UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2016/029
Judgment No.: UNDT/2018/077
Date: 6 July 2018
Original: English

Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

KOTANJYAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Robbie Leighton, OSLA

Counsel for Respondent:
Jérôme Blanchard, HRLU/UNOG
Bettina Gerber, HRLU/UNOG

Introduction

1. By application filed on 2 May 2016, the Applicant, a former Regional Advisor (P-5) at the Sustainable Energy Division ("SED") of the United Nations Economic Commission for Europe ("UNECE"), contests the decision not to renew his fixed-term appointment ("FTA") beyond 31 December 2015.

Facts

2. The Applicant joined the United Nations on 3 May 2014, at the above-mentioned level and position, under a one-year fixed-term appointment.

3. In June 2014, the Applicant and his First Reporting Officer ("FRO"), namely the Director, SED, UNECE, established his 2014-2015 performance cycle workplan, in consultation with the Applicant's Additional Reporting Officer ("ARO"), namely the Chief, Program Management Unit ("PMU"), UNECE.

4. On 10 September 2014, the Applicant and his FRO had an informal discussion about the Applicant's progresses, and, on 10 December 2014, the FRO completed the Applicant's 2014-2015 mid-point review in *Inspira*.

5. On 8 January 2015, the Applicant met with his FRO to discuss his performance. The FRO provided the Applicant with a performance improvement plan ("PIP"), also dated 8 January 2015, to be implemented from 9 January to 31 March 2015, which corresponded with the 2014-2015 end-of-year performance appraisal cycle. This document was not signed. A second version of the PIP, dated 9 January 2015, which included minor changes to the first one and was signed by the Applicant's FRO, his Second Reporting Officer ("SRO") and his ARO, was delivered to the Applicant on 9 January 2015, which he refused to sign ("first PIP").

6. From 26 to 30 January 2015, the Applicant was on sick leave.

7. On 6 March 2015, the Applicant requested management evaluation of the "decision to place [him] on a PIP". His request was rejected as irreceivable by the Management Evaluation Unit, Office of the Under-Secretary-General for Management, on 10 March 2015, on the ground that "the matter of the implementation of a PIP constituted a preliminary decision", therefore making the Applicant's request premature.

8. From 13 to 20 March 2015, the Applicant was on annual leave.

9. The FRO and ARO met with the Applicant on 2 April 2015 to discuss the outcome of the first PIP, advising him that the goals had not been reached, and laying the ground for a second PIP.

10. On 10 April 2015, the FRO provided the Applicant with a second PIP, which was to run from 1 April until 30 June 2015. This PIP identified shortcomings in the Applicant's performance; building on the first PIP, it set new deadlines for achieving the expected results. It also stated that "progress on [the PIP would] be reviewed and discussed monthly in meetings between [the Applicant, his FRO and his ARO], but no later than five working days after the respective deadlines", and that "[the Applicant's] performance under this plan [would] be assessed by the end of June 2015".

11. The Applicant did not accept the second PIP and refused to sign it.

12. On 27 April 2015, the Applicant's appointment was extended from 3 May to 30 June 2015 to allow completion of the second PIP.

13. On 5 May 2015, the Applicant's end-of-cycle performance evaluation covering the period from his initial appointment until 31 March 2015 was completed. The FRO rated the Applicant's performance as "D—Does not meet performance expectations" and commented that:

> A second PIP has been implemented that builds on the acceleration that was perceived under the first PIP. The plan is intended to provide [the Applicant] with additional time and clarity on what is needed in order to raise [his] performance to expected levels.

14. On the same day, the Applicant initiated a rebuttal process of his 2014-2015 performance evaluation.

15. By email of 7 May 2015 to the Applicant, and after a first scheduling attempt had not materialized since the Applicant had advised that he was not feeling well, the FRO followed-up with the Applicant on the latter's availability to discuss progress on the second PIP.

16. On 11 May 2015, the Applicant went on extended sick leave.

17. By email dated 19 May 2015 to the Applicant, the FRO raised a number of concerns regarding his performance and regretted not to have had the opportunity to meet to discuss progress on the second PIP. He concluded in saying that he hoped that the Applicant would return soon "to continue working to develop a robust regional advisory programme".

18. By email of 1 June 2015 to the then Executive Officer, ECE, the FRO recommended that the Applicant's contract not be extended beyond its expiry on 30 June 2015.

19. By memorandum dated 22 June 2015, a Human Resources Officer, Human Resources Management Service ("HRMS"), United Nations Office at Geneva ("UNOG"), informed the Applicant that his appointment had been extended until 31 August 2015 "for the purpose of completion of the rebuttal process" as per ST/AI/2010/5 (Performance Management and Development System). The memorandum further stated that the Applicant's appointment would end on 31 August 2015.

20. By email of 28 August 2015, the same Human Resources Officer informed the Applicant that his appointment would be extended for a further month, i.e., until 30 September 2015, "for the purpose of [his] utilization of sick leave entitlements as per Staff Rule 6.2 and ST/AI/2005/3 [(Sick leave)]", given that UNOG Medical Service had certified his sick leave for this period. The email specified that the extension of the Applicant's contract was "purely administrative in nature and [did] not give rise to any further leave entitlement … nor [did] it reverse or impact the

decision to not extend [the Applicant's contract] as communicated to [him] by Memorandum of 22 [June] 2015."

21. On 1 October 2015, the Applicant returned from sick leave on a half-time basis and, from 30 October 2015, he worked on a full-time basis. His contract was subsequently extended on a monthly basis in October, November and December 2015 to allow completion of the rebuttal process.

22. On 18 December 2015, the Rebuttal Panel issued its report upholding the Applicant's 2014-2015 performance rating of "D—Does not meet performance expectations". The Panel concluded, amongst others, that the Applicant "did not demonstrate progress in his performance throughout the performance cycle, in spite of feedbacks received […] and the institution of a performance improvement plan". It further found that "the e-Pass process was largely adhered to", although "a number of issues could have been handled with more care by the FRO". The Panel concluded that the "handling of the PIP by the FRO was careless but not intentionally fraudulent".

23. By memorandum dated 21 December 2015, the Executive Secretary, ECE, advised the Chief, HRMS, UNOG, that "[b]ased upon the report of the Rebuttal Panel dated 18 December 2015, we recommend there be no further extension of [the Applicant's] fixed-term appointment, which expires on 31 December 2015".

24. By memorandum dated 22 December 2015, a Senior Human Resources Officer, HRMS, UNOG, informed the Applicant that "[o]n the basis [of the 18 December 2015 Rebuttal Panel Report], ECE [had] confirmed … the decision not to renew [his] fixed-term appointment, which [would] expire on 31 December 2015".

25. On 23 December 2015, the Applicant submitted a request for management evaluation of the above-mentioned 22 December 2015 decision not to renew his fixed-term appointment beyond 31 December 2015, together with an application for suspension of action.

26. By Order No. 272 (GVA/2015) of 31 December 2015, the Tribunal ordered suspension of action, pending management evaluation, of the decision not to renew the Applicant's fixed-term appointment.

27. By email of 8 January 2016, the Applicant's FRO regretted the Applicant's absence at a meeting scheduled on that day to "review [his] recent activities". The FRO advised the Applicant that his performance had not improved and raised concerns as to his non-authorised absences from work.

28. On 11 January 2016, the Applicant filed a complaint of abuse of authority under ST/SGB/2008/5 against his FRO, alleging that "[he was] being pushed out from the UN on entirely bogus charges of poor performance".

29. By letter of 3 February 2016, the Under-Secretary-General for Management informed the Applicant that the Secretary-General had decided to uphold the contested decision.

30. On 7 February 2016, the Applicant was separated from the Organization.

31. By memorandum of 8 February 2016, the Executive Secretary, UNECE, informed the Applicant that he had reviewed his complaint of 11 January 2016 and found that a fact-finding investigation was not warranted.

32. The Applicant filed an application before the Tribunal on 2 May 2016, to which the Respondent replied on 3 June 2016.

33. The Tribunal held a hearing on the merits of the case from 1 through 4 May 2018, following a number of postponements at the Applicant's requests, due to personal circumstances. The following witnesses were heard:

a. the Applicant;

b. the FRO;

c. a Senior Economic Affairs Officer, Chief of Energy Industries Section, SED, UNECE ("Chief of Energy Industries Section"), former colleague of the Applicant;

d. a Senior Economic Affairs Officer, Chief of Sustainable Energy Section, SED, UNECE ("Chief of Sustainable Energy Section"), former colleague of the Applicant; and

e. the Deputy Executive Secretary, UNECE, the Applicant's former SRO.

Parties' contentions

34. The Applicant's primary contentions may be summarized as follows:

a. The first PIP was unlawful as no performance shortcomings had been identified beforehand by the Applicant's FRO and SRO, and no other remedial measures had been considered, as required by the UN Guide for Managers "Addressing and Resolving Underperformance" ("Guide for Managers"). Furthermore, the first PIP was presented to the Applicant as a *fait accompli* and included performance goals that were absent from his workplan;

b. A rating of "D—Does not meet performance expectations" cannot justify the non-extension of an appointment; sec. 10.4 of ST/AI/2010/5 requires that a PIP "was initiated not less than three months before the end of the performance cycle". The Applicant's first PIP did not meet this requirement;

