

UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2023-UNAT-1377



Mohammad Saeed Almasri
(Appellant)

v.

Secretary -General of the United Nations
(Respondent)

JUDGMENT

Before: Judge Nassib G. Ziadé, Presiding
Judge Graeme Colgan
Judge Leslie F. Forbang

Case No: 2022-1748

Date of Decision:

Counsel for Appellant: Self-represented

Counsel for Respondent: Noam Wiener and Sylvia Schaefer

he could benefit from “reacting to situations with more calm” and “always be concentrated and dedicated to work while at work” (AD.52 371.4 7451.38 28 21 5.52 (b)-2.4 (e)-319..850.565.28 210 c.4 (

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evaluation and the level of collaboration during the previous reporting period. Once the environment is clear and healthy we can discuss the new ePAD".⁹

17. On 7 September 2020, Mr. Almasri filed a rebuttal of the first Short- Term ePAD.¹⁰

18. On 13 September 2020, Mr. Almasri met with Ms. Al -Momani as well as his new reviewing officer, Mr. Elgadhafi. According to Ms. Al -Momani's summary of the meeting, Mr. Almasri "aggressively insisted" that he would not setup the second Short-Term ePAD until the rebuttal of the first Short- Term ePAD was finalized.¹¹

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19. Mr. Almasri was on sick leave due to Covid

23. On 11 December 2020, TDPS responded to several questions from Ms. Sikoeva-Shelow in which they agreed that in line with the rules on Administrative Actions in Case of Unsatisfactory Service, the first Short-Term ePAD pending rebuttal could not be used as a basis for administrative action. TDPS responded: “[i]n line with this, we need to wait for the rebuttal process to be completed”¹⁵

24. On 20 December 2020, the UNHCR Representative met with Mr. Almasri where he was provided a letter notifying him that his FTA, which was expiring on 31 December 2020, would “not be renewed due to performance reasons”¹⁶ The Representative further stated:

I recall that you have not initiated an ePAD for the period 1 June 2020 until 31 December 2020 despite several requests to do so. For that reason, your manager was not able to formally record the performance shortcomings in MSRP. However, these shortcomings have been documented and discussed with you at various instances, including 7 July 2020 meeting with me. (...) I have requested your reviewing officer to complete an offline performance evaluation before the expiry date of your fixed-term appointment.

25. On 30 December 2020, Mr. Almasri submitted a request for management evaluation contesting the non-renewal of his FTA. He contended that no discussion had been held about non-renewal prior to the decision and he had not been informed as to what conditions might lead to non-renewal. He pointed out that the non-renewal was related to performance, yet his first Short-Term ePAD was under rebuttal. He noted that the UNHCR Representative had not discussed shortcomings with him at the referenced meeting in the separation letter. He also stated that the separation with nine days’ notice created a hardship for his family particularly as regards medical insurance.¹⁷

26. On 10 February 2021, after the expiry of his FTA and his separation, he received the offline performance document for the period June – December 2020 with the evaluation of his supervisor. This evaluation noted that he “did not deliver a single output/task on time” and was “always seeking guidance from his supervisor, even for minor actions”.

27. On 26 March 2021, the Deputy High Commissioner for UNHCR responded to Mr. Almasri’s management evaluation request. She advised that Mr. Almasri was not entitled to

¹⁵ Secretary-General’s Annex 16 11 December 2020 email from S. Singh to T. Sikoeva-Shelow, Subject: RE: Mr. Mohammad Almasri .

¹⁶ Secretary-General’s Annex 18 20 December 2020 letter from D. Bartsch to M. Almasri, Ref: PER/IND/Mohammad ALMASRI .

¹⁷ Secretary-General’s Annex 20, Request for Management Evaluation Form.

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33. The Dispute Tribunal reviewed the performance shortcomings in Mr. Almasri's ePADs from 2016-2019 and observed that Mr. Almasri had not submitted employee comments in 2017-

37. The Dispute Tribunal recognized that the non-renewal decision was “irregular” but that Mr. Almasri’s failure to initiate the second Short- Term ePAD could not be ignored, and the reasons for the non-renewal (poor performance) had since been upheld. Accordingly, given that

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72. The ePAD process is one method by which the Administration may establish, by following proper procedures, a reasonable performance-related justification for non-renewal decisions. Absent a proper ePAD or analogous formalized evaluation, “an [informal] evaluation can only be upheld if it was not arbitrary and if the Administration proves that it is nonetheless objective, fair and well-based”.⁴¹

73. Appellant’s FTA in the present case was not renewed “due to performance reasons”. The non-renewal notification letter, dated 20 December 2020, noted that Appellant’s “performance shortcomings” had not been “formally record[ed]” due to Appellant’s delay in initiating an ePAD for the period 1 June 2020 -31 December 2020. The same letter observed that “these shortcomings have been documented and discussed with [Appellant] at various instances, including [the] 7 July 2020 meeting”.⁴²

74. Under this Tribunal’s case law, the issue is therefore whether that conclusion regarding Appellant’s performance was not arbitrary but instead “objective, fair and bo 1.04 -0t TwTd (-)Tj 0..009 Tc 0.00

evidence it was not so used. However, the ultimate resolution by the Rebuttal Board confirmed the conclusion of management that Appellant warranted a rating of “Partially meets expectations”.⁴⁵ Likewise, the second Short-Term ePAD further established that Appellant’s performance deficiencies continued. While the *ex-post* nature of these determinations are perhaps not in line with prescribed procedure, it nonetheless confirms the conclusion that the prior informal evaluation of Appellant’s performance was not arbitrary but instead well -based as required by UNAT case law.

77. Accordingly, we conclude that there was an objective and reasonable justification for the non-renewal of Appellant’s FTA.

78. However, we also conclude –as the Management Evaluation found – that there was a significant procedural irregularity with respect to the handling of Appellant’s first Short-Term ePAD in connection with the non-renewal. Appellant timely rebutted that ePAD, at which point it was incumbent upon the United Nations to conduct a timely review under established procedures. For reasons which cannot be attributed to Appellant, the Rebuttal Board did not complete its review until November 2021 – some fourteen months after Appellant had lodged his rebuttal.

79. As a result of the Management Evaluation, which was provided to Appellant in March 2021, the UNHCR Deputy High Commissioner acknowledged that Appellant’s contract should have been renewed on a monthly basis while the rebuttal process was underway. But rather than awarding compensation for the entire period between the expiry of the FTA and the Rebuttal Bearf1.1 9e

but instead undermines substantive fairness. We consider that the UNDT erred in its review of this issue.

81. Here, the Administration conceded that Appellant's contract should have been renewed

Accordingly, Appellant's request in this regard is barred. 2 rēTee r

Judgment

86. The Appellant's appeal is granted in part with respect to the remedy, and Judgment No. UNDT/2022/072 is hereby modified. The Administration is ordered to pay an additional three months' net base salary to Appellant, and the sum that represents what would have been the Organization's contribution on Appellant's behalf to the United Nations Joint Staff Pension Fund for the six-month period following the date of the expiry of Appellant's contract.

Original and Authoritative Version: English

Decision dated this 27th day of October 2023 in New York, United States.

(Signed)

Judge Ziadé, Presiding

(Signed)

Judge Colgan

(Signed)

Judge Forbang

Judgment published and entered into the Register on this 2nd day of November 2023 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar