
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2010/050

Judgment No.: UNDT/2013/036

Date: 28 February 2013

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

ARIGI-OIKELOMEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Seth Levine, OSLA

Counsel for the Respondent:

Miouly Pongnon, UNON

Introduction

1. The Applicant was recruited as an Administrative Assistant in the Procurement, Travel and Shipping Section (PTSS) of the Support Services Service with the United Nations Office at Nairobi (UNON) at the G-6 level on a three-month fixed-term appointment on 11 July 2006.

2. The Applicant's contract was subsequently renewed and on 1 April 2007, she received a two-year fixed-term appointment expiring on 31 March 2009.

3. Her last contract was a renewal for six months which expired on 31 October 2009.

4. The Applicant is contesting a decision dated 16 September 2009 separating her from service on 1 November 2009 on the basis of performance shortcomings.

Facts

f.

- c. The Applicant was entitled to a higher assessment and recommended that her overall rating be changed to “fully successful performance.
- d. It was disturbed to receive an intimidating and aggressive email from the SRO where she questioned the manner in which the Panel was conducting its work.

11. The Applicant filed the present Application on 30 March 2010. On 30 April 2010, the Respondent filed a Reply to the Application.

12. On 11 August 2011, the Tribunal issued Order No. 085 (NBI/2011) setting the matter down for hearing on 23 August 2011. On 19 August 2011, the Respondent sought an extension of time to file his list of witnesses and for rescheduling of the hearing.

13. Order No. 104 (NBI/2011), dated 23 August 2011 adjourned the hearing to 16 September 2011.

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Case No. UNDT/NBI/2010/050

Judgment No. UNDT/2013/036

- d. The Applicant had a habit of not reporting her absences from work and would sometimes attend training without her approval. Prior to concluding the Applicant's performance appraisal for the 2008/2009 cycle, she undertook a midpoint review with the Applicant in November 2008.
- e. During the midpoint review, a discussion took place between herself, the Applicant and the SRO, Ms. Glavind. They placed the Applicant on a performance improvement plan because she lacked both integrity and professionalism and needed improvement in teamwork. All the tasks in the performance improvement plan were the same as in the Applicant's work plan but the purpose of the plan was to set deadlines for each task. The Applicant failed to meet the deadlines.
- f. The Applicant's lack of integrity was demonstrated by the fact that the Applicant reported her private calls as being official calls. The Applicant spent one third of her working hours on the telephone. She rated the Applicant's professionalism as "unsatisfactory" because she consistently missed deadlines.
- g. She asked the Applicant to work overtime and help with the financial report on ten occasions but she did not stay behind on all these occasions with the excuse that her son was at home alone and sick. She came to the office every Saturday and Sunday evening for two years doing the Applicant's job because the Applicant could not meet deadlines. She felt that she was working for the Applicant and not the other way round.
- h. She gave the Applicant the lowest ranking for teamwork because the Applicant was not a team player. The Applicant failed to provide files that she requested to be provided to auditors. The Applicant even delegated some of her tasks to interns.
- i. In September 2008, she was called to a meeting by the Staff Union to discuss a harassment claim brought to them against her by the Applicant. The Applicant had also complained to the Staff Union that she swore at her. Ms. Glavind, the then Staff Union President,

Ms. Rhoda Atana and the then Chief of the Procurement Section, Ms. Diana Mills-Aryee and some others, were present at the meeting.

- j. The Applicant did not sign her midpoint review on time and she was forced to send her three email reminders. For the 2008/2009 reporting cycle, she gave the Applicant a rating of “partially meets performance expectations”. She was involved in the Applicant’s rebuttal of her 2008/2009 performance appraisal by sending responses to the Applicant’s assertions. She, however, formed the impression that the rebuttal panel was partial because the Chairman of the rebuttal panel and one panel member were the Applicant’s friends.
- k. She had discussions with Ms. Glavind concerning the non-renewal of the Applicant’s contract. At this point she felt that she had exhausted all means of improving the Applicant’s performance.

