



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2012/085
Judgement No.: UNDT/2013/044
Date: 8 March 2013
Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: ~~REGENERALD~~ (880 10 Tc)T5TD01 TtTc(TJØ TH U12 202N 12 262.02 -12 0 TD

Application

1. By application filed on 8 October 2012 with the Registrar of the United Nations Dispute Court, the applicant:

(a) Contests her performance evaluations for the periods 2009-2010 and 2010-2011, as well as the decisions of 28 March 2012 and 3 April 2012 to place those evaluations on her official administrative file.

(b) She asks, first, that those evaluation reports be annulled in part and that the decisions to place them on her file be annulled; in addition, that the contested decisions be fully annulled, that the Secretary-General be ordered to pay her a sum corresponding to 12 months' salary as reparations for damages caused by the above-mentioned decisions; lastly, that her name not be mentioned in the published judgement.

Facts

dated 26 March 2012 transmitting the opinion of the Office of Human Resources Management, a copy of the report of the rebuttal panel dated 28 March 2012, and, lastly, a copy of her performance evaluation for the period 2010-2011.

10. On 2 April 2012, the rebuttal panel rendered its report for the period 2009-2010 and awarded the rating “*fully successful performance*”, and on 3 April 2012, the applicant was informed that the panel report as well as other documents related to her evaluation by her supervisors were placed on

(e) She has suffered serious moral damages as a result of the contested decisions, for she has been deeply hurt by the reports of her first reporting officer. She became ill in the aftermath of these irregularities. She suffered hostility from her first reporting officer for which she bore no responsibility. The failure to conduct an interview prior to the assessment was a deliberate attack on her dignity. The fact that the evaluation was made retroactive is absurd, recognizing that the work plan was drawn up and the mid-point performance review conducted only after the end of the period evaluated.

(f) Contrary to what the respondent maintains, it is the place of the Tribunal to rule on the harassment and the abuse of authority of which she has been the victim.

(g) As the rebuttal panel recognized, the contested evaluations must be deemed null and void, and thus cannot be considered as evaluations.

17. The respondent's contentions are:

15.3. The rebuttal panels shall prepare with maximum dispatch a brief report setting forth the reasons why the original appraisal ratings should or should not be maintained. The report of the rebuttal panel shall be placed in the staff member's official status file as an attachment to the PAS [Performance Appraisal System]. The performance rating resulting from the rebuttal process shall be binding on the head of the department or office 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 marked by the executive or administrative office on the final appraisal section of the PAS form, with annotation that the rating was changed as a result of a PAS rebuttal.

15.4. The rating resulting from an appraisal that has not been rebutted, or from the rebuttal process, shall not be subject to further appeal. However, administrative decisions that stem from any final performance appraisal and that affect the conditions of service of a staff member may be appealed.

20. The above provisions mean that, when the final rating has been amended by the panel, as in this case, the latter rating replaces the one previously given. Thus, the applicant is not entitled to request cancellation of an evaluation that has been replaced by the rating awarded by the panel, namely "*fully successful performance*", the final rating which the applicant has expressly declared she is not contesting.

21. With respect to the period 2010-2011, the applicable text is Administrative Instruction ST/AI/2010/5, which provides as follows:

Section 15
Rebuttal Process

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.

...

15.7. 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.

22. The above-cited provisions differ little from those applicable to the period 2009-2010, and specify in the same manner that the rating awarded by the rebuttal panel replaces the rating awarded

24. The applicant next asks for annulment of the decisions of 28 March 2012 and 3 April 2012 to place on her official administrative file certain documents relating to her performance evaluations for the periods 2009-2010 and 2010-2011.

25. The respondent claims that the contested decisions are not administrative decisions that might affect the rights of the applicant, as management was merely applying Administrative Instructions

Regulation 1.3
Performance of staff

Section 4 **Reporting officers and additional supervisors**

4.1. A first reporting officers shall be designated for each staff member at the beginning of the cycle. The first reporting officers responsible for:

- (a) Setting the workplan with the staff member;
- (b) Conducting the mid-point review and final appraisal;
- (c) Providing supervision of the overall work of the staff member through the reporting period.

...

4.3. The second reporting officer, who shall be the first reporting officer's supervisor, is responsible for:

- (a) Ensuring that the first reporting officer understands and applies the PAS principles and procedures;
- (b) Holding the first reporting officer accountable for appraising staff in accordance with PAS guidelines;
- (c) Providing ongoing feedback and including in the PAS of the first reporting officer an appraisal of his or her management of staff performance;
- (d) Resolving disagreements between staff and the first reporting officer in the interpretation of PAS.

Section 6 **Individual plans**

6.1. In the light of the departmental and work unit plans, managers meet with the staff under their direct supervision to ensure that the objectives of the work unit are understood and annual individual workplans are drawn up.

6.2. The staff member works with the first reporting officer to devise the plan for the performance cycle and to determine the competencies that will be used to carry out the workplan.

Section 7 **Implementation and monitoring**

7.3. Primary responsibility for the timely execution of the PAS rests with the head of department or office for overall compliance as well as consistent and fair implementation.

7.4. Timely implementation of all aspects of the PAS and compliance with the spirit and the letter of the process, including completion of the PAS forms and development of remedial action under section 8.3, if necessary, rests with the supervisor acting as the first reporting officer under section 4.1.

7.5. Officials acting as second reporting officers under sections 4.3 and 4.4 shall be held accountable for the fair and consistent implementation of PAS by supervisory staff acting as first reporting officers.

Section 8 **Mid-point performance review**

8.1. In the middle of each performance year, the first reporting officer reviews with each staff member the manner in which the individual workplan has been carried out and provides performance feedback and guidance for the accomplishment of the goals and/or performance expectations set out in the workplan.

the evaluation by her supervisors are to be withdrawn from her personal file, management can in no case cite them as grounds for any refusal to renew her current appointment.

47. With respect to the moral damages claimed by the applicant, the Tribunal considers that these have been in part compensated by the satisfactory ratings awarded her by the rebuttal panel. However, for the two periods under dispute the applicant worked without a workplan and her first reporting officer did not conduct any mid-point review with her. The applicant has been left in great uncertainty as to the quality of her work, to the point where her relations with her first reporting officer have deteriorated seriously, while her second reporting officer has been unable to intervene, as he could have if the evaluations had been conducted regularly. The Tribunal considers, then, that the irregularities committed in the applicant's evaluations have been at least in part the source of the difficult relations that she has had and continues to have with her supervisors. On this point, it is proper to order the respondent to pay her the sum of US\$ 5,000.

48. Lastly, the applicant has asked the Tribunal to