



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/076

Judgment No.: UNDT/2012/059

Date: 30 April 2012

English

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: René M. Vargas M.

KAMANOU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant contests the legality of decisions that have resulted in a failure to appraise her performance for the period 2007-2011 in accordance with the established procedures.
2. She requests that:
 - a. Her performance appraisals for the 2007-2008, 2008-2009, 2009-2010 and 2010-2011 cycles be annulled;
 - b. The Tribunal award her the rating “Frequently exceeds performance expectations” for each of the four aforementioned cycles;
 - c. All of her reassignments to different work units and supervisors starting in 2005 be considered as lateral moves;
 - d. The Respondent be ordered to pay her monetary compensation equivalent to three years’ net base salary for the damage resulting from the violation of her rights.

Facts

3. The Applicant, who entered the service of the United Nations in 1989, is employed as a Statistician in the Department of Economic and Social Affairs (“DESA”), in New York, on a permanent appointment at the P-3 level.
4. On 7 October 2008, the Applicant signed and finalized her performance appraisal for the period 1 April 2007 to 31 March 2008 using the electronic Performance Appraisal System (“e-PAS”). She was given the rating “Fully successful performance”.
5. On 10 February 2009, the Applicant submitted to her first reporting officer a draft work plan for the period 1 April 2009 to 31 March 2010 and, on 26 March 2009, the first reporting officer sent comments on the work plan to the Applicant.

6. On 20 April and 6 May 2009, the first reporting officer met with the Applicant to discuss her work plan; this was followed by several other meetings and communications on the matter.

7. On 22 May 2009, the Applicant submitted a request for a desk audit of her job description to the DESA Executive Office, which transmitted the request to the Compensation and Classification Section of the Office of Human Resources Management on 4 June 2009.

8. For the period 1 April 2008 to 31 March 2009, the Applicant's first reporting officer evaluated her performance on 26 September 2009 and her second reporting officer did so on 19 October 2009. The Applicant was given the rating "Partially meets performance expectations".

9. On 5 November 2009, the Applicant initiated a rebuttal process challenging her e-PAS for the 2008-2009 cycle.

10. On 24 November 2009, the Applicant was requested to sign a copy of her e-PAS for the 2008-2009 cycle so that the rebuttal process could proceed.

11. On 23 March 2010, the Applicant's rebuttal statement for the 2008-2009 cycle was sent to the Statistics Division for comments.

12. On 8 April 2010, the Compensation and Classification Section submitted a memorandum recommending that DESA complete the job description for the post held by the Applicant and incorporate her new duties.

13. On 20 April 2010, the Applicant's reporting officers finalized and signed her performance appraisal for the 2009-2010 cycle on a paper form, giving her the worst rating: "Does not meet expectations".

14. On 30 June 2010, the Applicant submitted a request for management evaluation of the decision of the Statistics Division not to develop a work unit plan and prepare her work plans for the 2009-2010 and 2010-2011 cycles.

15. On 2 July 2010, the Applicant submitted a request for management evaluation of the decision of the DESA Executive Office not to prepare a new job description for Post No. UNA-009-03050-EP3-0010/IMIS 7408, which she held.

16. On 6 July 2010, the Applicant submitted a request for management evaluation of the failure of the DESA Executive Office to pursue the e-PAS rebuttal process for the 2008-2009 cycle, and of the Executive Office and the Statistics Division to prepare her performance appraisal for the 2009-2010 cycle in accordance with established procedures.

17. On 26 July 2010, a new job description was shared with the Applicant for signature, which she declined to do.

18. On 31 January 2011, the rebuttal panel delivered the final version of its report and upheld the rating “Partially meets performance expectations” for the 2008-2009 cycle. This report was sent to the Applicant on 29 April 2011.

19. The Applicant was on sick leave from 22 October 2010 to 31 May 2011.

20. The Applicant filed her application with the New York Registry of the Tribunal on 15 April 2011.

21. By letter dated 10 May 2011, the Management Evaluation Unit at United Nations Headquarters, New York, responded to the Applicant’s three requests dated 30 June, 2 July and 6 July 2010, respectively.

22. On 6 June 2011, the Respondent submitted his reply, maintaining, *inter alia*, that the application was not receivable.

23. By memorandum dated 14 June 2011, the Applicant requested the Tribunal to strike the Respondent’s reply, maintaining that her application was receivable.

24. By Order No. 263 (NY/2011) of 8 November 2011, the judge handling the case at the New York Registry ordered that it should be transferred to the Geneva Registry.

25. On 3 April 2012, the Tribunal held a hearing on the case, in which the Applicant and Counsel for the Respondent participated by videoconference.

Parties' submissions

26. The Applicant's contentions are:

- a. The failure of her first reporting officer to finalize her e-PAS for the 2007-2008 cycle prevented her from exercising her right to rebuttal;
- b. There are numerous irregularities regarding the e-PAS for the 2008-2009 cycle: the work plan was established with a delay of eight months and approved 13 months after the cycle began; the rebuttal panel was convened 19 months after the cycle ended; and the rebuttal process was not completed;
- c. The report of the rebuttal panel was not sent to her;
- d. There was a systematic abuse of her rights over a period of more than 10 years, which has caused her irreparable damage;
- e. She was the victim of retaliation for having contested the decision not to promote her to the P-4 level;
- f. There were breaches in the rating of core values and competencies.