21. Ms. Glavind’s testimony is summarized below:

- a. She is currently the Chief of the Support Services Section (SSS) of UNON. She was involved in recruiting the Applicant to UNON but the Applicant was not her preferred candidate. At the date of her recruitment and throughout her employment, she was the Applicant’s SRO. The reason Ms. Villamin gave the Applicant good performance ratings was to justify recruiting her.
- b. In 2006, the Property Management, or the inventory sub-unit was reporting to the Chief of Procurement, which was Ms. Villamin. An audit observation that there was a conflict of interest of the Chief of Procurement being supervisor of this particular sub-unit resulted in that sub-unit being moved to her direct supervision in 2007. A post of chief of that unit was established in 2007.
- c. As of September 2007, Ms. Villamin had no reporting duties in respect of the Applicant.
- d. With respect to the Applicant’s performance for 2007/2008, she was not happy with the rating the Applicant received from her

FRO, Ms. Villamin, and considered it an over-rating. She had observed that the Applicant came in late, went home early, disappeared for hours, did not meet deadlines, made many mistakes in her work, was constantly on the phone, was nasty to colleagues, did not follow instructions and intimidated her supervisor.

- e. She was involved in assessing the Applicant's

- l. She believes that Ms. Villamin was of questionable integrity and she had a very low opinion of her.
- m. She had on numerous occasions given the Applicant pep talks in attempts to improve her attendance and her work performance.
- n. She was interviewed by the Rebuttal Panel over the Applicant's rebuttal of her 2008/2009 performance appraisal. The Applicant exclusively selected the members of the Rebuttal Panel. She expressed concerns about the membership of the Rebuttal Panel since she knew that the Chairperson of the Panel, another member of the Panel and the Applicant were friends. She was worried that the Applicant had constituted a panel of friends that would not give an objective assessment of the rebuttal case.
- o. When the case filed by the Applicant commenced, she began doing some background checks on the Applicant by phoning UNICEF's Chief of Human Resources where the Applicant had previously been employed and also called up an Institute in Nairobi to verify whether the Applicant had taken some computer examinations which were in her PHP. She discovered that she had not.

22. Ms. Muiruri's testimony is summarized below:

- a. She joined UNON's Property Management Unit in July 2007 where she worked with the Applicant.
- b. The Applicant denied her access to files relating to insurance issues and she was forced to register with a college to learn more about insurance matters.
- c. She found it very difficult to work with the Applicant whom she considered rude, arrogant, intimidating and not a team player. In the end she decided to leave and return to the Commercial Operations Unit where she had been working.
- d. She did not complain about the Applicant to her other superiors until she decided to leave as she was new to the office and did not want to be perceived as complaining about her boss.

Applicant's case

23. In her pleadings and evidence placed before the Tribunal, the Applicant's case can be summarized as follows:

24. The decision not to renew her contract beyond 1 November 2009 was unlawful because it failed to take cognizance of her right to rebuttal of the 2008/2009 performance appraisal especially because performance was the reason for the decision not to renew her contract. In taking the decision, the UNON Administration deprived her of her right to due process.

25. The act of separating her before the conclusion of the rebuttal process amounted to a lack of due process. It was unacceptable to make a decision on her future when the internal rebuttal process had not yet been finalized.

26. As stipulated by ST/AI/2002/3, even if her rating of "partially meets expectations" was justified, the decision not to renew her contract was still unlawful.

27. Elements of unfairness and bias as well as ill treatment underlined the evaluation of the Applicant's performance.

28. Rather than using the ePAS system as a means of addressing genuine concerns about performance, in the present case, the ePAS process was used as a means of targeting the Applicant with a v 227. rg 0eith a v 227. rg 0ei unacceptable -5(e)-3(v) 213.12 28

30. Evidence of the unfairness of the performance evaluation is clear from the sharp disparity in the Applicant's 2006/2007 and 2007/2008 appraisals (under the supervision of Ms. Villamin) and against the 2008/2009 appraisal under Ms Vurdelja.

31. The Applicant contends that it was impossible for her to carry out all the tasks assigned to her with anything like perfection. Additionally, she was given tasks well beyond her terms of reference and when she found these difficult to complete, she was given tighter deadlines and deliberately refused the opportunity to enhance her skill by undertaking training.

