



- 1. **Model for the Respondent:**
- 2. Wynn, AAS/ALD/OHR
- 3. n Munyolo, AAS/ALD/OHR

November 2018.⁵

7. On 7 July 2019, the Applicant and her First Reporting Officer (“FRO”) held the end of cycle performance discussion.⁶ For the 2018/2019 performance cycle, the Applicant was given a rating of D: Does not meet performance expectations.⁷

8. On 6 August 2019, the Applicant requested leave to rebut her performance rating before the Rebuttal Panel.⁸

9. On 20 August 2019, the Applicant’s FRO submitted to the Rebuttal Panel a reply to the Applicant’s rebuttal statement. However, UNAMA Human Resources and Training Section (“HRTS”) did not provide the Applicant with the copy of the response from the FRO.⁹

10. The Rebuttal Panel interviewed the Applicant on 17 October 2019. On 2, 7 and 8 December 2019, the Rebuttal Panel interviewed the FRO, the Second Reporting Officer (“SRO”) and the Chief Legal Officer (“CLO”), respectively.¹⁰

11. While the rebuttal process was still in progress, the Applicant resigned from her post at UNAMA on 29 October 2019 and she separated from the Mission on 30 October 2019.¹¹

12. On 18 May 2020, the UNAMA Chief of Human Resources Officer (“CHRO”) sent the rebuttal report to the Applicant. The Rebuttal Panel designated a new rating of “partially meets the expectations”. The CHRO informed the Applicant that due to their large size, the attachments would be sent in a separate email. The CHRO also informed the Applicant that the Office of Human Resources in New York (“OHR/NY”) would

⁵ Application, annex B.

⁶ F70.rg 0.9981 0.0 0.0 1.0 105.36 132.0 Tm [(F70.rg 1/F1 12.0 Tf 0.0 0N 10.08 Tf 0.0 rg)37(o)-20(n)19(s)8(“)3(.)] TJ E

place a copy of her rebuttal report in her OSF.¹²

13. On 19 May 2020, the Applicant wrote to the CHRO and informed her that she did not receive a copy of her FRO's response to her rebuttal statement as was indicated in the rebuttal report.¹³ On the same day, the CHRO replied to the Applicant and gave her

procedural flaws to the Special Representative of the Secretary-General (“SRSG”).¹⁸

18. On 17 July 2020, the Applicant requested the SRSG to remove her 2018/2019 e-PAS and the rebuttal panel report from *Inspira* and her OSF.¹⁹

19. The SRSG replied on 28 July 2020, informing the Applicant that, having assessed the entire performance appraisal process, rebuttal process and rebuttal outcome, including the material effect, if any, from the Administration’s failure to provide her with a copy of the response of her FRO to her rebuttalng 4o10.32 0.0 1.0 3051 0.0 0.0 1.2.0 1.

22. The Respondent further contends that the application is not receivable because the Applicant did not timely request management evaluation of the contested decision. The 60-day deadline for requesting management evaluation began to run from 18 May 2020 when the UNAMA CHRO first informed the Applicant that the signed rebuttal report would be placed in her OSF. The management evaluation deadline was, therefore, on 17 July 2020. The Applicant requested management evaluation on 30 July 2020, 13 days late.

Applicant's submissions

23. The Applicant submits that the application is receivable because the contested decision has a direct negative impact on her. The adverse effect of the impugned decision on her occurred from when the irregularities occurred, leading to a violation of her due process rights, and continue to date for as long as the impugned materials remain in her OSF.

24. The Applicant further submits that the Respondent misconstrues the decision she is challenging and thus erroneously asserts that she did not file the request for

CHRO denied that request on 3 June 2020. Contrary to the Respondent's assertions, the 3 June 2020 decision was not a reiteration of the decision to place the documents in the file. Rather, the decision directly addressed the Applicant's request to have the documents removed based on the identified errors and procedural irregularities. The Applicant then filed her management evaluation request on 30 July 2020, which was within 60 days from when the decision was issued. Based on this, and contrary to the Respondent's submissions, the management evaluation request was filed in a timely manner.

Considerations

27. The Applicant does not contest a reviewable administrative decision within the meaning of art.2(1)(a) of the Dispute Tribunal's Statute. Article 2(1)(a) of the UNDT Statute defines an administrative decision as one alleged to be in non-compliance with the terms of appointment or contract of employment. The administrative decision must have a direct impact on the terms of appointment or contract of employment of the individual staff member.²³ What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made and the consequences of the decision.²⁴

28. The Appeals Tribunal in *Gnassou*²⁵ affirmed this Tribunal's finding that the act of placing the rebuttal report in the Applicant's OSF is an administrative requirement and not an appealable administrative decision. In *Oummih*²⁶, the Appeals Tribunal held that "under the applicable legislative framework as set out in ST/AI/2002/3 (Performance Appraisal System) and ST/AI/2010/5 (Performance Management and Development System), it was mandatory for the Administration to kc30(f)32(r)-7(o)-7(o)-7(o)-7(o)-

29. The Tribunal notes that, in challenging the decision to place the rebuttal report in her OSF, the Applicant challenged her performance evaluation itself. In *Kebede*,²⁷ the applicant challenged before the United Nations Dispute Tribunal the outcome of the rebuttal process for his performance evaluation. In rejecting the application as irreceivable, the Dispute Tribunal held that direct legal consequences “are normally not caused by the evaluation alone.” The Tribunal could not find, nor did she provide any evidence, that any negative decision affecting her terms of appointment was taken on the basis of the performance evaluation, be it, for example, a decision not to grant her a step increment or to separate her from service. Indeed, as to the latter, the Tribunal notes that she resigned from service.

30. The Applicant has, further, not demonstrated any adverse consequences to her

any impact on any of the rights that the Applicant held under the terms of her employment. In this regard, the Tribunal recalls that in *Kennes*, analogously, the applicant objected to the placement of a note in his OSF which stated that, at the time of his resignation, there was a pending disciplinary process.