating he had received. He received his notice of non-renewal on 22 May. On 21 June 2009 he provided detailed reasons for his rebuttal.

6. The applicant told the Tribunal that his relationship with his P-5 supervisor was initially very good but deteriorated to the extent that the applicant felt it necessary to bypass his supervisor when making suggestions on how to improve the UN system. The applicant then took his proposals to a higher authority. His supervisor reacted badly to this.

7. The applicant was critical of the e-PAS process used by his supervisors to assess his performance. He alleges he was not provided with a work plan for his unit, there was no improvement plan suggested to deal with the adverse findings made against him, no reasons were given for the comments on his professionalism and integrity and there was no end-of-cycle discussion with him. In summary he believes his supervisors did not respect the e-PAS system.

8. As at the date of the hearing of this matter the rebuttal process was not completed although the applicant had been interviewed and interviews with his supervisors are planned. The applicant told the Tribunal he had received a fair hearing by the rebuttal panel members.

9. The applicant also requested a management evaluation of the e-PAS on 21



irreparable harm. Harm is irreparable if it can be shown that suspension of the action is the only way to ensure that the Applicant's rights are observed.

17. Even if the applicant had made out a prima facie case of unlawfulness of the decision not to renew his appointment, he has not established that he will suffer irreparable harm as a result of that decision. I find that it is open for the applicant to be compensated for any wrong should it be found to have occurred in the course of the e-PAS process.

18. The nature of his appointment gave the applicant no expectation of automatic renewal of his position. That does not mean that he does not have an expectation of fair treatment by his supervisors when exercising the discretion to renew but any breach of due process is able to be compensated for in other ways.

19. It was accepted by Mr Margetts for the respondent that the outcome of the rebuttal process is binding on the Secretary-General. A positive outcome for the applicant will be reflected in an amended e-PAS and the original e-PAS cannot be used to prejudice any future applications for appointment. Mr Margetts confirmed that it is the policy of the Secretary-General that a former employee will not lose accrued rights to due process. Consequently the applicant will not be deprived of his right to continue to challenge the e-PAS by rebuttal or management evaluation even though he is no longer employed by the United Nations.

20. Next, it is clear that apart from the important matter of his honour, any harm to the applicant is financial. Should he be ultimately vindicated by the rebuttal process, management evaluation or by a decision of this Tribunal it is open to him to apply for monetary compensation to reflect any losses that arise out of defects in the performance management applied to him.

21. I am therefore satisfied that if it were established that there has been harm suffered by the applicant as a result of an unlawful e-PAS procedure such harm would not be irreparable as it can be compensated by the correction of his

