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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2022/024

Judgment No.: UNDT/2023/053

Date: 13 June 2023

Original: English

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8. On 4 October 2021, the Under-Secretary-General for

## **Consideration**

### *Applicable law*

17. Staff regulation 9.3(a)(ii) and staff rules 9.6(c)(ii) and 13.1(b)(i) provide that the Administration may terminate a permanent appointment for unsatisfactory service. The procedures for identifying and addressing performance shortcomings and unsatisfactory performance are set out in sec. 10 of ST/AI/2010/5 (Performance Management and Development System)<sup>1</sup>.

18. Under sec. 4.10 of ST/SGB/2011/7 titled Central Review Bodies, requests for termination of permanent appointments under staff regulation 9.3(a)(ii) and staff rule 13.1(b)(i) are reviewed by a CRP, following the procedure established in ST/AI/222<sup>2</sup>, before the Secretary-General makes a decision on whether to terminate a permanent appointment.

19. In *Sarwar* 2017-UNAT-757, para. 73, the Appeals Tribunal held that whenever the Secretary-General is called upon to decide if a valid and fair reason exists to terminate an appointment for poor performance, he should consider whether the staff member in fact failed to meet the performance standard and if so whether:

- i) the staff member was aware, or could reasonably be expected to have been aware, of the required standard; ii) the staff member was given a fair opportunity to meet the required standard; and iii)



b. Whether the Administration followed a proper procedure in making the contested decision.

24. The Tribunal recognizes that its role is not to review *de novo* the Administration's evaluation of the Applicant's performance but rather to determine whether the rules and procedures governing performance evaluation were complied with (see *Ncube* UNDT-2016-069, para. 127). In this respect, the Tribunal recalls

10.3 If the performance shortcoming was not rectified following the remedial actions indicated in section 10.1, a number of administrative actions may ensue, including the withholding of a within-grade salary increment pursuant to section 16.4, the non-renewal of an appointment or the termination of an appointment for unsatisfactory service in accordance with staff regulation 9.3.

10.4 Where at the end of the performance cycle performance is appraised overall as “does not meet performance expectations”, the appointment may be terminated as long as the remedial actions indicated in section 10.1 above **included a performance improvement plan, which was initiated not less than three months before the end of the performance cycle.**

26. The Applicant asserts that throughout 2019 and 2020, he experienced adverse effects on his health and for the first time received criticism over his work and his need to take sick leave. He indicated that his performance was downgraded to “partially meets expectations” in the 2018-2019 and 2019-2020 performance evaluations despite his rebuttal of this rating and that the PIPs imposed were procedurally defective and offered no help or remedial assistance.

27. The Tribunal notes that the contested decision is based on the Applicant’s records for the performance cycles of 2018-2019, 2019-2020, and 2020-2021. The Applicant received a rating of “partially meets performance expectations” for the 2018-2019 and 2019-2020 cycles and a rating of “does not meet performance expectations” for the 2020-2021 cycle.

#### The 2018-2019 performance cycle

28. The evidence on record shows that the main issues identified in this cycle included poor time management, lack of attention to detail at work, inability to work independently, and poor adherence to time and attendance expect0 0o0048x(.07 F17qW\*nbT

29. At the end of the 2018-2019 performance cycle, the Applicant was assessed as only partially achieving the goals set in his work plan. He was rated “requires development” in the core value of Professionalism as well as in three of the six core competencies, namely, Planning and Organizing, Continuous Learning, and Technological Awareness. The Applicant obtained an overall rating of “partially meets expectations”.

30. While the Applicant rebutted the rating of his 2018-2019 performance cycle, the Rebuttal Panel recommended maintaining the overall rating of “partially meets expectations”.

#### The 2019-2020 performance cycle

31. The evidence shows that during the 2019-2020 cycle, the Applicant’s performance continued to deteriorate. The Applicant was placed on a PIP that initially lasted five months covering the period from 1 June 2019 to 31 October 2019. However, the PIP was further extended until 29 February 2020. The goals included in the PIP related to the timely completion of daily tasks, timely attendance at work, and in general the improvement of his work product requiring him to pay special attention to details to minimize mistakes.

32. The Tribunal notes that the Applicant was provided with feedback and continuous guidance by his FRO and other senior team members on how to improve his shortcomings during the performance period. Further to the initiation of the PIP, the FRO held regular conversations with the Applicant to formally discuss his progress and provide feedback. However, the Applicant did not achieve the expected results.

33. At the end of the 2019-2020 performance cycle, the Applicant was assessed as only partially achieving the goals set forth in his work plan. He was rated as “requires development” in the core values of Professionalism and Respect for Diversity, as well as in three of the five core competencies, namely in Teamwork, Planning and Organizing, and Accountability. The Applicant obtained an overall rating of “partially meets expectations”.





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4. The proposal for termination, together with supporting evidence, **shall be submitted in writing to the joint review body** prior to its consideration of the case. A copy of this material shall, at the same time, be provided to the staff member concerned.

5. The joint review body shall base its deliberations on the proposal placed before it and shall advise the Secretary-General **whether or not, in its opinion, there is sufficient ground for the termination of the permanent appointment** for unsatisfactory services under staff regulation 9.1(a).

6. The joint review body may request any member of the Secretariat to provide information, either orally or in writing, relevant to its consideration of the case.

7. The staff member concerned shall be afforded a reasonable opportunity **to comment on the proposal for termination** or on any matter relating to the case and to request that information which he considers to be relevant to the case be obtained from specified staff members. The joint review body shall hear the staff member in person, whenever it considers this feasible.

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9. The joint review body **shall adopt a report that includes a statement of its considerations, as well as its conclusions and recommendations.**

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11. In cases where the **decision of the Secretary-General is to terminate the permanent appointment, the staff member shall be given in the notice of termination a statement of the reasons** for the Secretary-General's decision and the considerations, conclusions and recommendations of the joint review body.

44. The Tribunal notes that on 4 October 2021, the USG/DGACM submitted to the ASG/HR a request for the termination of the Applicant's permanent appointment for unsatisfactory service pursuant to staff regulation 9.1(a) and in line with para. 2 of ST/AI/222.

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