32. Ms. Vurdelja and Ms. Glavind in attempts to justify their decision not to renew her contract on the ground of poor performance have said that she has an attitude problem, is a poor communicator and is not a team player. The Applicant asserts that this is false and that the Rebuttal Panel's finding was that the FRO's and SRO's conclusions were not corroborated by the rest of the team.

33. There was indeed a period when the Applicant spent a lot of time on the phone because she was receiving work-related stress counselling. She received some of the counselling in the UNON compound from the Staff Counsellor's office and from her church Pastor. She also had an incident with her son at that time and would call him to check up on how he was doing. She would often telephone the staff counsellor or her church Pastor when she was feeling stressed and could not work.

34. It is untrue that the Applicant was hostile to her colleagues, made their lives generally miserable and had terrible working relationships. The reason that Ms. Muiruri gave when she left the department was that she could not work in a department where information was being given and changed at any time. Ms. Muiruri would not have been able to perform her duties without her assistance. She showed Ms. Muiruri how to do the work and Ms. Muiruri told her that she had been instructed to consult Ms. Vurdelja.

35. She had made a number of file notes in relation to her relationship with Ms. Vurdelja. Ms. Vurdelja felt that the Applicant was undermining her and Ms Vurdelja had sworn at her on several occasions.

36.

the Secretary-General sought to exercise his discretion as Chief Administrative Officer to overturn the revised performance rating and he is therefore bound by it.

41. In view of the foregoing, the Applicant prays the Tribunal to award her two years' net base salary in damages and to order that all negative material relating to her -10(in)9(is)5(tr)-8(a)-36 heragr0 0ndhe 0 0 2231(e 0 v)17(t)- 0 0(h)31(er)4Pagriaghe(g)31()-

respect to her performance appraisal, when she was the one who did not observe procedural deadlines.

48. The Administration does not need to give reasons for the non-extension of a fixed-term appointment and a fixed-term appointment does not carry an expectancy of renewal.

49. The decision not to extend the Applicant's appointment was based on a number of reasons including performance. The other reasons included the manner in which she conducted herself with both of her supervisors and colleagues, the lack of team spirit, insubordination, erratic attendance and work attitude issues.

50. There were serious misgivings with the Rebuttal process, the content of the review by the Rebuttal Panel and the resulting Report that was heavily

f. Whether there is

62. Section 7.1

knowledge, nor assist the three new colleagues assigned to the Unit. She has difficulty completing tasks on time and consistently

all indications, the midpoint review meeting, which should have taken place in September 2008 but was instead done in November 2008 and signed, was done without a work plan. The FRO, during the mid-point review is required to review the manner in which the work plan had been carried out by the staff member and to provide performance feedback and guidance for the accomplishment of the goals and performance expectations set out in the work plan.⁴ It is evident that the Applicant's mid-point review was carried out on the basis of a work-plan that either did not exist or had not been finalized.

71. Section 8.3 of ST/AI/2002/3 provides that where a performance shortcoming has been identified, steps are to be taken to rectify the situation, with the development of a performance improvement plan. The first reporting officer is expected to set up a performance improvement plan in consultation with the staff member. Accordingly, performance improvement measures may be instituted based on the on-going performance evaluation, including mid-point review, and prior to the finalization of the ePAS report.⁵

72. The midpoint review in this instance was signed by the FRO on 28 February 2009, 14 days after she signed the work plan and three months after the streamlined tasks were drawn up in November 2008. The SRO was also present at this meeting in November where the focus of the mid-point review appeared to be centred on the meeting of deadlines. There is no evidence that the FRO had spoken with the Applicant about her performance, before the SRO came in to intervene.

73. One of the functions of an SRO is to resolve ePAS disagreements between the staff member and the FRO. It is not clear what disagreements the SRO was addressing in the mid-point review meeting of November 2008. Ms Glavind testified that the Applicant twisted facts as to what was said in meetings and that for that reason; she insisted that she and Ms. Vurdelja would have meetings with the Applicant together so as to have evidence of what was said, how it was said and what happened. This posture definitely detracted from the role of a senior

⁴ ST/AI/2002/3 at section 8.1.

