
UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/NY/2018/063
UNDT/NY/2018/064
Judgment No.: UNDT/2020/096
Date: 23 June 2020
Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

HAMMOND

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Nicole Wynn, ALD/OHR, UN Secretariat
Nusrat Chagtai, ALD/OHR, UN Secretariat

General Assembly's decision to convert the post that he previously encumbered from a P-4 to an FS-6 are not receivable *ratione materiae*. The Respondent further submitted that should the Tribunal find that the Applicant's claims are receivable, the Administration's actions were lawful.

5. On 16 November 2018, the cases were transf

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25. On 13 March 2018, the MEU informed the Applicant that his 15 December 2017 request for management

30. The Respondent states that the Applicant's claim is not receivable as a performance appraisal rating and narrative are not reviewable administrative decisions within the meaning of art. 2.1(a) of the Dispute Tribunal's Statute. The Respondent further submits that no administrative decision was taken on the basis of any final rating resulting from his 2016/2017 performance appraisal.

31. The governing issuance in respect of performance evaluations is ST/AI/2010/5, PMDS. Under section 15.1 thereof, staff members having received the rating of 'successfully meets performance expectations' cannot initiate a rebuttal under the procedures outlined in ST/AI/2010/5. The Tribunal notes that it is settled case law of the Appeals Tribunal that "a comment made in a satisfactory appraisal" is not a "final administrative decision" if it does "not detract from the overall satisfactory performance appraisal and [has] no direct legal consequences for [the staff member's] terms of appointment (see *Ngokeng* 2014-UNAT-460, as affirmed in *Staedtler* 2015-UNAT-546).

32. The Applicant therefore needs to show that the failure to revise the rating and narrative of his 2016-2017 ePAS had a direct and negative impact on his conditions of service. In this regard, the Applicant claims that the failure to revise the rating and narrative of his 2016-2017 ePAS to reflect the findings of the Rebuttal Panel has an adverse impact on his terms of employment. He states that the ePAS remains the same with the overall end-of-cycle rating of "partially meets expectations" and therefore is "not presentable or useful" even with a cover note of the Rebuttal Panel report. The Respondent contends that the Administration properly followed the applicable procedures and that the contested decision had no negative effects on the Applicant's terms of employment.

33. In the present case, following the Applicant's rebuttal of his 2016-2017 performance appraisal on 10 July 2017, UNAMID convened a rebuttal panel in

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OiC/MSD sent the Applican

39. The Respondent states that the Applicant's challenge is not receivable *ratione materiae*. The Applicant never requested management evaluation of the decision of the General Assembly dated 24 December 2017 to convert the Post, encumbered by the Applicant, to the FS-6 level. Furthermore, the decision was taken by the General Assembly, and the Dispute Tribunal lacks jurisdiction under art. 2.1(c) of its Statute to review General Assembly decisions.

40. Should the Tribunal find the claim receivable, the Respondent submits that the decision was lawful and not tainted by extraneous factors. The Respondent states that UNAMID lawfully restructured the work of the mission in light of the recommendations from the Security Council and a civilian staffing review to align staffing with the revised mission mandate.

41. Upon review of the record, the Tribunal finds that the Applicant filed a request for management evaluation of the proposal to convert the Post on 22 September 2017. On 4 October 2017, the MEU informed the Applicant that his request for management evaluation of the proposal to convert the Post was premature because the proposal was still being considered in UN Headquarters and was still subject to General Assembly approval.

42. In these circumstances, the Tribunal finds the claim to not be receivable. Even if the Tribunal could consider the 22 September 2017 request as requesting evaluation of the General Assembly's decision, the application is time-barred. The Applicant was required to file his challenge before the Dispute Tribunal within the 90-day period prescribed under art. 8.1(d)(i)(a) of its Statute after his receipt of the management evaluation. TheIn the

43. As a final matter, the Tribunal notes that in his application, the Applicant appears to challenge the 13 March 2017 outcome of his 15 December 2017 request for management evaluation relating to the decision to terminate his fixed-term appointment, effective 31 December 2017. The MEU informed the Applicant that his request was considered moot because his fixed-term appointment was renewed until 30 June 2018

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