
UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2023-UNAT-1364



Mustapha Guenfoudi
(Appellant)

v.

Secretary -General of the United Nations
(Respondent)

JUDGMENT

Before: Judge Gao Xiaoli, Presiding
Judge Sabine Knierim
Judge Martha Halfeld

Case No.: 2022-1728

Date of Decision: 30 June 2023

Date of Publication: 31 July 2023

Registrar: Juliet Johnson

Counsel for Appellant: Self-represented

Counsel for Respondent: Patricia C. Aragonés

JUDGE GAO XIAOLI , PRESIDING .

1. Mr. Mustapha Guenfoudi (Appellant), a former staff member in the Department for General Assembly and Conference Management (DGACM), filed an application with the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) contesting the termination of his continuing appointment due to unsatisfactory performance. In Judgment No. UNDT/2022/076, the Dispute Tribunal rejected his application (impugned Judgment).
2. Mr. Guenfoudi has filed an appeal of the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
3. For the reasons set forth herein, the Appeals Tribunal dismisses Mr. Guenfoudi's appeal and affirms the impugned Judgment.

Facts and Procedure

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harassing him. Mr. Guenfoudi sent the Chief/AVRS multiple e-mails declaring the PIP “null and void” and stated that it was “not applicable” to him and that he would not consent to it. ⁴

14. The Chief/AVRS attempted to close out the Second PIP in March 2021, but Mr. Guenfoudi refused to meet with him.

15. On 18 March 2021, the Chief/AVRS finalized the Second PIP and indicated that Mr. Guenfoudi had “not met” 5 of 8 goals, and only “partially met” 3 of the goals.

16. On 22 April 2021, the Chief/AVRS and the SRO completed Mr. Guenfoudi’s ePAS for the 2020-2021 performance cycle with the overall rating of “Does Not Meet Expectations”. His rating for the competencies of Integrity, Professionalism, Accountability, Communication and Client Orientation was “unsatisfactory”. ⁵

17. On 3 May 2021, Mr. Guenfoudi sent an email to the Chief/AVRS stating that he did not “recognize [the] botched unilateral eP[AS]” and that he was in a “dire situation, thanks to [the Chief/AVRS’s] repetitive harassments, mistreatment and unhealthy working conditions before the pandemic in the UNITAR building”. ⁶ He further stated that the ePAS prepared by the Chief/AVRS was “null and void”. ⁷

18. On 5 May 2021, Mr. Guenfoudi was advised of the procedure to rebut the performance rating, but he did not do so. Thus, his performance evaluation document was deemed signed and final on 18 May 2021.

performance expectations” rating for the 2020 -2021 cycle, the Organization had decided to terminate his continuing appointment (contested decision).

21. On 27 August 2021, Mr. Guenfoudi requested management evaluation of the contested decision.

22. On 8 October 2021, Mr. Guenfoudi filed an application with the UNDT, challenging the contested decision.

Impugned Judgment

23. In its Judgment, the UNDT took note that Mr. Guenfoudi made many arguments and submissions regarding the performance appraisal process, but that the question for the tribunal was whether the termination decision was unlawful.⁸

24. Likewise, the UNDT held that it could not undertake judicial review of Mr. Guenfoudi’s allegations of prohibited conducted by the Chief/AVRS or his complaint that the United Nations Federal Credit Union (UNFCU) had confiscated certain payments.⁹

25. With respect to the termination decision, the UNDT was guided by Staff Rule 9.6(c)(ii) and Staff Regulation 9.3(a)(ii),¹⁰ which permit terminating a staff member for unsatisfactory performance. The UNDT noted further that performance standards fall within the prerogative of the Secretary-General.¹¹

26. The UNDT found that two consecutive underperformance ratings, concomitant with Mr. Guenfoudi’s refusal to engage with his supervisors on improving his performance, provided a rational foundation for the Secretary -

THE UNITED NATIONS APPEALS TRIBUNAL

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48. The Secretary-General submits that the UNDT properly found that the record demonstrated that Mr. Guenfoudi's unsatisfactory performance was well-established, and that the procedure followed by the Organization to terminate his appointment was in no way flawed.

49. The Secretary-General argues that Mr. Guenfoudi has failed to identify any reversible error by the UNDT, and that his appeal is largely a reiteration of the arguments considered and rejected by the UNDT. This constitutes impermissible re-litigation of his case and his appeal should be denied on this ground alone.

50. The Secretary-General states that the USG/GACM had the delegated authority to sign Mr. Guenfoudi's termination letter, and that Mr. Guenfoudi's allegation about the USG/GACM's support of his "abusive chief" is unsubstantiated and was not presented to the UNDT.

