Introduction

1.

expectations". At the mid-point review, in January 2006, a performance improvement plan was instituted.

6. By email dated 9 October 2006, the applicant's first reporting officer reminded him that a performance improvement plan had been instituted because his performance had been rated at the mid-point review in the 2005-2006 cycle as not meeting expectations. He stated that, although a slight improvement was noted at the end of the 2005-2006 cycle, the applicant still needed close supervision and the documents he prepared still needed extensive corrections. He also stated that the quality of the applicant's work and his performance had not improved since the end of the 2005-2006 cycle

two chairmen of the working parties of which the applicant was secretary were dissatisfied with his performance.

19. On 12 June 2007, the applicant's contract was extended by a month, until 8 July 2007.

20. The same day, an internal vacancy announcement was issued for the post the applicant had occupied since May 2005. The applicant applied for the post.

21. On 22 June 2007, the applicant submitted to the Secretary-General a request for administrative review of the decision not to renew his contract. On the same day, he appealed to the Geneva Joint Appeals Board (JAB) for suspension of action on the contested decision. On 3 July 2007, the Secretary-General, as recommended by JAB, rejected the request for suspension of action.

22. On 27 June 2007, the chairman of another working party of which the applicant was secretary also said that the applicant's performance was unsatisfactory.

23. On 6 July 2007, the applicant was placed on sick leave. His appointment ended on 2 September 2007.

24. On 21 August 2007, the Secretary-General rejected the applicant's request for administrative review. On 19 September and 25 October 2007 respectively, the applicant submitted an incomplete and a full statement of appeal to JAB.

25. On 14 August 2008, JAB submitted its report. It recommended that the Secretary-General award the applicant USD3,000 as compensation for violation of his due process rights in the appraisal of his performance.

26.

Organisation Administrative Tribunal (ILOAT) jurisprudence, however, the Organization must state the reason for non-renewal and the staff member must be advised what it is within a reasonable time, failing which the contract is implicitly renewed;

e. According to ILOAT jurisprudence, an organization must comply with the rules it establishes and no adverse decision can be taken on the basis of a staff member's poor performance unless the rules regarding performance appraisal have been followed. In deciding not to renew his contract, ECE took into account a performance appraisal report based on improper motives. The Administration breached the provisions of administrative instruction ST/AI/2002/3 and ECE Directive No. 9; he never received a job description for his post and the latest such description dated from 1993, since when the workload had increased significantly to the point of being excessive, as the rebuttal panel recognized in its report. His duties were therefore more akin to those of a P-4 than of a P-3 and his post should have been reclassified;

f. As the rebuttal panel also noted, the second performance improvement plan was not drawn up in accordance with the administrative instruction on the performance appraisal system. The Administration should have first considered withholding a within-grade increment or transferring him to another post. His performance appraisal was discriminatory and the appraisal process was conducted in a non-transparent manner so as to justify the non-renewal of his contract;

g. The Administration refused to take seriously his candidacy for an internal vacancy for which he was qualified;

h. The Administration's actions damaged both his professional and his personal reputation.

32. The respondent's contentions are:

a. The applicant's contract was governed by the then staff rule 104.12(b)(ii), which provided that

observing his performance for two years, his supervisors felt that he did not have the competencies needed for the post;

f. The Administration subsequently extended the applicant's contract until September 2007 to enable him to take his paternity leave and use his sick-leave entitlement, so giving him the time to prepare his rebuttal of his e-PAS and await its outcome. His due process rights had therefore been respected;

g. The Administration was under no obligation to place the applicant on another post after the non-renewal of his contract;

h. The Administration complied with the rebuttal panel's recommendation to upgrade the applicant's rating from "Does not meet performance expectations" to "Partially meets performance expectations";

i. The contested decision was a legitimate exercise of the Secretary-General's discretionary power regarding non--5.3(f.0196)(f.0196)(f.0168 T1le)-5.3 plican espec

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33. The applicant contests the decision not to renew hisfrixed-terr contract. Staff rule 104.12(b)(ii) in force at th stipulated that "[a]frixed-ter appointment does not carry any expectancy of renewal or of conversion to4gyother type of appointment" andstaff rule 109.7(a) hat "[a] temporary appointment for afrixed term shall expire automatically and l9 hout prior notice on he expiration date specified in the letter of appointmnst".

34. It followsfrrom he above prnvisions tha decisions on the renewal of f ixe- te apointments ar e w ithin the Sereay- Geneal's discr etionary power, as has been asserted by the former UNAT, which, however, has

stipulated that they must not be improperly motivated and must not violate due process (see, for example, UNAT judgement No. 981, *Masri* (2000)). The former UNAT has also stated that when the Administration gives a justification for the exercise of its discretionary power, especially as regards

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him improve his work. Notwithstanding, the rating given him at the end of the cycle was "Does not meet performance expectations". This he rebutted, and the rebuttal panel upgraded his final rating to "Partially meets performance expectations".

40. He therefore received the rating "Partially meets performance expectations" for two consecutive years despite the fact that his supervisors tried, by means of performance improvement plans and regular supervision, to help him improve his work.

41. When the recommendation not to renew the applicant's contract was made, on 5 April 2007, his supervisors took into account his work over a period of 23 months and, although the applicant had not signed his e-PAS at that point, the 2006-2007 appraisal cycle was already over. The applicant's contract was subsequently extended for administrative reasons, so enabling him to initiate rebuttal proceedings against his performance rating for the 2006-2007 cycle and the rebuttal panel to complete its report.

42. While it follows from the provisions of administrative instruction ST/AI/2002/3 that the Administration cannot refuse to renew a staff member's appointment when he/she first receives the rating "Partially meets performance expectations", the Tribunal considers that the Administration is entitled to refuse renewal when, after it has taken steps to try to improve his/her work, the staff member receives thaaaineb3, 5near.3.9(.)3.7( )]TJ0 -2.2268 TD-.00043Tc0 Tw(41.)Tj/TT8 1 Tf1.2489 0 TD

45. Regarding the applicant's claims that his supervisors wrongly assessed his workload, the Tribunal observes that the rebuttal panel, an independent body, looked thoroughly into his allegations and none the less simply recommended that his rating be upgraded to "Partially meets performance expectations". The applicant therefore fails to prove to the Tribunal that the appraisal of his work over a period of approximately two years was tainted by a manifest error of judgment.

46. It follows from the foregoing that the applicant has not proved the decision not to renew his contract to have been unlawful and that the whole of the application must therefore be rejected.

Decision

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

The application is rejected.

(*signed*)

Judge Jean-François Cousin

Dated this 20th day of August 2010

Entered in the Register on this 20th day of August 2010

(*signed*)

A. Coutin
p.p. Víctor Rodríguez, Registrar, UNDT, Geneva