⁵ UNDT Judgment No. UNDT/2010/213 *Jennings* at para 38.

officer who ought to resolve disagreements, if any, between the staff member and the FRO.

74. What happened was that Ms. Vurdelja and Ms. Glavind placed numerous notes to file instead of engaging in supportive discussions when the shortcomings were identified. What is referred to as the performance improvement plan set up for the Applicant only included a goal, a key related action and deadlines.

75. Unfortunately, nowhere in the performance improvement plan was there an indication of what, in the “work plan” the Applicant had failed to do in terms of her goals, expectations and core values and competencies. There was also no indication on the document as to how the said performance was going to be monitored and evaluated or any specific guidance to be provided to the Applicant. It appeared that the major fault of the Applicant was mainly in her failure to meet deadlines that were set for her.

76. The evidence does not even remotely show that the Applicant was provided any real support to improve her performance as provided for in ST/AI/2002/3. It must be noted that giving her a list of deadlines does not demonstrate an attempt to improve the Applicant’s performance. Ms. Glavind stated in her evidence,

I was involved in the midterm review and the development plan, or the improvement plan. And I was also involved in the end of cycle talk with [the Applicant]

Applicant that she was tired of having to meet with her, to discuss her attitude,

evaluation of the Applicant's performance for the 2008/2009 reporting cycle was not carried out in accordance with the established procedures.

82. Is this failure to properly follow the said ePAS guidelines material in determining whether the Applicant's performance appraisal as carried out by her supervisors can stand? Although the Rebuttal Panel had already upgraded the Applicant's rating, the Tribunal's considered view here is yes, the manner in which the ePAS guidelines were breached materially affected the outcome of the performance appraisal as to render it unreliable and an unfair basis for the non-renewal decision that followed.

83. Ms. Glavind had testified that the Applicant was smart and could do the job for which she was hired but that she had simply decided to be uncooperative. Based on this view expressed by the SRO, it emerges that the problems between the Applicant and her supervisors were rather due to personality and inter-personal communication issues.

Were the allegations of a poor work attitude and absences from the office sufficiently established and serious as to warrant the non-renewal of contract decision against the Applicant?

84. Several notes to file were recorded against the Applicant by her first and second reporting officers. In Ms. Glavind's testimony, she stated that the Applicant lacked team spirit, was often uncooperative and unhelpful to her colleagues and spent most of her working hours on the telephone instead of concentrating on her work.

85. In a note to file dated 8 July 2009, she recorded that she had been informed by Ms. Vurdelja that the Applicant was unwell and was not at work. She recorded also that she was surprised at the information because she had earlier seen the Applicant within the premises and that the Applicant did not greet her or acknowledge her presence as that was her usual habit.

86. For her part, in another note to file dated 27 August 2008, Ms. Vurdelja recorded several instances of wrong-doing spanning over several months from 13

March to 20 August 2008 against the Applicant. In another note dated 25 March 2009, she recorded two instances of absence from the office without permission. Yet another note to file recorded that the Applicant had not verified her telephone bills three months after a request to do so.

87. On one occasion, the Applicant attended a five-day training on procurement without the approval of her FRO. She was also said to have gone off to Staff Union meetings without permission and to have taken part in Staff Union demonstrations. Other instances recorded were her seeking permission to take her son to hospital.

88. An email which was tendered in evidence clearly established that the Applicant had attended the said training to which she was invited. It must be pointed out that the Applicant's attitude of attending the procurement training, even though officially invited, without her supervisor's approval was clearly wrong. The Tribunal is not in any doubt that the Applicant had sometimes not obtained permission as she ought to or that she had gone off to Staff Union meetings against the wishes of her supervisor.

89. With regards to Ms. Muiruri's testimony whose essence was that the Applicant was not a team player and did not teach her things she ought to know in carrying out her duties or help her while she worked in the same office, this was not by itself conclusive proof that the Applicant behaved badly towards her colleagues. While bearing in mind that the Rebuttal Panel report had stated that the Applicant's work colleagues had given the opposite impression, the Tribunal must be careful not to draw conclusions on the singular evidence of a G4 officer who was invited to testify by highly-placed superiors.

