Introduction

1. On 20 May 2019, the Applicant, a Senior Reviser at the Department of General Assembly and C , filed an application contesting the decision to terminate his permanent appointment on the ground of unsatisfactory service.

2. On 19 June 2019, the Respondent duly filed his reply, responding that the application was without merit.

3. For the reasons stated below, the Tribunal finds that the Administration properly followed the applicable procedure
appointment and dismisses the application.

Facts

4. Over six electronic performance appraisal cycles (from 2011-2012 to 2016-2017), inadequate at various points, and DGACM implemented a total of three performance improvement plans

5. In the 2011-2012 and 2112-2013 ePAS , t productivity fell under the minimum standard five pages of translation, and he received the first overall rating -2013 ePAS report, leading up to the first PIP in the 2013-2014 cycle. The PIP lead to an improvement in the , and he received a ePAS for this cycle.

6. In the 2014- . With the the

ePAS.

7. In the 2015- and a uctivity

8. In the 2016- , and a third PIP was implemented. Despite the PIP and coaching from his supervisor, the ePAS for this

rebuttal of the ePAS. In November 2017, the rebuttal panel confirmed the awarded rating.

9. On 13 April 2018, DGACM submitted a request for termination of the Central Review sec. 4.10 of ST/SGB/2011/7 (Central review bodies) and ST/AI/222 (Procedure to be followed in cases of termination of permanent appointment for unsatisfactory services). On 10 August 2018, the CRB concluded that there were sufficient grounds CRB recommended that the Secretary- termination. The CRB further recommended that the Secretary-General consider the possibility of granting the Applicant early retirement.

10. On 23 October 2018, the Under-Secretary-General for Management, in the exercise of her delegated authority, accepted the request for termination. On 1

of his appointment.

Consideration

Applicable law

11. Staff regulation 9.3(a)(iii) and staff rules 9.6(c)(ii) and 13.1(b)(i) provide that the Administration may terminate a permanent appointment for unsatisfactory service. Under sec. 4.10 of ST/SGB/2011/7, requests for termination of permanent appointment under these provisions are reviewed by a central review body following the procedure established in ST/AI/222.

12. The Appeals Tribunal has recalled that in examining the validity of the eview is limited to determining whether the exercise of such discretion is legal, rational, reasonable and procedurally correct to avoid unfairness, unlawfulness or arbitrariness (see, for instance, *Abusondous* 2018-UNAT-812, para. 12 [Dispute] Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary- *Sanwidi* 2010-UNAT-084, para. 40).

Was the decision to terminate

13. The Applicant claims that the contested decision was tainted by procedural errors. He states that he was not afforded the opportunity to provide comments at the end of the 2017-2018 ePAS in violation of sec. 15.1 of ST/AI/2010/5, because the rebuttal process was underway when he received the termination notice. The ePAS is irrelevant because the termination was based on his poor performance over a period of six cycles, 2016-2017 ePAS. The Respondent adds that secs. 10 and 15 of ST/AI/2010/5 do not require the completion of the rebuttal process for the 2017-2018 cycle.

14. The Appeals Tribunal held that Administration to restart the termination process if a new performance appraisal is completed before a final termination decision is taken. Otherwise, it would potentially place the Administration in an endless cycle whereby it could never be in a position to *Weerasooriya* 2015-UNAT-571, para. 31). Therefore, the Tribunal agrees with the Respondent that the outcome of the -2018 performance appraisal was irrelevant for his termination decision that was based on the performance cycles of 2011-2012 to 2016-2017.

15. The Applicant further argues that the CRB failed to consider his health and family problems which, he claims, were the cause of his poor performance. He states that the CRB failed to consult with the Medical Services Division or DGACM to obtain information about his medical condition and, in doing so, he was deprived of his right to be heard.

16. The Respondent rejects these claims. He states that
sick leave were considered according to the applicable framework. He states that the
he was absent frequently, but for short periods of time.
The Respondent submits that the Applicant did not request any specific accommodation in connection with his health problems. To the contrary, when in 2016 his manager suggested him to telecommute, the Applicant declined. The Respondent

2016. To assist the Applicant to meet his productivity shortfall, he was assigned translations of texts that contained a lot of text that had previously been translated .

17.
his health and family concerns, the Respondent recalls that the Applicant was given the opportunity to substantiate his claims and submit supporting evidence,

DGACM, including quality control officers and the Applicants supervisors during the period under review. The CRB interviewed the Applicant in person on 14 June 2018.

19. On 10 August 2018, the CRB rendered its findings. Having reviewed the documentation submitted by both parties, the CRB found that DGACM had adequately

The CRB also noted that the Applicant claimed that DGACM had not properly considered his health and family issues, which negatively affected his performance and further claimed that the request for termination was in retaliation for his having complained about one of his supervisors in the 2012-2013 ePAS cycle. The CRB was not satisfied, however, that the Applicant had provided evidence to support his claims.

20. In light of this evidence, the Tribunal is satisfied that despite having had the opportunity to do so, the Applicant failed to provide evidence that DGACM disregarded his health concerns or that such concerns had an impact on his productivity. Similarly, the Applicant failed to provide any evidence in support of his allegations of retaliation or any other ulterior motive, for that matter.

21. The Applicant further challenges the institution and management of the PIPs. He claims that in the 2012-2013 ePAS cycle, where he received the overall rating of of his shortcomings and, therefore, was not afforded a chance to improve his performance.

22. The Tribunal notes that the Applicant did not seek rebuttal of his 2012-2013 ePAS and he is therefore barred from challenging this administrative decision at this point.

23. The Applicant states further that he was assigned additional managerial duties during the 2013-2014 ePAS cycle, which were not mentioned in the resulting PIP for that cycle and The Applicant further claims that the PIPs that of the 2015-2016 and 2016-2017 cycles, were unwarranted because the previous PIPs

24. The Respondent responds that a PIP was instituted during the 2013-2014 ePAS

25. With respect to the 2015-2016 and 2016-2017 ePAS ratings, the Respondent recalls that sec. 10.2 of ST/AI/2010/5 does not limit the ability to implement a PIP to situations where a staff member received an unsatisfactory rating in the previous cycle. The Respondent states that a PIP can be implemented once a performance shortcoming has been identified under sec. 10.1 of ST/AI/2010/5. He explains that a PIP must be implemented under sec. 10.2 of ST/AI/2010/5 in two cases: first, where the remedial actions under sec. 10.1 do not contribute to the improvement of the performance and, ly meets -2016 and 2016-2017 ePAS cycles .

26. The Tribunal recalls that sec. 10.2 of ST/AI/2010/5 provides that a PIP may be initiated where the other remedial actions instituted in application of 10.1 of ST/AI/2010/5, including counselling and training, do not result in the improvement of

the performance. Therefore, the rating in the previous cycle is irrelevant to the decision to institute a PIP.

27. The Applicant further challenges the PIP instituted during the 2017-2018. However, the Tribunal has already established that the 2017-2018 cycle is irrelevant in

Conclusion

29. In light of the foregoing, the application is dismissed.

(Signed)

Judge Joelle Adda

Dated this 15th day of June 2020

(Signed)

Entered in the Register on this 15th day of June 2020

Nerea Suero Fontecha, Registrar