51. The Secretary-General submits that Mr. Guenfoudi's claims that the UNDT did not consider his various arguments, including his complaints about the Chief/AVRS and his submissions about his medical condition, are without merit. The UNDT acknowledged these issues in the impugned Judgment.

52. The Secretary-General states that Mr. Guenfoudi's argument that the Second PIP was not valid because it was not developed in consultation with him has no basis in the legal framework.

53. The Secretary-General submits that there is nothing in the applicable legal framework that requires the Administration to delay termination of a staff member to allow them to use their remaining sick leave balance.

54. The Secretary-General avers that the UNDT properly found that Mr. Guenfoudi was not denied the opportunity to take sick leave.

55. The Secretary-General argues that there is no "acquired right" to unused sick leave.

56. The Secretary-General submits that Mr. Guenfoudi's complaints about delays in payment of his separation entitlements and the remittance of a portion to the UNFCU were not properly before the UNDT, or the UNAT.

57. The Secretary-General urges the UNAT to deny Mr. Guenfoudi's claims to compensation for the alleged retaliatory termination and unhealthy workplace, because there has been no illegality established.

Considerations

Request for Oral Hearing

58. Mr. Guenfoudi requested an oral hearing, noting in his appeal form that this was for him to "explain and defend [his] case better".

59. The Appeals Tribunal's disposition of requests for oral hearings are guided by its Statute and Rules of Procedure. Article 8(3) of UNAT Statute provides:

The judges assigned to a case will determine whether to hold oral proceedings.

60. Article 18(1) of UNAT Rules of Procedure further provides:

The judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case.

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...

Reasons for termination

(c) The Secretary-General may, giving the reasons therefor, terminate the appointment of a staff member who holds a temporary, fixed-term or continuing appointment in accordance with the terms of the appointment or on any of the following grounds:

(i) Abolition of posts or reduction of staff;

(ii) Unsatisfactory service;

...

68. Staff Regulation 9.3 is not applicable to the staff member concerned. (0.4 (t)10,7 (e)1 () Tc 30.022 Tc32Tc 0 T6

These two ratings indicate the existence of performance shortcomings.

71. Finally, Sections 9.8 and 9.9 further elaborate, respectively, that:

... A rating of “partially meets performance expectations” should be considered when the staff member did not meet the defined success criteria and/or performance expectations for some of the goals/key results but demonstrates potential to develop the required skills;

... A rating of “does not meet performance expectations” should be considered when the staff member did not meet the defined success criteria or performance expectations for the majority of the goals/key results, and the staff member demonstrates an inability to develop the required skills.

72. Notably, Section 10.3 informs staff members that: “If the performance shortcoming was not rectified following the remedial actions indicated in [S]ection 10.1, a number of administrative actions may ensue, including the withholding of a within -grade salary increment pursuant to [S]ection 16.4, the non-renewal of an appointment or the termination of an appointment for unsatisfactory service in accordance with [S]taff [R]egulation 9.3.”

73. In this case, Mr. Guenfoudi’s overall performance rating was “partially meets performance expectations” for the 2019-2020 cycle and “does not meet performance expectations” for the 2020 -2021 cycle.

74. Taking into account the duration of Mr. Guenfoudi’s service² for 45.8 (t)19 Tc -0.224

questioned the Chief/AVRS's competency. However, his harassment complaint against the Chief/AVRS is a different issue and cannot be an excuse for his refusal to take part in the PIPs when he fell short in his performance appraisal.

77. Human resource management requires not only that the employer ensures %Àè@ç óhB •óhÙP•ép...`

81. In this case, the UNDT was not at liberty to re-assess the Appellants performance on its own, but rather should have examined the process by which the Administration determined that his performance was satisfactory.

86.

periods, Mr. Guenfoudi had refused.²² It was only after receiving the notice of intent to terminate did Mr. Guenfoudi request and receive his first sick leave medical certification on 17 May 2021 (for the period 12 May 2021 to 31 May 2021). This suggests that perhaps Mr. Guenfoudi did not take the sick leave in good faith. In any event, Mr. Guenfoudi was able to use considerable amounts of sick leave before his termination, because he was on certified sick leave through 30 July 2021. Then, in accordance with Staff Rule 9.11(a)(v), his entitlement to sick leave ceased with the date specified in his termination letter.

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.

97. Mr. Guenfoudi identifies the contested ^{Ho} decision as the decision to terminate his continuing appointment in this case, which is also confirmed in his request for management evaluation. However, Mr. Guenfoudi's other allegations i713.4 (-6.7 (5.08 517.8 ())nt0.302 Tw51.978 0 Td [(M)3

Judgment

102. Mr. Guenfoudi's appeal is dismissed, and Judgment No. UNDT/2022/076 is hereby affirmed.

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