



JUDGE NASSIB G. ZIADÉ , P

7. On 7 October 2020, Ms. Haydar's FRO reminded the Unit Chiefs, including Ms. Haydar, to submit their individual and Unit dr0 m453nhUrM8 m48(n)9.88(s)-2 (8(C)61.5 (a)4f7 (t)or3 (-)-0.7 (s)-48(n)9pp

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her appointment; consequently, there was no administrative decision within the meaning of Staff Rule 11.2(a) that could be subject to review before the MEU.<sup>19</sup>

18. On 8 June 2022, Ms. Haydar filed an application before the UNDT contesting the decision of 29 November 2021 that she described as:<sup>20</sup>

The FRO prepared a[n] EPAS [electronic performance appraisal] offline instead of doing it in *INSPIRA* as is normally the case and did it in a manner that reflected negatively on the ... staff member despite the fact she was not the cause of the delay. He rated her “successfully meets performance expectations”, the comments and the majority of the individual elements rated make that rating a 'sham', only used to evade a rebuttal.

19. Ms. Haydar asked that the offline performance evaluation completed by her FRO be cancelled, and that a new evaluation be done in *Inspira* in accordance with the applicable legal provisions. She further asked that she be awarded compensation for the violation of her due process rights.

20. The UNDT held hearings from 21 to 23

60 days of being notified of the decision.<sup>24</sup> However, the UNDT held that the application was receivable insofar as it related to the negative comments in Ms. Haydar’s appraisal.<sup>25</sup>

22. On the merits, the UNDT found that Ms. Haydar had not been given “an opportunity to be heard on the negative comments that detracted from the overall successful rating in her performance appraisal”, and that this represented a breach of her due process rights and her right to be assessed fairly.<sup>26</sup>

23. The UNDT granted the application in part and rescinded the filing of Ms. Haydar’s 2020-2021 performance appraisal in her personnel or other records to allow the Administration to give her an opportunity to be heard on the negative comments before an “independent, impartial and objective panel to ensure that the performance rating of successfully meets expectations is consistent with the comments”.<sup>27</sup>

24. The Secretary-General filed an appeal on 30 May 2023, and Ms. Haydar filed her answer on 27 July 2023.

#### Parties’ Submissions

The Secretary -General’s Appeal

25. The Secretary-General contends that the UNDT erred in law in finding that Ms. Haydar’s challenge of the comments in her performance appraisal was receiv- Tw 16 orss 0 Td[(Se)-1

request for management evaluation on her behalf. Counsel is presumed to be aware of the relevant law and their actions and omissions legally reflect the persons they represent.

26. The Secretary-General further submits that the UNDT erred in law in finding that the challenge of the comments in Ms. Haydar's performance appraisal with an overall rating of "successfully meets expectations" was receivable on grounds that they had direct legal consequences affecting her terms and conditions of appointment. The UNDT erred in relying on the UNAT's jurisprudence in *Handy*<sup>28</sup> in reaching its conclusion in that regard. In *Handy*,

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further expounds on her claim that the FRO's reliance on an offline performance evaluation was unlawful and motivated by bad faith. She recounts the different e-mail exchanges and discussions regarding their disputes on matters such as (illegal) recruitment practices to demonstrate her FRO's alleged motivation to penalize her.

36. Ms. Haydar contends that the principle in *Handy* is to prevent sham ratings by adding derogatory comments in a performance evaluation that render an overall positive performance evaluation negative. In Ms. Haydar's case, the adverse comments were inaccurate, unbalanced, and went unchallenged. The UNDT found that letting the offline evaluation stand had the effect of introducing adverse material into Ms. Haydar's official records. Before the UNDT, Ms. Haydar argued successfully that there was no justification for the FRO to go offline and then to refuse to complete her ePAS in *Inspira*. Moreover, Ms. Haydar's performance evaluations in *Inspira* for the year beforefed suvlly thpl3cueInsp.8 pw -1 dSv.7 (Am)6.3 (S6 (n6 (b)0.6 (ef)47 -1 (e)-50..027522c 0.027 a)8

Considerations

39. The threshold issue in this case is whether the application was receivable *ratione materiae* before the UNDT. Article 2(1)(a) of the UNDT Statute provides that the Dispute Tribunal “shall be competent to hear and pass judgement on an application filed by an individual ... [t]o appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment”. Under the applicable Staff Rules, a staff member wishing to “contest an administrative decision” on this basis must first make a timely “request for a management evaluation of the administrative decision”.<sup>29</sup> It is well settled that a claim which has not first been raised in a request for management evaluation is not receivable *ratione materiae*.<sup>30</sup>

40. It is not disputed that Ms. Haydar did request a management evaluation of the performance appraisal, prior to seeking review by the UNDT. The performance appraisal was completed on 29 November 2021, and received by Ms. Haydar on 30 November 2021. Ms. Haydar submitted a request for a management evaluation on 28 January 2022, and the MEU advised her on 10 March 2022 that her request was not receivable. On 8 June 2022, Ms. Haydar submitted her application to the UNDT. The core disputed issue here is whether the management evaluation request and the UNDT application involve the same administrative decision. The UNDT concluded that, with respect to the inclusion of negative comments in Ms. Haydar’s appraisal, the issue had been raised to the MEU in a timely fashion;



“the capacity to produce direct legal consequences”. Accordingly, this Tribunal must examine the underlying circumstances and context of the challenged action. With particular regard to a facially positive performance evaluation, we look to the “actual character” of the evaluation, including whether the reasoning or narrative comments so detract from the overall favorable conclusion that they can be said to have a direct adverse impact on the terms and conditions of the staff member’s employment.<sup>37</sup>

47. Our examination of the record finds ample support for the UNDT’s conclusion that the evaluation here falls within this recognized, albeit narrow, exception. While commending Ms. Haydar and her team for their effective response to the Covid-19 outbreak, the narrative finds that “her good performance was marred by her creation of a hostile work environment in her unit”; and further states that she “refused to assign tasks” to a subordinate based on “strained relations”; that she devoted her energy to “resisting” her supervisors, and lists in some detail the ways in which that perceived resistance was manifested. These comments, all from the FRO, were “fully endorse[d]” by the SRO.<sup>38</sup>

48. The paucity of positive comments, compared with the pointed and overwhelmingly negative comments in the performance appraisal render this evaluation an “administrative decision” with, in this context, a direct adverse impact on Ms. Haydar’s employment. The application was receivable as a matter of law.

49. Because the application was receivable *ratione materiae*

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