

request management evaluation of this decision within the statutory time limits and the decision was therefore final.

On 30 June 2016, the Applicant signed her performance evaluation for

6. On 26 September 2016, the Applicant filed a motion to amend the application, and also submitted the amended application with annexes.
7. On 28 September 2016, the case was assigned to Judge Ebrahim-Carstens.
8. By Order No. 227 (NY/2016) dated 29 September 2016, the Tribunal granted for the Respondent to file the reply to 28 October 2016.
9. On 28 October 2016, the Respondent filed his reply, in which he claims that the non-application is therefore without merit.
10. By Order No. 178 (NY/2017) dated 30 August 2017, the Tribunal provided the following orders, noting, *inter alia*, that it was not clear to what extent the parties agreed or disagreed on certain facts set out in their respective submissions:

By **5:00 p.m. on Friday, 29 September 2017**, the parties are to file a jointly signed statement providing, under separate headings, the following information:

- a. A consolidated list of agreed and contested facts in chronological order, making clear reference to the relevant and specific dates, manner of notification or transmittal of information, and the documentary evidence, if any, relied upon to support the agreed or contested fact (clearly referencing the appropriate annex to the application or reply as, for example, A/1 or R/1);
- b. A list of any further documents which each of the parties request to produce, or request the opposing party to produce, and the relevance thereof;
- c. Whether they request an oral hearing to address the merits of the application and, if so:
 - i. A list of the witnesses that each party proposes to call; and
 - ii. A brief summary of the issue(s) to be addressed by each witness.

18. Accordingly, the Tribunal defines the principal issues of the present case as follows:

- a. Was the reason for the non-appointment appropriately based on relevant and reliable facts with regard to her alleged performance shortcomings?
- b. Is a supervisor obliged to provide guidance, feedback and training to a staff member on a temporary contract during the course of the appointment case?
- c. Was the non-renewal of the Applicant tainted by ulterior motives?

The judicial review and burden of proof

19. From the onset, the Tribunal notes that its judicial review is limited as the Dispute Tribunal is not to replace the decision-maker by assessing the correctness of the contested decision but rather to assess (a) the legality of the decision, (b) the appropriateness on how it was reached, and/or (c) whether the Administration acted properly within its discretionary powers. As stated by the Appeals Tribunal in *Sanwidi* 2010-UNAT-084:

38. [A]dministrative tribunals worldwide keep evolving legal principles to help them

dedicated to data entry, email correspondence, her liaising with member organizations to obtain documentation, as well as the inherent difficulties she encountered with the slow performance of the new V3 system .

23. Various technical issues prevented the Applicant from undertaking her task(s), which the Applicant had addressed in an email to her FRO. The Applicant explains that during a meeting with the FRO, she was forced to estimate how many cases she could complete in a week and that she had informed the FRO that, under optimal conditions, she could complete approximately 15 to 20 cases a week and that the FRO had stated that 80 cases a month would be assigned to her to be

28. The Respondent submits that a temporary appointment does not carry any expectancy of renewal, irrespective of length of service in accordance with staff regulation 4.5(b) and staff rule 4.12(c). In this regard, t
was unsatisfactory. As such, p

5. Liaise with member organizations of the Pension Fund, communicating pertinent rules and regulations of the Fund, in order to maintain accurate case files with respect to participation and benefit options.

Success Criteria:

2. Liaise with client services, records management unit, cashiers unit, and accounts unit as necessary to ensure complete documentation, the accuracy of payment forms and participant account data.

3. Drafting meeting minutes as assigned for weekly staff meetings.

4. Participate in training activities related to the Section's work, including participation in bi-weekly training modules on calculations, prior to system conversion (V3 Go Live), and further training offered as made available. [The Tribunal notes that no explanation is provided for the technical acronym]

Success Criteria: Work collaboratively within team unit to complete cases for payment, to include exceptional and more complex cases for payment. Work collaboratively with other units to ensure complete documentation, accuracy of payment forms, and participant account data. Completion of meeting minutes within 1-2 business days in consultation with supervisor's review. Attend, participate and engage in training activities as assigned.

