

Counsel for Appellant: Self-represented

Counsel for Respondent: Agnieszka Martin

- 1. Ms. Naïma Abdellaoui, a P-4 Reviser with the Arabic Translation Section, Languages Service, Division of Conference Management, United Nations Office at Geneva (UNOG), sought rescission of certain comments that her Second Reporting Officer (SRO) made in her 2021-2022 Performance Document (ePas).
- 2. By Judgment No. UNDT/2023/113 dated 10 October 2023 (impugned Judgment), the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) dismissed the application as not receivable *ratione materiae*.
- 3. Ms. Abdellaoui

Pas was not an appealable administrative decision under Article 2(1)(a) of its Statute and accordingly dismissed the application as not receivable *ratione materiae*.

- 12. By Order No. 547 (2023) dated 8 December 2023, the Appeals Tribunal granted within ten days from the date of the Order.
- 13. On 18 December 2023, Ms. Abdellaoui filed an appeal against the impugned Judgment, and the Secretary-General filed his answer on 16 February 2024.

14. Ms. Abdellaoui claims that the UNDT erred in fact and in law in finding the comments to be lawful and well-intentioned and failed to give due weight to the factual and contemporaneous evidence showing they were not. The evidence that Ms. Abdellaoui alleges the UNDT failed to properly consider includes: a 6 July 2022 e-mail exchange with her SRO; her 26 May 2022 e-mail; an e-mail exchange with the Human Resources Legal Unit of the Human Resources Management Service (HRLU-HRMS); an e-mail to the

Ms. Abdellaoui

constitute a reviewable administrative decision. In support of her contention, Ms. Abdellaoui refers to case law of the International Labour Organization Administrative Tribunal (ILOAT), the UNAT Judgment in *Ngokeng*, 12 and Section 15.7 of Administrative Instruction ST/AI/2021/4 to

Ms. Abdellaoui

constitutes ill- -compliant with Section 2.2 of ST/AI/2021/4, which

. Such ill-motivation is also shown by the SRO

contravening ST/AI/2021/4 by entering such comments without prior discussion with the FRO and Ms. Abdellaoui and by

comments to avoid having the Handy

. 13 Furthermore,

-mail to Ms. Abdellaoui on 14 June 2022.

17. Ms. Abdellaoui argues that the UNDT erred in finding that there was no merit to her contention that her FRO and SRO had no competence to evaluate her functions as a staff representative and that the fact that Ms. Abdellaoui

18. Ms. Abdellaoui requests that the Appeals Tribunal reverse the impugned Judgment. She asks that the Appeals Tribunal order the removal of all adverse material from her 2021-2022 Performance Document, and th on-compliance with ST/AI/2021/4 be recorded in his Performance Document and be reflected in his

follows from an interpretation of *Ngokeng* and ST/AI/2021/4 that s constitute a reviewable administrative decision. The UNDT correctly recalled that a performance with a good final rating does not affect the conditions of service. Second, the assertion that a negative comment in a performance appraisal is ill-motivated renders the purpose of performance evaluations meaningless. There would be no room for improvement if managers could not address performance issues and invite staff members to improve in their performance appraisal. Third, Ms. Abdellaoui

been included in the ePAS for the following cycle since the SRO decided to maintain his comment on 14 June 2022 is erroneous. The 14 June 2022 e-mail is not a new decision, but a confirmation of the retention of the comments finalized on 1 May 2022. Fourth, the comment does not reach the standard of *Handy* precisely because it is well-balanced, as pointed out by Ms. Abdellaoui herself.

25. The Secretary-General avers that Ms. Abdellaoui has failed to demonstrate that the

her role as a staff representative. T representative activities were positive.

Ms. Abdellaoui

Ms. Abdellaoui to

improve her communication skills concerned her communication in the context of her daily work as a Reviser in the Arabic Translation Section and not as a staff representative, as supported by the evidence on record. The UNDT correctly found that the fact that Ms. Abdellaoui served as a staff representative did not exempt her from the obligations to communicate in a manner consistent with the communication competency set forth in her workplan.

Ms. Abdellaoui

was high as well as the quality of her work and her efforts as a champion of gender parity, as a

Article 2 of the UNDT Statute, the UNDT has no jurisdiction to conduct investigations into retaliation complaints, except for the purpose of determining if an impugned administrative decision was improperly motivated, where it is within the competence of the UNDT to examine such allegations. In the absence of an administrative decision, the UNDT has no-2(v)8d0.0048 \$60550.000

26. Finally, the Secretary-General contends that Ms. Abdellaoui has failed to demonstrate that she is entitled to compensation for moral damages and accordingly her request for compensation should be dismissed. The first medical report should not be admitted as evidence since it was known to Ms. Abdellaoui at the time of the proceedings before the UNDT and was not presented before the UNDT. Furthermore, she has not submitted a motion before the UNAT demonstrating exceptional circumstances to adduce evidence. Moreover, the second medical report fails to specify the reason for Ms. Abdellaoui

Consequently, if the UNAT were to decide to consider Ms. Abdellaoui est for compensation for moral damages, Ms. Abdellaoui has failed to provide evidence of harm to demonstrate that she is entitled to compensation for moral damages.

27. The Secretary-General asks that the UNAT affirm the UNDT Judgment and dismiss the appeal in its entirety.

28.

receivable ratione materiae.

29. To resolve that issue, we must determine whether the challenged performance administrative decision.

Judgment No. 2024-UNAT-151

	Judgment No. 2024-UNAT-1511
34.	Under the applicable Administrative Instruction, the SRO has the responsibility to
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	Judgment No. 2024-UNAT-1511
administrative decision which was reviewable as a matter of la	aw. ²⁶

contends, means that the SRO now lacks authority to make any comments, whether negative or positive in nature.

42. This argument is unpersuasive. To begin with, the applicable Administrative Instruction does not say that the SRO is forbidden to comment on the performance of staff who work under their review. Nor does the revised language support such a reading. Indeed, the

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the overall rating of individual staff members for a given performance management and

³⁶ This mandate does not preclude comments

by the SRO.

Successfully meets performance

ultra vires.

43. Because we find that the application was not receivable ratione materiae, and based on

damages. Leaving aside whether the medical reports she has submitted would support such a finding, moral damages are not available where there is no underlying finding of illegality.³⁷ The Appeals Tribunal has found no illegality, and therefore moral damages are not available.

³⁵ Ibid., Section 8.5.

³⁶ Ibid., Sections 5.5(a) and (b).

³⁷ Sarah Coleman v. Secretary-General of the United Nations, Judgment No. 2022-UNAT-1228, para. 38; Boubacar Dieng v. Secretary-General of the United Nations, Judgment No. 2021-UNAT-1118, para. 68; Kebede v. Secretary-General of the United Nations, Judgment No. 2018-UNAT-874, para. 20; Sirhan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, Judgment No. 2018-UNAT-860, para. 19.