



## **INTRODUCTION**

1. T

e. Her performance could not have suddenly become “so abysmal” after more than a decade of good performance.

4. The Applicant seeks the removal of both the 2013-2014 and 2014-2015 e-PASes from her OSF and moral damages in the amount of USD90,000 for damages she has suffered as a result of the Organization’s errors.

#### **THE REPLY**

5. By a reply dated 7 November 2016, the Respondent submitted that the application is not receivable because:

a. A rebuttal panel report is not a contestable administrative decision within the meaning of art. 2.1(a) of the UNDT Statute and that no administrative decision had been taken on the basis of any final performance rating resulting from the rebuttal process. Relying on *Staedtler* 2015-UNAT-546 and *Ngokeng* 2014-UNAT-460, the Respondent submitted that the decision is not receivable because it is not a final administrative decision.

return due to operational crises that he had to respond to as the head of the Goma office. After the FRO submitted his statement on 23 February 2016, the Rebuttal Panel finalized its report in less than a month.

## **FINDINGS OF FACT**

7. The Tribunal did not consider that an oral hearing would assist in establishing the relevant primary facts.

8. The Tribunal considered a substantial number of documents provided by the Applicant who made several allegations against the decision-makers whom she considered as having acted improperly in breach of the Organization's rules and procedures on recruitment and performance appraisal.

9. The Tribunal finds the following facts proven on the basis of the documentary evidence and taking into account the submissions of the parties:

a. On 1 July 2004, the Applicant commenced employment with MONUSCO on a fixed-term appointment as an Economic Affairs Officer at the P-4 level in the Political Affairs Division ("PAD"). She worked in PAD until her separation from service on 31 August 2015.

b. On 1 July 2015, the Applicant's first reporting officer ("FRO") assessed her overall performance for the 2014-2015 performance evaluation cycle as "does not meet performance expectations".

c. By an email dated 14 July 2015, the Applicant sought guidance from the Chief of the MONUSCO Human Resources Section (HRS) on the  
r

- e. By email dated 22 July 2015, the Office of the DMS requested that the Applicant's first reporting officer ("FRO") respond to the Applicant's rebuttal statement within 14 days (by 5 August 2015). The FRO did not respond so the Office of the DMS sent a reminder on 5 August 2015. The FRO responded the next day that he was on emergency medical evacuation.
- f. On 23 July 2015, the Applicant sent an email to the Director of Mission Support ("DMS") again requesting a rebuttal of her 2014-2015 e-PAS. Subsequently, she provided the DMS with her partially signed performance appraisal and the 32 annexes.
- g. The Applicant received a hard copy of her signed e-PAS on 28 July 2015.
- h. The Applicant was separated from service on 31 August 2015.
- i. The Applicant's FRO returned to the duty station on 21 December 2015. On 5 and 28 January 2016 and 2 February 2016, the DMS' office took follow up action in relation to his reply to the Applicant's rebuttal statement, which he submitted on 23 February 2016.
- j. The Applicant received a copy of the FRO's reply to her rebuttal statement on 25 February 2016.
- k. The Rebuttal Panel interviewed the Applicant on 3 March 2016.
- l. On 14 March 2016, the Rebuttal Panel completed its report,



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

medical leave and his responsibility to deal with the inter-ethnic crisis in South  
Lubero, Democratic Republic of the Congo, on his return in late December, was  
legitimate particularly since it would not have been appropriate to have delegated1(i)17(nc)3(e)3( )-70

review. The authorities are clear and there is nothing in the Applicant's further submissions dated 26 January 2018, following a case management discussion ("CMD") on 25 January 2018, that persuades the Tribunal that this aspect of the claim is receivable. The Applicant does not challenge an administrative decision under article 2.1(a) of the UNDT Statute.

## **JUDGMENT**

The Application fails and is dismissed.

*(Signed)*

Judge Goolam Meeran

Dated this 29<sup>th</sup> day of January 2018

Entered in the Register on this 29<sup>th</sup> day of January 2018

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi