

agreed course of action, as well as a lack of adherence to organizational policies and procedures, a failure to take mandatory trainings, and substantial challenges in forming a team and in creating and fostering team spirit. He also reiterated the Applicant's difficulties in ensuring effective communication with key stakeholders. The Applicant received the following overall ratings:

- a. Work Plan Outputs: "partially achieve outputs";
- b. Core Competencies: "developing proficiency";
- c. Functional Competencies: "developing proficiency"; and
- d. Development Outputs: "partially achieved".

8. By letter of 4 March 2015 from the Director, Division of Human Resources, UNFPA, the Applicant was notified that her fixed-term appointment would not be renewed beyond 30 April 2015 for what was described as "documented performance reasons".

9. On 27 March 2015, the Applicant submitted a rebuttal against her 2014 PAD. Her appointment was extended pending the review by the Rebuttal Panel.

10. On 12 May 2015, the Applicant submitted a rebuttal against her 2014 PAD. Her appointment was extended pending the review by the Rebuttal Panel.

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- e. The Applicant's fixed-term appointment was due to expire, without further notice, on 14 March 2015, and carried no expectancy of renewal;
- f. The contested decision is substantiated by the 2014 PAD and the report of the Rebuttal Panel, which demonstrate that the Applicant's performance was below standard;
- g. The UNFPA Separation from Service Policy does not require that a staff member whose PAD indicates a departure from the standards of performance be given an opportunity to improve before a decision not to renew his or her fixed-term contract is taken, nor that a staff member be informed prior to such;
- h. The Applicant has been informed on several occasions of shortcomings in her performance, not only in her PADs but also in several meetings with her supervisors throughout 2013 to 2015. She was also given the opportunity to improve her performance by being reassigned to new functions;
- i. The Applicant did not bring any concrete evidence that she has been discriminated against; and
- j. In the circumstances, the Respondent requests the Tribunal to reject the application.

Con^s on

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22. The Applicant challenges the decision not to renew her contract beyond 30 April 2015.

23. In so doing, she also challenges her 2014 PAD and the rebuttal process, which are closely related to the contested decision. She asserts that the decision not to renew her contract is the result of a pattern of harassment and abuse of authority from her supervisors and the Chief of the UNFPA Geneva Liaison

Office. As such, she seeks to link the present application with her complaint of harassment and abuse of authority to the OAIS.

24. It is clear from the Applicant's submissions, in particular her additional submissions of 23 December 2015, that she does not challenge the decision to reassign her as GBV Advisor.

25. The Tribunal finds that the only decision that the Applicant submitted for management evaluation is the decision of 3 March 2015 not to renew her fixed-term appointment. Pursuant to art. 8 of the Dispute Tribunal's Statute, this is the only decision that the Tribunal is competent to examine.

Principles

26. Staff rule 4.13(c) provides that "[a] fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service, except as provided under staff rule 4.14(b)". Pursuant to staff rule 9.6(b), "[s]eparation as a result of ... expiration of appointment ... shall not be regarded as a termination within the meaning of the Staff Rules".

27. It is settled jurisprudence that "poor performance ... may be the basis for the non-renewal of [a] fixed-term appointment" (2015-UNAT-500, para. 34, referring to *Principles* 2013-UNAT-298, para. 18; *Principles* 2011-UNAT-153, para. 49). The Appeals Tribunal also held that "a staff member whose performance was rated as 'partially meeting performance expectations' had no legitimate expectancy of renewal of his contract" (, para. 41, referring to *Principles* 2011-UNAT-176, paras. 30-31).

28. In , the Appeals Tribunal stressed that the Dispute Tribunal shall give deference to the decision-maker's assessment of the staff member's performance. It is not the Tribunal's role to place itself in the role of the decision-maker, and determine whether it would have renewed the contract based on the performance appraisal (para. 40).

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been desirable to have entered individual ratings for each of the six functional competencies, the Applicant's supervisor provided the necessary information to reflect his appraisal of these competencies. The Tribunal finds that there was no material irregularity in the procedure followed in that the supervisor's way of proceeding had no significant impact on the Applicant's appraisal.

43. The Applicant has not established that her 2014 PAD was vitiated by procedural irregularities, and that she was denied the opportunity to challenge it. Pursuant to sec. 4.19 of the Rebuttal Policy, the ratings and comments contained in the 2014 PAD are final. The Tribunal is therefore bound to examine the legality of the contested decision in the light of this performance appraisal.

The decision not to renew the Applicant's fixed-term appointment

44. Based on the Applicant's 2014 PAD, which was finalised on 27 February 2015, the Organization decided, on 3 March 2015, not to renew her fixed-term appointment beyond 30 April 2015. The Applicant was informed within the deadline set forth in sec. 5.8 of the Separation Policy of her non-renewal and of the reason for such, namely "documented performance reasons". The Applicant's departure from the required standards of performance was fully and properly documented in her 2014 PAD, as required by sec. 5.13 of the Separation Policy.

45. In this respect, the Tribunal notes that sec. 5.13 of the Separation Policy refers to "unsatisfactory performance", and sets a different standard for non-renewal of fixed-term appointments from the standard applicable to termination of appointments, as set forth in sec. 7.3 of the Separation Policy. Although sec. 5.13 and 7.3.5 of the Separation Policy both use the expression "unsatisfactory performance", it is clear from sec. 7.3.5 of the Separation Policy that the specific factors and criteria for determining "unsatisfactory performance" apply to "termination" of appointments. It is unfortunate that sec. 5.13 uses the same terminology as sec. 7.3.5, but it is clear from sec. 5.13 that the standard for non-renewal is a "departure from the required standards of performance". The difference in the applicable standards is consistent with the jurisprudence of the Appeals Tribunal, which held that it is not necessary for the performance of a staff

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coordination. It seems that those meetings were discontinued at some point in

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procedures were followed to evaluate her performance for the year 2014, and to