
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/036

Judgment No.: UNDT/2024/113

Date: 18 December 2024

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar:

Case No.

Case No.

25. The Respondent's main contentions may be summarized as follows:
- a. The decision not to renew the Applicant's fixed-term appointment was due to unsatisfactory services and was lawful. It followed from the Applicant's failure to improve his performance or to reach the desired outcomes of the PIP that was initiated to address his performance shortcomings.
 - b. The placement of the Applicant on a formal time-bound PIP in April 2023 was in accordance with secs. 4.3 and 4.4 of UNICEF's CF/AI/2011-001 Amend. 2 (Performance management). During the 2022 performance period, the Applicant's FRO and SRO had identified challenges around the

Case No. UNDT/NY/2023/036

Judgment No.

Dispute Tribunal's Rules of Procedure. The Applicant asserts that he was advised by his lawyer to make audio recordings of the PIP check-in meetings with his supervisors in order to document the discussions and to have evidence of their misconduct. He argues in his closing statement that the recordings "show a pattern of hostile, dismissive, and retaliatory behavior and expose discrepancies between what was discussed in meetings and what was documented in reports".

27. The Respondent, on the other hand, submits that since the recordings were made without the knowledge and consent of the meeting participants, the Tribunal should disregard them.

28. The Tribunal notes that UNICEF's Guidance/DHR/2021/001, effective 28 December 2021, which is "applicable to all UNICEF personnel", makes it clear that the Agency "does not condone non-consensual recordings at workplace settings or activities" since such recordings "undermine the work relationship between employees and UNICEF's core value of Trust, raise confidentiality concerns, and may infringe on the rights of others", among other reasons. The Guidance document also warns that "[m]aking a non-consensual recording is unacceptable behavior and may amount to misconduct" (UNICEF, *Guidance on Workplace Recording*, para. 6).

are admissible in the limited context of his case. However, having carefully listened to the recordings, the Tribunal concludes that they are not relevant to its adjudication of the case as the contents are already included in many of the written documents filed by the parties. Accordingly, the Tribunal will not consider them in the present proceedings.

The issues

31. The Tribunal notes that this case involves the non-renewal of the Applicant's fixed-term appointment based on a negative appraisal of his work performance by his supervisors.

32. In the contested decision, contain Tm0 1s1r40 g

Case No. UNDT/NY/2023/036

Judgment No.

40. During the first half of his tenure with the ACO, the Applicant had very contentious interactions with his direct supervisors, consistently rejecting supervision and constructive feedback, as documented in the rebuttal review report and in many of the annexes filed by the parties. His supervisors also received complaints from his colleagues and a representative of a UNICEF implementing partner about the Applicant's language and behavior that they perceived as disrespectful, embarrassing, and offensive. At the mid-term performance review meeting with his FRO

Tribunal has held,

(see, for example, *Soares* UNDT/2022/111, *Koumoin* 2011-UNAT-119, *Soliman* 2017-UNAT-788).

47. Further, the Tribunal’s review of the record supports a finding that the Applicant was offered numerous opportunities to change his approach and interactions with his supervisors and colleagues, and he was encouraged to make efforts to improve his work performance. This assessment was endorsed not only by the UNICEF management but also by the independent PIP rebuttal reviewer. Regarding the Applicant’s complaint that the Administration failed to consider the “context” of his “battle with depression” and his medical needs, the Tribunal expresses its sympathy with the Applicant but notes that this is not a legitimate justification for underperformance. The record shows that during his short tenure

Case No. UNDT/NY/2023/036

Judgment No. UNDT/2024/113