90. Due to the fact that the numerous notes to file clearly convey that there was a 'war situation' in the Applicant's office in which deep resentment and a lack of cordiality prevented a fruitful resolution of work issues between the Applicant and her supervisor, it is difficult to objectively establish the extent of the Applicant's wrongdoings. This is made even more difficult because of the non-conciliatory stance of Ms. Glavind who took the matter of the Applicant's

short-comings unduly personally and actively encouraged Ms. Vurdelja to create records.

Did the relationship between the Applicant's former FRO and the SRO impact on the non-renewal of her contract?

91. Ms. Villamin was the Applicant's FRO from the time she was recruited in July 2006 up until the new FRO, Ms Vurdelja, arrived in September 2007. Ms. Villamin was at the time the Chief of Procurement, Travel and Shipping Section (PTSS) at UNON which included the property management Unit. Ms. Glavind, the Applicant's SRO, was the Chief of Support Services in the Division of Administrative Services in UNON. She supervised the Facilities Management & Transport section, the Building Management, the Procurement Section and the General Services Section which includes the Travel, Shipping and Visa unit, Host Country and Property Management.

92. The Tribunal will in the following paragraphs assess whether the relationship between the Applicant's former FRO, Ms. Villamin, and the SRO, Ms. Glavind, impacted on the performance appraisal carried out on the Applicant and her work for the 2008/2009 reporting cycle.

93. With regards to the Applicant's recruitment, Ms. Villamin testified that she was involved in the process and that it was properly done. She further stated that she recommended the selection of the Applicant to Ms. Glavind. In response to a question posed by the Respondent's Counsel regarding her interest in seeing that the Applicant was perceived to be succeeding in the Organization, she stated that once staff members had been recruited, it was up to them to prove that they deserved the position.

94. Ms. Glavind testified that she was also involved in the recruitment of the Applicant and that she had preferred another candidate over the Applicant but when Ms. Villamin expressed her interest in the Applicant, she gave in. Since the Applicant would be working with Ms. Villamin, she thought that it was important that Ms. Villamin was comfortable with the person selected.

Concerning the performance appraisal of the Applicant

95. Ms. Villamin testified that the rating of “frequently exceed performance expectations” which she gave the Applicant for the 2007/2008

Tribunal that she did not have a high regard for Ms. Villamin's integrity and competence.

100. Concerning the 2007/2008 ePAS and the fact that Ms. Villamin still prepared it as the Applicant's FRO, Ms. Glavind had in her response to the MEU, dated 1 December 2009, stated that that ePAS ought to have been prepared by the current FRO Ms. Vurdelja instead of Ms. Villamin who did not even as much as consult Ms. Vurdelja when she did so.

101. In her testimony, Ms. Glavind stated that one of the reasons for this error with regard to the FRO reflected for the 2007/2008 period, was that she did not understand the details of the ePAS system and that to that extent, it was an oversight on her part since as required by ST/AI/2002/3 it was for her as SRO to finalize the report.

102. The Tribunal finds it strange that Ms. Glavind as SRO had signed off on the high appraisal rating given the Applicant by Ms. Villamin when she was no longer the Applicant's FRO, only for her (Ms. Glavind) to turn around and complain about it to both the MEU and the Tribunal.

103. Unfortunately, the foregoing available evidence demonstrates that the relationship between Ms. Glavind and Ms. Villamin had not been cordial from late 2007 and evidently up until the hearing of this Application.

104. There is no gain-s10J ET Q-133(M)-oft

The implications of post-facto investigations into the Applicant's qualifications and the allegations of lack of integrity

106. In her testimony, Ms. Glavind spoke of unverified personal telephone calls made by the Applicant which in her view demonstrated the Applicant's lack of integrity. According to her, the Applicant had left the Organization before certifying or clearing her telephone bills.

107. Ms. Glavind also spoke of a lady who claimed that the Applicant owed her money and incidents where the Applicant would direct the official equipment movers to come to her office and carry two files for a distance of two meters. The information on the movers' incident, she said, was relayed to her after the Applicant had left the Organization and so she had not questioned the Applicant about it.

108. Ms. Glavind further took it upon herself to personally investigate the Applicant's qualifications by checking her employment record with the United Nations Children's Fund (UNICEF). Ms. Glavind also "investigated" the Applicant's computer qualifications from an institute in Nairobi and told the Tribunal that the said institute did not have in its records the exams the Applicant claimed to have taken. She testified that these "investigations" were undertaken after the Applicant had left the Organization and specifically just before the hearing of this matter in March 2011 because, according to her, she saw a pattern of lack of credibility on the part of the Applicant.

109. When Ms. Glavind was questioned as to whether she had a personal interest in the outcome of the case, and hence the need to engage in further investigations of the Applicant, she stated

I do have a personal-- I am the boss of that service. I am the second supervisor of the unit, and first supervisor of Vesna. I have, as
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110. Ms. Glavind's personal investigations into the Applicant's academic qualifications and place of former employment after the said Applicant's separation from service with UNON unfortunately raise questions as to her own integrity and good faith. If the basis for the non-renewal of the Applicant's contract was poor performance, it was irrelevant, unnecessary and unethical for Ms. Glavind to start a personal investigation in order to convince the Tribunal that there was good reason for separating the Applicant.

111. Where a staff member is alleged to have been recruited on the basis of false academic claims, it is a matter for the relevant investigations unit to undertake official investigations and for the Office of Human Resources Management (OHRM) to take appropriate disciplinary action where the allegations are established.

112. If indeed Ms. Glavind believed that she had made the right decision about the Applicant's performance and subsequent non-renewal, why would she need to wrongfully and unethically launch into her own private investigations of an official matter more than one year after the Applicant was separated?

113. The Tribunal seriously frowns upon such busy-body efforts and finds that evidence placed before it as a result of such efforts constitute an abuse of process of the Tribunal. In the case of Tadonki, (UNDT/2013/032), the efforts of the Respondent to introduce other matters outside the purview of the case in order to morally discredit the Applicant were held to constitute an abuse of process of the Tribunal.

The Rebuttal Process

114. ST/AI/2002/3 provides clearly and elaborately for the Rebuttal process. Some of the important highlights of this Administrative Instruction are explained in the next paragraphs.

115. Section 14.1 provides that the Rebuttal Panel members are chosen in consultation with the staff representatives of the department or office concerned, the head of the department or office or his or her representative. The Panel

120. Thereafter, as stipulated by section 15.3, any change in the final rating, and the date of the decision, shall be marked by the executive or administrative office on the final appraisal section of the ePAS form, with annotation that the rating was changed as a result of an ePAS rebuttal.

Did UNON have an obligation to defer the Applicant's non-renewal until the rebuttal process was completed?

121. The Applicant filed her rebuttal statement on 15 October 2009 and was separated from service on 1 November 2009. The Rebuttal Panel, chosen by the Applicant, received the FRO's comments on 30 November 2009. On 30 December 2009, the Rebuttal Panel issued their report which the Applicant received on 5 January 2010. The Panel decided that the rating should be changed to "fully successful performance."

122.

125. The Respondent further argued that there was no provision in the ST/AI/2002/3 that required the Administration to forestall its separation of a staff member before the conclusion of the rebuttal process. The Tribunal's reading of the said Administrative Instruction is that

Can the Respondent allow a Rebuttal Panel to proceed until completion only to later question its credibility?

129. The Respondent submitted that there were serious misgivings with the rebuttal process and the context of the review of the Rebuttal Panel and that the resulting Report was heavily biased in favour of the Applicant thereby not providing a fair platform for the consideration of the Administration's point of view. Ms. Glavind alleged in her testimony that the constitution of the Panel was biased as two of the members were the Applicant's friends.

130. It was argued on behalf of the Applicant that the Respondent is estopped from putting forward this argument as the Secretary-General has established the process by which the rebuttal panels are constituted and it is therefore perverse for his Counsel to impugn that very system. The Applicant also submitted that no evidence was adduced to suggest that the system of selecting members of the rebuttal panel was wanting or is subject to change or review.

