



Judgment No. 2021-UNAT-1142

A decorative horizontal band featuring a repeating geometric pattern of interlocking shapes, possibly representing a traditional architectural or cultural motif.

Counsel for Appellant: Self-represented

Counsel for Secretary-General: André Luiz Pereira de Oliveira

JUDGE SABINE KNIERIM, PRESIDING.

1. This case arose from Mr. Hammond's application regarding his 2016-2017 performance appraisal, and his application regarding the decision to reclassify his post. The United Nations Dispute Tribunal ("UNDT") dismissed Mr. Hammond's applications in Judgment No. UNDT/2020/096. For the reasons set out below, Mr. H (ng093.Tv) 2.8 Ts|E(10) Tt-08w(TWj106018-5 d10

7. The Management Evaluation Unit (“MEU”) rejected the Appellant’s request on 12 February 2018, and on 4 April 2018, the Appellant filed his application to the UNDT (Case No. UNDT/NY/2018/063), in which he challenged the 15 June 2017 ePAS-2016/2017 cycle rating.

Facts relevant to the decision to reclassify the Appellant’s P-4 Post to an FS-6 post

8. On 18 May 2017, the Chairperson of the African Union and the Secretary-General submitted a special report on the strategic review of UNAMID to the United Nations Security Council and the UNAMID Peace and Security Council (S/2017/437). The special report recommended a comprehensive civilian staffing review (“CSR”) to ensure the UNAMID staffing levels were adjusted to implement the revised mission mandate. The draft CSR reports dated 18 August

THE UNITED N

THE UNITED NATIONS APPEALS T

Submissions

Mr. Hammond's Appeal

29. With regard to the 2016-2017 ePAS, Mr. Hammond submits that the procedure adopted by the UNDT was flawed and arbitrary as the UNDT concentrated on the matter of his performance evaluation which gave rise to the reclassification or so-called "conversion" of the Post. He says that, while the UNDT Judgment acknowledged the unfairness and recommended to revise the ePAS, the evaluation had yet to be revised. He claims that there is no clarity as to whether the unfair ePAS is to be destroyed and that there seems to be no

~~Postulant (h) UNDT~~

striD6eostrio8-5-6n ()TJ0.001 Tc -0.001 T[9 (d)-0.8TD6ee.

THE U

35. The Respondent further argues that the Appellant failed to demonstrate that the UNDT committed any error of law or fact warranting the reversal of its Judgment. The Respondent argues that the Appellant is not actually attacking the contested decisions (attaching the Panel's report to the ePAS and the decision to convert the Post), but instead is attacking the decision to separate him from service. The Respondent notes that claims regarding his separation from service are beyond the scope of this case, and they are the rnte7IO.7 D5 (

conjunction with each other. It stated that it was a settled law of the Appeals Tribunal that a comment made in a satisfactory appraisal was not a final administrative decision if it did not detract from the overall satisfactory performance appraisal and had no direct legal consequences for the staff member. As Mr. Hammond had not shown that the rating and narrative of his 2016-2017 ePAS had direct and negative impact on his terms of appointment, and the requirements of Section 15.4 of ST/AI/2010/05 were met, the failure to revise his performance evaluation for the period 1 April 2016–30 March 2017 did not constitute an administrative decision. However, the UNDT recommended that a corrected 2016-2017 ePAS be provided to Mr. Hammond reflecting the Rebuttal Panel's findings and rating of

Secretary-General who decides to downgrade a staff member's post. To find otherwise would mean that the Secretary-General, under ST/AI/1998/9, has authority to modify

9.8.17 SOEMC (T) (h) 1 B 38 (A) 199 (a) 15092 Tcv 5.786 27.34 (26710 de B d y SOEMC 38E/244 (w) 5.9003] T 0.00.03
6.14 The Assistant Secretary-General for Human Resources Management or the head of office, as appropriate, shall take the final decision on the appeal. A copy of the final decision shall be communicated promptly to the appellant, together with a copy of the report of the Appeals Committee. Any further recourse against the decision shall be submitted to the

Mr. Hammond's application against the 13 March 2018 MEU response

55. In his 27 April 2018 UNDT application, Mr. Hammond also challenged the "MOOT [sic] Decision received from the MEU in its response on 13 March 2018".

56. We agree with the UNDT's finding that Mr. Hammond's application against the 13 March 2018 response from MEU was not receivable because the MEU response did not constitute a reviewable administrative decision under Article 2(1)(a) of the UNDT Statute. Under the Appeals Tribunal's consistent jurisprudence, the response from MEU is not an appealable administrative decision, but the staff member must challenge the original and underlying administrative decision.⁹ In the present case, this was the decision to terminate his fixed-term appointment with effect from 31 December 2017 which was communicated to Mr. Hammond on 24 November 2017 and again on 4 December 2017. However, as the MEU correctly pointed out, this decision had been rendered moot because Mr. Hammond's appointment eventually was not terminated but was renewed until 30 June 2018 and beyond; and he was separated from service not on 31 December 2017, but much later on 9 March 2019. Further, in his application to the UNDT, while he disputed "the MOOT Decision received from the MEU in its response on 13 March 2018", Mr. Hammond linked this MEU response to the issue of the lawfulness of the reclassification of his post. He complained that it was not clear from the 13 Mar

Judgment

57. Mr. Hammond's appeal is dismissed and Judgment No. UNDT/2020/096 is affirmed.

Original and Authoritative Version: English

Dated this 25th day of June 2021.

(Signed)

Judge Knierim, Presiding
Hamburg, Germany

(Signed)

Judge Murphy
Cape Town, South Africa

(Signed)

Judge Raikos
Athens, Greece

Entered in the Register on this 24th day of August 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar