

UNITED NATIONS DISPUTE TRIBUNAL

## **Introduction**

1. On 17 October 2017, the Applicant, a retired staff member with the Office of the High Commissioner for Human Rights, filed an application concerning the rebuttal process of her performance appraisals for the periods 2010-11 and 2011-12 in which she received the ratings of “partially meets performance expectations”. The Applicant requested a rebuttal of these two performance appraisals in 2013 and yet had not received the rebuttal reports at the time of the filing of the application. The Applicant claims that as a result of these performance ratings she received in 2013, she did not receive the long-







- Successfully meets performance expectations.

9.4 These two ratings establish full satisfaction with the work performed and justify awarding a salary increment in accordance with section 16.3 below. These ratings shall be so viewed when staff members are considered for selection for a post at the same or higher level, without prejudice to the discretionary authority of the Secretary-General to appoint staff members.

...

9.7 Staff who have not fully met performance expectations should be given one of the following two overall ratings:

- Partially meets performance expectations;
-

or “successfully meets performance expectations” cannot initiate a rebuttal.

...

15.4 The rebuttal panel shall prepare, within 14 days after the review of the case, a brief report setting forth the reasons why the original rating should or should not be maintained. In the event that an overall rating should not be maintained, the rebuttal panel should designate the new rating on performance evaluation. The report of the rebuttal panel shall be placed in the staff member’s official status file as an attachment to the completed e-PAS or e-performance document and also communicated to OHRM, or the Field Personnel Division of the Department of Field Support, as appropriate.

15.5 The performance rating resulting from the rebuttal process shall be binding on the head of the department/office/mission and on the staff member concerned, subject to the ultimate authority of the Secretary-General as Chief Administrative Officer of the Organization, who may review the matter as needed on the basis of the record. Any change in the final rating, and the date of the decision, shall be communicated to OHRM with an annotation that the rating was changed as a result of a review of the performance management and development rebuttal and the final rating recommended by the rebuttal panel.

15.6 Should unsatisfactory performance be the basis for a decision of non-renewal of an appointment and should the appointment expire before the end of the rebuttal process, the appointment should be renewed for the duration necessary to the completion of the rebuttal process.

15.7 The rating resulting from an evaluation that has not been rebutted is final and may not be appealed. However, administrative decisions that stem from any final performance appraisal and that affect the conditions of service of a staff member may be resolved by way of informal or formal justice mechanisms.

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review. In *Auda* 2017-UNAT-786, citing *Birya* 2015-UNAT-562, the Appeals Tribunal distinguished the absence of a response to a staff member's request, which could constitute an implied administrative decision, from the case in which the requested process began and yet suffered inordinate delay. The Appeals Tribunal held in *Auda*:

30. Therefore, such a step is preliminary in nature and irregularities in connection with that decision, including alleged delay in reaching that decision, may only be challenged in the context of an appeal after the conclusion of the entire process. This final administrative decision that concludes the compound administrative process in administering the staff member's complaint is the only challengeable one and absorbs all the previous preliminary steps.

21. The *Auda*







the challenge of any other administrative decisions that may stem from a final performance appraisal.

29. Based on the record, it is not clear when the decision to grant or deny the long-service step was made, if any, but the decision would have been made before the

requested a management evaluation within the time limit set forth in staff rule 11.2(c). Since the Applicant only requested a management evaluation in July 2017, long after the prescribed time limit from the date on which she could have been notified of the decision on her eligibility for the YPP exam, if any, the Tribunal finds that the Applicant's challenge to any administrative decision pertaining to her eligibility for the YPP exam is also not receivable as time-barred.

33. Except the Applicant's eligibility for long-service step and for the YPP exam, the Applicant did not clearly identify any other direct consequences stemming from her performance appraisals and therefore, there are no other issues for the Tribunal to review.

### **Conclusion**

34. In light of the foregoing, the Tribunal rejects the present application as not receivable.

*(Signed)*

Judge Joelle Adda

Dated this 5<sup>th</sup> day of August 2019

Entered in the Register on this 5<sup>th</sup> day of August 2019

*(Signed)*

Nerea Suero Fontecha, Registrar, New York