31. _____ ment,
the form was signed by the FRO, the SRO and the Applicant. In the form, the FRO
_____ -month temporary appointment with
s
FRO _____ as follows:

[The Applicant] was appointed on a 12 month [General Temporary Assistance] position on 15 June 2015, as a Benefits Clerk within the Pensions Entitlements Section (PES) since she met the basic qualifications to support the team in anticipation of a backlog of cases resulting from the i0051031opents 32f ay i004()-w()] T(329(I)2)10-7()]g7(ti)-ed317(i003(e)4(

inconsistency in output and reliability. [The Applicant] has not extended herself to produce more than the minimum set target and for most of the year she has under produced.

Towards the end of her contract, [the Applicant] has shown that she has the ability to fully apply herself, however, for the rest of the year she has not applied herself consistently and has not been able to meet the demands required at this critical time for PES.

Efforts have been made to communicate this inconsistency to [the Applicant] both verbally and in writing. [The Applicant] provided

completed performance appraisal form, submit a written explanatory statement to the respective Executive Office at Headquarters, or to the Chief of Administration elsewhere. The performance evaluation form and the explanatory statement shall become part of the official status file of the staff member.

34. It follows from the case record that the Applicant never submitted such a written explanatory statement to object against the performance rating and that this therefore stands unchallenged. In the 29 September 2017 joint statement, the Applicant submitted that she had instead submitted a written self-assessment and work log in disagreement with the review and that the signed performance appraisal by the Applicant does not imply any admission of agreement as per ST/AI/2010/4/Rev.1.

35. As a matter of principle, the Tribunal finds that there is no legal basis for finding that only because the Applicant did not file a written explanatory statement in protest against the appraisal of her performance as set out in the signed performance evaluation form, she is now barred from questioning the propriety of her performance assessment as a matter of fact in her non-

which the Tribunal has accepted in evidence. When reviewing submissions and the documentation on record, including the written correspondence with her sister, the email correspondence relating to the performance appraisal and the performance evaluation form (see *supra*), the Tribunal is left with the impression of an increasingly deteriorating working relationship between the Applicant and the FRO as also demonstrated by ST/SGB/2008/5 against the FRO. However, by itself, none of this proves that the FRO and the SRO had overstepped their discretionary authority as supervisors when providing the Applicant with a negative performance appraisal, but only that they disagreed about some points in this assessment.

37. Lacking any evidence that shows the contrary, the Tribunal therefore finds that the non- was appropriately supported by relevant and reliable facts, namely that, as proved by her performance appraisal, her performance did not meet expectations. In this regard, the Tribunal further notes that, in the joint submission of 29 September 2017, the Applicant stated not request an oral hearing to address the merits of the application. [She]

After over six months, the Applicant was denied training to complete retirement benefits calculations.

40.

the Applicant on her work goals and performance. At their first meeting, they er training needs, and she was provided with the appropriate training. The Applicant was involved in staff meetings, where issues regarding the work of the unit were discussed, and the FRO regularly provided guidance and feedback on ongoing work, whic

self-evaluation dated 30 June 2016. The Respondent also submits that sec. 1 of ST/AI/2010/5 (Performance Management and Development System) excludes temporary staff members from this system, and that the procedures and rights provided in ST/AI/2010/5 do not apply to the Applicant, for which reason no requirement exists for mid-point reviews or remedial measures in the case of unsatisfactory performance.