131. The Applicant further submitted that the Respondent adduced no credible evidence that members of the Rebuttal Panel in the Applicant's case were in fact friends or biased in favour of the Applicant and that the constitution and operation of rebuttal panels under ST/AI/2002/3 contained inherent checks and balances to ensure their fair and effective operation. No evidence was adduced to suggest that the Secretary-General sought to exercise his discretion as Chief Administrative Officer to overturn the revised performance rating and he is therefore bound by it.

132. According to the Rebuttal Process outlined in ST/AI/2002/3, the constitution of the Panel and its tenure clearly involves three groups: (1) the head of the department or office; (2) the staff of the department or office and (3)

to the choice was not possible. Ms. Glavind was requested to submit a reply to the Applicant's rebuttal statement which she did on 30 November 2009. She also wrote an email on 1 December 2009 to the Panel members complaining about the process of the Rebuttal hearings. She never raised any objections to the constitution of the Panel or alleged bias on the part of the panel members at those times.

134. The Respondent had allowed the Rebuttal Panel to complete and finalise its Report before attacking its integrity. It does not lie with the Respondent to discredit a properly constituted Rebuttal Panel simply because its report is not favourable to him. The Tribunal finds and holds that, in the present case, the Respondent cannot now question the credibility of the Rebuttal Panel.

Was there evidence of bad faith, ill-motive or extraneous factors behind the decision not to renew the Applicant's fixed-term appointment?

135. The Respondent had submitted that the decision not to renew the contract of the Applicant was based on a number of reasons, one of which was performance, the others were the manner in which she conducted herself with both supervisors and colleagues, the lack of team work spirit, insubordination and work attitude issues. It was argued on behalf of the Applicant that the decision not to renew, although purportedly based on poor performance, was in fact the culmination of a long period of harassment and victimization by both Ms. Vurdelja and Ms. Glavind.

136. In *Abdallah* UNDT/2010/049⁷ it was held that "the discretion of the Secretary-General not to renew a fixed-term contract is not limitless and will be vitiated where it is motivated by prejudice, bias, or oTf 0 0 0 rjustice, biaias8 415(j)22(u)-11(d)icd

she fully supported the assessment of the Applicant's performance made by Ms. Villamin.

138. In the following 2007/2008 reporting cycle, the Applicant received a rating of "frequently exceed performance expectations". Ms. Villamin testified that the Applicant deserved the rating due to the extra work she had put in during that reporting period. Again, Ms. Glavind endorsed the rating and positive remarks made about the Applicant.

139. When the Applicant's rating fell in the following reporting cycle to "partially meets performance expectations", Ms. Glavind who had also endorsed it commented in her response to the MEU:

Obviously [the Applicant] would not have had the positive rating in the 2007/2008 cycle had [Ms Vurdelja]-as the rules dictate- been the first reporting officer. Therefore, and to conclude, the previous performance appraisal were not considered as honestly reflecting [the Applicant] performance."

140. Ms. Glavind stated in her testimony that she had just let the previous year's rating of the Applicant by Ms. Villamin pass as she did not want to make an issue of it. Her exact words to the Tribunal were:

Ms. Villamin has gone; we will start on a ne()] 8lfw

Vurdelja also placed numerous notes to her official status file. The notes to file appeared to document every move the Applicant made in a negative light.

143. While the Tribunal is convinced that the Applicant's attendance at a procurement training to which she was invited for an entire week without the approval of her supervisor Ms. Vurdelja was wrong and wholly unacceptable, it appears that Ms. Glavind's interventions as SRO rather than help the situation, only served to deepen the problems between them.

144. A consistent habit of placing negative

problems between the Applicant and her immediate supervisor in this case appeared to depart from the role intended for an SRO in the Administrative Instructions that govern the Performance Appraisal System and only worsened matters. She gave the impression, during the proceedings, of an officer who would grasp at every straw to justify the impugned administrative decision.

148. The

f. There is sufficient