27. The Respondent's contentions are:

- a. The application is not receivable with regard to the manner in which the Applicant's performance was appraised since no specific administrative decision with direct consequences for her is identified and it is the responsibility of the Applicant alone, not that of the Respondent, to identify the contested decisions. Furthermore, only decisions that have been submitted for management evaluation may be appealed before the Tribunal;

b. Contrary to the Applicant's assertions concerning the 2009-2010 and 2010-2011 cycles, the documents on record show that her work plans were developed. The Applicant's first and second reporting officers observed all the requirements of administrative instruction ST/AI/2002/3 on the Performance Appraisal System when preparing her work plans, and it was she who prevented them from being finalized;

c. As to the question of whether the rebuttal process for the 2008-2009 cycle was pursued, that process was completed, contrary to the Applicant's assertions, and the rebuttal panel's report was sent to the Applicant. The rebuttal process was delayed for several reasons, including the Applicant's failure to sign her e-PAS and her submission of additional materials;

d. With regard to her performance appraisal for the 2009-2010 cycle, the application is not receivable because the Applicant failed to file her rebuttal statement concerning this appraisal within the time limits in accordance with section 15 of ST/AI/2002/3, and she has not proved that she was prevented from doing so. The Applicant's performance was evaluated without using the e-PAS owing to her uncooperative behaviour and the first and second reporting officers signed her appraisal on 20 April 2010 using a paper form, which is not prohibited since it was the only way to appraise the Applicant's performance;

e. With regard to her e-PAS for the 2010-2011 cycle, the application is not receivable because the Applicant is contesting only the preliminary steps in the appraisal process and not the final outcome thereof;

f. With regard to the job description, the Applicant's claims have no basis in fact because, contrary to her assertions, she received the contested job description on 26 July 2010 and simply refused to sign it despite repeated requests from the Statistics Division.

Consideration

28. In support of her request to annul her e-PAS for the 2007-2008, 2008-2009, 2009-2010 and 2010-2011 cycles, the Applicant contests, *inter alia*, several stages of the appraisal process that lead to the assignment of a rating. However, even assuming that certain stages of the process were not respected, these are not administrative decisions that may be appealed directly before the Tribunal; they are merely preliminary steps in the performance appraisal process that culminates in a rating, and only that rating may be appealed.

29. The Applicant first requests the Tribunal to annul the e-PAS for the 2007-2008 cycle.

30. Administrative instruction ST/AI/2002/3, in force during the period in question, provides that:

15.1 Staff members who disagree with the performance rating given at the end of the performance year may, within 30 days of signing the completed performance appraisal form, submit to their Executive Office at Headquarters, or to the Chief of Administration elsewhere, a written rebuttal statement setting forth briefly the specific reasons why a higher rating should have been given ...

15.4 The rating resulting from an appraisal that has not been rebutted, or from the rebuttal process, shall not be subject to further appeal. However, administrative decisions that stem from any final performance appraisal and that affect the conditions of service of a staff member may be appealed.

31. The record shows that the Applicant did not request that a rebuttal process be initiated with regard to her performance rating for the 2007-2008 cycle. Therefore, in accordance with the aforementioned provisions, no appeal may be brought before this Tribunal since the Applicant did not avail herself of the rebuttal process described in the administrative instruction and her application, insofar as it concerns the rating given for the 2007-2008 cycle, is not receivable.

32. Even assuming that the Applicant's claims were correct and the rating process for the aforementioned cycle was not completed, no request for management evaluation was submitted in relation to the

e-PAS for the 2007-2008 cycle. Therefore, her application is not receivable with regard to that cycle in any event.

33. The Applicant then requests annulment of the rating that she was given for the 2008-2009 cycle. To that end, she maintains that the rebuttal process that she initiated was not completed. However, the Respondent has shown with documents placed on record that the rebuttal panel's report was sent to the Applicant on 29 April 2011. While the Applicant also maintains that the appraisal process was delayed, it is clear from the documents on record that this delay was largely attributable to the Applicant's own actions. Therefore, the Applicant's claims on this point must be rejected.

34. The Applicant further asks the Tribunal to annul her performance appraisal for the 2009-2010 cycle. However, the record shows that the Applicant did not request that a rebuttal process be initiated with regard to her performance rating for that cycle. In accordance with section 15.4 of ST/AI/2002/3, her appeal before the Tribunal is not receivable in any event as she failed to initiate a rebuttal process as described above.

35. The Applicant also requests the Tribunal to annul her e-PAS for the 2010-2011 cycle. However, the record shows that for that cycle, the Applicant submitted a request for management evaluation relating solely to the decision of the Statistics Division not to prepare her work plan. Even assuming that such a decision was taken, it is not an administrative decision that may be appealed directly before the Tribunal, as stated above. Therefore, the Applicant's request must be deemed not receivable.

36. Lastly, even assuming that the Applicant had intended to appeal before the Tribunal the decision of the DESA Executive Office not to prepare a new job description for Post No. UNA-009-03050-EP3-0010/IMIS 7408, it is clear from the documents on record that, on 26 July 2010, the Applicant was sent a new job description, which she declined to sign. Thus, since the Applicant, on the date on which she submitted her application, had received a new job description, her request must be deemed not receivable.

37. It follows from the foregoing that all of the Applicant's claims must be rejected.

Conclusion

38. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Jean-François Cousin

Dated this 30th day of April 2012

Entered in the Register on this 30th day of April 2012

(Signed)

René M. Vargas M., Registrar, Geneva