41. The Tribunal observes that ST/AI/2010/4/Rev.1 that concerns temporary appointments such as that of the Applicant does not entail any provision on guidance, feedback and training to a staff member on a temporary contract during the course of the appointment. The Tribunal further agrees with the Respondent that sec. 1 of ST/AI/2010/5 does not apply to temporary appointments. However, this does not mean that some of the general principles enshrined in ST/AI/2010/5 do not apply to the Applicant. On the contrary, the general notion of good faith and fair dealing in contractual relationships would entail that, at the beginning of the appointment, a staff member on temporary appointment should be informed by a supervisor about her/his assignments and performance expectations and, if her/his performance is subsequently considered substandard, the supervisor(s) should carry out a minimal amount of remedial actions the expected level (in line herewith, see the Appeals Tribunal in *Soliman* 2017-UNAT-788, para. 35, although dealing with a statutory duty). This would also

error reports to ensure the accuracy of my work on pension existing and new pension cases. I continued to support the office in following up with participants and member organizations for missing separation documents, commur orgadocuments, commur orgadocuments, commur orga

At the start of 2016, in consultation with my supervisor, I began to focus on more complex withdraw settlements for participants with more than 5 years of contributory service, pursuant to Article 31/8C. While continuing my training, I focused on knowledge retention, organizing my work queue, planning and prioritizing my workload, in conjunction with my supervisor, ensuring that urgent cases were completed within the weekly pay cycle. Our Team was learning to cope with the new pension entitlement system during weekly meetings, coping with system downtime and slowness, errors and recommending improvements to the development of ongoing updates. The Pension Entitlement Section and our Team were establishing new processing expectations and capabilities under the new system.

I established benchmarks for myself early in the New Year, aiming to complete a review of at least 60 cases a month. I focused on maintaining consistency of my work output and maintaining beneficial relationships with my team members, who aided me in my continuous learning. I excelled in working collaboratively with senior calculators and auditors on my team and it was an honor to work with them. I was further benefited by returning retirees, who advised [me] quite wisely that after decades with the Fund, they were still learning. It was with this breath that I dedicated myself to the Fund, my Team and most importantly the hard working current and former staff of the United Nations System. Through this support system, I was able to achieve over 60 case reviews a month (Annex 1 refers).

43. The Tribunal agrees with the Respondent that it follows from the A self-appraisal that she herself indicated that she had received guidance, feedback and training from her colleagues and the FRO. It also follows from the submissions and the evidence on record that at least one meeting was held between the Applicant and the FRO regarding her performance, that this meeting apparently concerned the number of cases which the Applicant was supposed to process as the FRO wanted for her to do more, and that the FRO had set a goal of 80 cases per month. The fact that the Applicant and the FRO then held diametrically different opinions about the standard of her performance, which the Applicant seems to have found satisfactory while the FRO thought the opposite, is an entirely different and unrelated matter.

44. The Tribunal therefore finds that, based on the evidence on record, it appears that the Applicant did receive the required guidance, feedback and training for her to undertake the job as a Benefits Assistant with UNJSPF on a temporary appointment. With reference to *He, supra*, the Applicant therefore has not proved that UNJSPF failed to act fairly, justly or transparently in this regard.

Was the non-renewal decision tainted by ulterior motives?

45. The Applicant contends that, on 23 May 2016, pursuant to ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority), she filed a complaint of discrimination, harassment, and abuse of authority against the FRO. The Applicant felt it imperative to file a formal complaint after her complaints in September 2015 to the FRO and the SRO and, in December 2015, to the Deputy Chief, UNJSPF, Officer-in-Charge at the time of the incident, went unaddressed, resulting in an increasingly hostile work environment which culminated in the non-renewal of her contract.

46. Pursuant to ST/SGB/2008/5

Applicant and the FRO was not good, this does not by itself prove that the decision not to renew the Applicant temporary appointment was influenced by ulterior motives and no direct or circumstantial evidence on record supports any such inference.

53. On the balance of evidence, referring to *He, supra*, the Tribunal therefore finds that the Applicant has not been able to establish that the non-renewal was motivated by bias, prejudice or improper motive.

Conclusion

54. In light of the above, the application is rejected.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 7th day o