

JUDGE MARTHA HALFELD , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2018/010, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi

The UNDT further rejected Ms. Gnassou's challenge to the assessment and findings of the rebuttal panel on the ground that she had not shown that the findings of the rebuttal panel together with her final performance appraisal resulted in an administrative decision to her detriment.

5. The UNDT emphasized that Ms. Gnassou's claim challenging her separation from the Organization was subject to a different application and was disposed of in Judgment No. UNDT/2018/011.

6. Turning to Ms. Gnassou's second claim, the UNDT held that it was clear from Section 15.4 of ST/AI/2010/5 and

should have extended her contract through March 2016, when the rebuttal panel issued its report.

12. In concluding that the PAD Director's medical leave and the need to deal with a civil crisis in South Lubero was a satisfactory justification for failing to complete his administrative duties, the UNDT failed to consider certain facts, including the fact that there was no explanation as to why the PAD Director could not have completed his comments on the rebuttal within the initial 14-day deadline, when Ms. Gnassou had submitted her comments on 14 July 2015 and he only went on medical leave in early August 2015; the fact that he never explained why he could not have assigned another supervisor/manager to respond to Ms. Gnassou's rebuttal; and the fact that his claim that he was too busy to manage administrative duties due to an alleged confrontation in the DRC must fail, given that he was able to manage other administrative tasks.

13. The UNDT also failed to consider how the Administration's self-created delays prejudiced Ms. Gnassou and that she was not able to rebut her performance appraisal before the expiration of her contract. Had the e-PAS been completed in a timely manner, she could have rebutted it within two months and avoided the issue of the PIP. The UNDT also e of th7101.Ci5asnae DRC mt7 DRC n

The Secretary-General's Answer

16. The Secretary-General submits that the UNDT correctly dismissed Ms. Gnassou's challenges to the findings of the rebuttal panel as not receivable. In accordance with the

19. Moreover, the UNDT correctly dismissed Ms. Gnassou's challenges to the placement of the rebuttal panel's report in her OSF. The placement was in full accord with Section 15.4 of ST/AI/2010/5 and, pursuant to the Appeals Tribunal jurisprudence in Oummih,⁴ it does not constitute a challengeable adverse administrative decision. The placement of a staff member's performance documents in his or her OSF is mandatory under Section 15.4 of ST/AI/2010/5 and according to Appeals Tribunal jurisprudence. Ms. Gnassou has failed to demonstrate any exceptional circumstances warranting a deviation from this rule.

20. In light of the foregoing, the Secretary-General requests that the Appeals Tribunal dismiss Ms. Gnassou's appeal in its entirety and affirm the impugned Judgment.

Considerations

21. The issues for consideration and determination in this appeal are whether the UNDT erred in law or fact resulting in a manifestly unreasonable decision when it found that i) there was no error of procedure stemming from the delay in completing the comments on Ms. Gnassou's rebuttal statement; and ii) Ms. Gnassou's claim regarding the assessment and findings of the rebuttal panel together with Ms. Gnassou's final performance appraisal did not result in a challengeable administrative decision. The Appeals Tribunal will assess these two issues in turn.

The delay by the Director of PAD in submitting his reply to Ms. Gnassou's rebuttal statement

22. The UNDT concluded that the delay by the Director of PAD in responding to Ms. Gnassou's rebuttal statement was justified, resulting in no error of procedure. It found that the absence of the Director of PAD on medical leave and his responsibility to deal with the crisis in South Lubero, DRC, on his return justified this delay.

23. Having reviewed the record and the parties' contentions, we find no explanation as to why the Director of PAD could not have completed his comments within the 14-day mandatory deadline. Pursuant to Section 15.3 of ST/AI/2015, "[a]fter receiving a copy of the rebuttal statement, the head of department/ office

Administration for the delay do not concern the relevant 14-day time span, but the seven months following the expiration of the time limit. Sinc

performance expectations in their respective performance appraisals and therefore had no right to initiate a rebuttal pursuant to ST/AI/2010/5.

29. On appeal, Ms. Gnassou contends that the UNDT erred in so finding since the order to place her on a PIP stemmed directly from her performance appraisal.

30. We note the Secretary-General's contention that Ms. Gnassou has never previously challenged her placement on a PIP, neither in her management evaluation request nor in her application before the UNDT. We agree with the Secretary-General and this ground of appeal is therefore not receivable.

31. Even if the ground of appeal was receivable, the order to place Ms. Gnassou on a PIP is not an appealable final administrative decision. Pursuant to ST/AI/2010/5, the PIP is merely a preliminary step instituted to address a staff member's shortcomings during a performance cycle. ST/AI/2010/5 sets out a series of steps which may ultimately lead to a reviewable final administrative decision. The Appeals Tribunal has held that such preliminary steps or actions are not administrative decisions subject to appeal.⁹

The removal of the 2013-2014 and 2014-2015 e-PAS from Ms. Gnassou's Official Status File

32. The UNDT found that placing the rebuttal panel report in Ms. Gnassou's OSF was an administrative obligation resulting from Section 15.4 of ST/AI/2010/5 and ST/AI/2010/5/Corr. 1. It held that this action did not amount to an administrative decision, but rather to an administrative requirement and that, since there was no exercise of discretion, the application was not receivable on that ground.

33. In her appeal, Ms. Gnassou acknowledges that the placement of a rebuttal panel report in a staff member's OSF is not a discretionary matter; she nevertheless requests the removal of her 2013-2014 and 2014-2015 appraisals "on an exceptional basis". As an alternative, she requests the placement of an explanatory note to supplement them.

34. We agree with the UNDT's decision not to order the removal of the above documents from Ms. Gnassou's OSF; we, however, differ on the reasoning. Contrary to what the UNDT and the parties suggest, an appealable administrative decision does not require an element of

THE UNITED NATIONS APPEALS T

Judgment

37. For the foregoing reasons, the appeal is dismissed.

Original and Authoritative Version: English

Dated this 26th day of October 2018 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Thomas-Felix

Entered in the Register on this 20th day of December 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar