



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2017-UNAT-715



**Charot
(Appellant)**

v.

Secretary-General of the United Nations

Counsel for Ms. Charot:

Maria Teresa Cirelli

Counsel for Secretary-General:

Stéphanie Cartier

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8. On 4 March 2015, UNFPA's Director, Division of Human Resources, notified Ms. Charot by letter that her fixed-term "appointment will not be renewed ... because of documented performance reasons", but would be extended to 30 April 2015 to give her at least 30 days notice.

9. On 27 March 2015, Ms. Charot submitted a rebuttal to her 2014 PAD, which was submitted to the Rebuttal Panel. Ms. Charot's appointment was extended while the Rebuttal Panel prepared its report.

10. On 1 May 2015, Ms. Charot filed a request for management evaluation of the decision not to renew her fixed-term appointment. In response, the Executive Director of UNFPA sent a letter on 22 May 2015, advising Ms. Charot that the decision depended on the outcome of the Rebuttal Panel's report.

11. On 25 June 2015, the Rebuttal Panel issued its report regarding the 2014 PAD, retaining the ratings of "partially achieved" for the Work Plan Outputs and the Development Outputs and "developing proficiency" for the Core Competencies and the Functional Competencies. The Rebuttal Panel retained the foregoing overall ratings "based on the panel's finding that, while some activities were undertaken by U6.3(a)-d(regoicTw[(ed l8(ef)TJann9()TJT*.

16. On 27 January 2016, OAS made a preliminary assessment to close Ms. Charot's complaint and proceed no further.

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which would have afforded her an opportunity to improve. Ms. Charot “was led to believe that the provisions of ST/AI/2010/5 were in fact applicable to her case”.

22. Moreover, UNFPA’s policies pertaining to the rebuttal process “are not in line with the adversarial principle, as they do not foresee any transparent adversarial process. ... There was in fact no genuine exchange of views between the parties and the rebuttal panel” Thus, the rebuttal procedures were flawed.

23. Further, it was procedurally incorrect for the Administration to respond to Ms. Charot’s request for management evaluation with a referral to the rebuttal process. Thus, the management evaluation process was flawed, which vitiates the whole process.

24. The Appellant also claims that it was a procedural error for the UNDT to disregard the importance of her harassment complaint, and to refuse to consider whether OAI dealt with the complaint dismissively. “Even though [the]

The Secretary-General's Answer

28. The Dispute Tribunal correctly concluded that the decision not to renew Ms. Charot's appointment was "taken in accordance with the applicable legal framework".²

32. The UNDT correctly concluded that Ms. Charot had not shown that the decision not to renew her appointment was motivated by ulterior considerations; Ms. Charot did not present any credible evidence showing bias or other improper factors influenced the decision. Rather, the decision was based solely on Ms. Charot's poor performance. In this regard, the UNDT correctly found that the OAI complaint was not directly at issue.

33. The UNDT correctly found that Ms. Charot

Considerations

Preliminary Matters

(i) *Confidentiality*

37. In Order No. 250 on Case Management (GVA/2015), the UNDT denied Ms. Charot's request for confidentiality, stating that:

... the [Dispute] Tribunal is not persuaded that [Ms. Charot] "displays a greater need than any litigant for confidentiality".... [She] does not demonstrate that her case is of such a nature as to overcome the guiding principle of transparency in judicial proceedings and public rulings before this [Dispute] Tribunal. ...

38. The Appellant asserts that the Dispute Tribunal failed to make any analysis of the level of sensitivity of her case, resulting in severe damage to her professional reputation. We disagree. Ms. Charot's case does not involve a level of sensitivity requiring confidentiality. As we have noted,³

[s]taff members challenge many types of employment-related decisions before the internal justice system. Some of these decisions pertain to personal matters, such as disability or illness, and others pertain to the staff member's performance - and even to claims of serious misconduct. If confidentiality attached to the staff member's identity in each case, there would be no transparency regarding the operations of the Organization, which would be contrary to one of the General Assembly's purposes and goals for the internal justice system.

Thus, we determine that the Dispute Tribunal did not err in law or fact in denying Ms. Charot's request for confidentiality.

(ii) *Additional Documentary Evidence*

39. Without filing a motion to augment the record on appeal, Ms. Charot has attached to her appeals brief three one-page annexes (annexes 2 through 4), which were not part of the record before the Dispute Tribunal. These three annexes are described by her as "testimonials". The Secretary-General objects to the admission of these documents, arguing

³ *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-456, para. 20; see also *Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-292.

that the Appellant has not provided any justification for their late submission nor shown exceptional circumstances warranting their admission.

