

UNITED NATIONS A



JUDGE LUIS MARÍA SIMÓN, PRESIDING.

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... On 28 October 2011, the applicant initiated a rebuttal process against her evaluation for the period from 1 September 2009 to 31 March 2010.

... On 18 November 2011, her first reporting officer signed the performance evaluation for the applicant for the period 2010-2011, and the second reporting officer signed it on 21 November 2011. The evaluation report for the period 2010-2011 contained the rating 'does not meet performance expectations'.

... On 19 December 2011, the applicant initiated a rebuttal process for the period 2010-2011. On 12 March 2012, the rebuttal panel rendered its report for the period

responded to the request for a management review, specifying that the documents covering her original evaluations, the report of the rebuttal panel, the rebuttal statement and the responses of the supervisors would remain on her personal file. With respect to the other documents relating to her evaluations, he responded to her that [OHRM] would remove them from her file, if she so requested. He also informed the applicant that her request for damages had been rejected.

3.

UNDT ordered their removal, together with related documents prepared by Ms. Oummih's supervisors, from her OSF, stating that only the rebuttal panel reports should remain, as the delays and irregularities in the procedure meant the initial appraisals had no legal existence.

6. The UNDT opined in respect of moral damages that the rebuttal panel's satisfactory ratings compensated Ms. Oummih in part, but that the uncertainty she was left with as to the quality of her work, and the resultant strain on her relationship with her first reporting officer, justified monetary compensation in the amount of USD 5,000.

7. On 26 April 2013, Ms. Oummih requested an extension of time to appeal Judgments No. UNDT/2013/043 and No. UNDT/2013/044. She argued that she had been on medical leave and also that she needed time to secure bilingual counsel. On 6 May 2013, the Appeals Tribunal issued Order No. 133 (2013), gr

11. The Secretary-General contends that the UNDT also erred in finding that Ms. Oummih suffered moral harm in the absence of any such evidence. Moreover, he recalls that the sole issue receivable by the Dispute Tribunal was the placement of the impugned appraisals on her OSF, and as this was obligatory for the Administration under the legislative framework in place, it cannot be construed as resulting in moral harm. Finally, he argues that the UNDT incorporated irrelevant and legally extraneous factors into its decision

12. The Secretary-General asks the Appeals Tribunal to vacate Judgment No. UNDT/2013/044 and to dismiss the underlying application in its entirety.

Considerations

13. The staff member, a legally trained person, did not file her answer and cross appeal in accordance with Practice Direction No. 1 of the Appeals Tribunal, despite the opportunity given to her for that purpose. Consequently, the case before this Tribunal only refers to the appeal filed by the Secretary-General.

14. The sole issue received by the Dispute Tribunal was the placement of the impugned appraisals on the staff member's personnel file, a very restricted scope.

15. The Appeals Tribunal holds that the UNDT erred when it excluded documents from the OSF and ordered compensation for alleged damages not related to any established illegality.

16. Under the applicable legislative framework as set out in ST/AI/2002/3 and ST/AI/2010/5, it was mandatory for the Administration to keep in the personnel file both the impugned appraisal and reports, and the rebuttal outcome.

17. Even if the irregularities and delays in the appraisal procedure were "so serious that they render the ... evaluations meaningless, as was decided by the rebuttal panel which held these evaluations to be null and void", as determined by the UNDT, that circumstance does not mean that they should not be kept in the file. Rather, they, together with the corrective substitute reports or decisions, should all be kept, in order to explain the whole process. In most cases, the rebuttal conclusions or administrative decisions amending previous erroneous appraisals will not be comprehensible if they cannot be read together with the impugned evaluations.

18. The placement on the OSF of impugned evaluations which are subsequently declared illegal or vacated cannot harm a staff member, since the corrective and complementary rebuttal report is simultaneously filed. In so doing, the entire administrative history relating to the evaluation is set out chronologically.

19.

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2014-UNAT-420