40. Article 2(5) of the Appeals Tribunal Statute provides that the Appeals Tribunal may receive additional evidence “[i]n exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, ... if that is in the interest of justice and the efficient and

44. The issue before the Dispute Tribunal was the lawfulness of “the decision of 3 March 2015 not to renew [Ms. Charot’s] fixed-term appointment”.⁶ The Appeals Tribunal agrees with this characterization of the issue by the Dispute Tribunal.⁷ Accordingly, we will not consider on appeal Ms. Charot’s complaints against the MEU or OAIS, which were not raised before the UNDT.

45. Initially, the Appellant argues that the UNDT erred in holding that she did not have a reasonable or legitimate expectation that her appointment would be renewed. That is not so. It is “well-established jurisprudence that a fixed-term appointment has no expectation of renewal ...”.⁸

46. Nevertheless, we have held that when the Administration “has made an express promise” in writing⁹ or “a firm commitment to renewal revealed by the circumstances of the case”,¹⁰ the staff member may be able to show a reasonable or legitimate expectation of renewal. However, the Appellant’s reliance on performance appraisals that pre-date 2013 and a form letter of appreciation – or the fact that she did not get “unsatisfactory” (the lowest) ratings – is misplaced. These documents do not show a commitment by the Administration to renew her appointment.

47. Rather, as we clearly stated in *Said*, “a staff member whose performance was rated as ‘partially meeting performance expectations’ ha[s] no legitimate expectancy of renewal of his [or her] contract”.¹¹ Thus, the UNDT did not err in law or fact when it held that Ms. Charot did not have a reasonable or legitimate expectation of renewal of her contract. Ms. Charot’s attempts to distinguish *Said* are unavailing.

⁶ Impugned Judgment, para. 25.

⁷ *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-611; *Gakumba v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-591.

⁸ *Badawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2012-UNAT-261, para. 33, citing *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153.

⁹ *Igbinedion v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-411, para. 26.

¹⁰ *Munir v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-522, para. 24.

¹¹ *Said v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-500, para. 41 (and cases cited therein),

48. Second, the Appellant contends that the UNDT erred when it found that ST/AI/2010/5 did not apply and that the Administration was not required to give her an opportunity to improve her poor performance befo

52. Moreover, Ms. Charot does not contend that the Administration failed to comply with the provisions of the Separation Policy regarding separation for poor performance. Rather, she acknowledges that, under the Separation Policy, the Dispute Tribunal was “bound to examine the legality of the contested decision in light of th[e 2014] performance appraisal”.¹⁷

53. Although a staff member may challenge a performance evaluation on the grounds it was procedurally defective or subject to bias or other improper motivations,¹⁸ the Dispute Tribunal found that Ms. Charot had shown neither a procedural irregularity nor improper motives. Among other things, the Dispute Tribunal held that there was “no material irregularity in the procedure followed” in the 2014 PAD that had any “significant impact on the [Appellant’s] appraisal”.¹⁹ Additionally, the Dispute Tribunal found that there was no credible evidence that the non-renewal decision was motivated by bias or “ulterior considerations”, noting that the Appellant’s supervisors may have on occasion “expressed their dissatisfaction with her work output and overall performance” but those “comments were legitimate and justified ... and are fully within the ambit of a supervisor’s role”.²⁰

54. Accordingly, the Dispute Tribunal found that the Appellant’s performance was a “departure from the required standards of performance [and] was fully and properly documented in her 2014 PAD ...”.²¹ As to the 2014 PAD, the UNDT found that the Appellant’s performance:²²

was rated by her former supervisor as ‘partially achieved’ in respect of her work plan and development outputs, and as ‘developing proficiency’ in respect of core and functional competencies. The ratings provided to [Ms. Charot] are substantiated by detailed comments provided by her supervisor, which identified several shortcomings in the delivery of outputs and in her level of competence.

¹⁷ Impugned Judgment, para. 43.

¹⁸ *Said v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-500, para. 34 citing *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153 and *Obdeijn v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-201.

¹⁹ Impugned Judgment, para. 42.

²⁰ *Ibid.*, paras. 53-56.

²¹ *Ibid.*, para. 44.

²² *Ibid.*, para. 37.

55. Such ratings support the conclusion that Ms. Charot's performance was poor.²³ As such, the UNDT found that grounds existed for the Administration to not renew the Appellant's appointment.²⁴

56. Additionally, the UNDT found, as reflected in the Rebuttal Panel's report, that the Appellant's performance was poor or substandard based on interviews with and comments by supervisors and others who were interviewed (including those interviewed at Ms. Charot's request). Nevertheless, Ms. Charot challenges the Rebuttal Panel, as she did before the UNDT.

57.

Judgment

60. The appeal is denied; Judgment No. UNDT/2016/060 is affirmed.

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