c. Furthermore, following completion of the first PIP and of his 2014-2015 performance evaluation, the Administration did not decide to either terminate or not renew his appointment for performance reasons. Instead, it offered him "a further opportunity to deliver on the expected results as detailed in the first performance improvement plan." Having decided not to separate the Applicant for performance reasons, the Administration should be estopped from arguing that under sec. 10.3 of ST/AI/2010/5, failure to improve after the first PIP justified the non-renewal decision;

d. The Administration cannot rely on the second PIP to justify the non-renewal decision on performance grounds because the Applicant was never provided with the opportunity to complete it and was never assessed

against it; the Applicant was on sick leave as of 11 May 2015, less than half-way into the second PIP, and the term running to 30 June 2015 was never completed. Furthermore, the Administration informed the Applicant about the non-renewal of his appointment on 22 June 2015, i.e., before the end of the second PIP period. It is manifestly unreasonable to purport to provide a staff member with an opportunity to correct performance issues and to, subsequently, decide to separate that staff member before such opportunity has been exhausted;

e. Insofar as the Administration seeks to rely on the two and a half months the Applicant spent in service upon his return from sick leave, this argument is misguided as it is based on an email from the Applicant's FRO, which post-dates the decision to separate the Applicant and is incoherent with the approach taken by the FRO to exclude him from work in the section. The argument amounts to a *post facto* justification of the Applicant's non-renewal, for which the decision was taken in June 2015;

f. The Administration's actions demonstrate a desire to justify a non-renewal decision but no desire to address alleged performance issues;

g. Consequently, the Applicant requests:

i. Rescission of the contested decision and his reintegration into his post;

ii. In the alternative, compensation for his unlawful separation from service; and

iii. Moral damages in compensation for his moral injury (stress and emotional distress resulting from the way his performance was evaluated and from the contested decision).

35. The Respondent's primary contentions may be summarized as follows:

a. The decision not to renew the Applicant's appointment is a proper exercise of managerial discretion, made in line with applicable rules and not

motivated by any extraneous consideration; when a staff member holding a fixed-term contract obtains the lowest rating of "Does not meet performance expectations", the Administration is entitled to not renew the staff member's contract on the ground of unsatisfactory performance;

b. The Applicant's performance was properly and fairly evaluated; he was given feedback on his work, and a mid-term discussion properly took place in September 2014. Additional feedback was provided to him during the SED retreat in December 2014;

c. The Applicant's placement under a PIP was proper, lawful and proportionate; a PIP is one of the remedial measures provided for in sec. 10.1 of ST/AI/2010/5 when performance shortcomings are identified during a performance cycle; the PIP was properly implemented in line with sec. 10 of ST/AI/2010/5;

d. The fact that the first PIP was implemented for slightly less than three months is not a flaw that vitiates the whole procedure. Sec. 10.4 of ST/AI/2010/5 requires a PIP of not less than three months before the end of the performance cycle only in cases of *termination* of an appointment, whereas the case at hand concerns the non-renewal of a fixed-term appointment, which is addressed under sec. 10.3 of ST/AI/2010/5. In any event, any issue arising from the length of the first PIP was cured by the implementation of a second one;

e. Despite the Applicant's leaves in the course of the PIPs, if one combines the PIP periods, the Applicant effectively worked under a PIP for a period exceeding four months. This period meets the requirements of sec. 10.4 of ST/AI/2010/5, the intent of which is to ensure that staff members are given sufficient time to improve their performance once a PIP is initiated; during this period, i.e., from 9 January to 11 May 2015, the Applicant did not meet the requirements of either PIP;

f. The rating of "Does not meet performance expectations" was based on objective elements and upheld by a Rebuttal Panel;

g. The Applicant had the opportunity to deliver on his second PIP upon his return from sick leave. However, his actions made it impossible to complete this PIP under normal circumstances and caused a loss of confidence on the part of the Administration which, in itself, justifies the non-renewal of his contract; and

h. Consequently, the Respondent requests the Tribunal to dismiss the application in its entirety.

Consideration

Scope and standard of judicial review

36. Staff regulation 4.5(c) and staff rule 4.13 provide that "[a] fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal". In *Ahmed* 2011-UNAT-153, the Appeals Tribunal held that "if based on valid reasons and in compliance with procedural requirements, fixed-term appointments may not be renewed."

37. A non-renewal decision can be challenged on the grounds that the Administration did not act fairly, justly or transparently, or if the decision is motivated by bias, prejudice or improper motive against the staff member. The staff member has the burden of proving that such factors played a role in the administrative decision (*Said* 2015-UNAT-500, referring to *Ahmed*; *Obdeijn* 2012-UNAT-201; *Asaad* 2010-UNAT-021).

38. It is well established that unsatisfactory performance constitutes a legitimate basis for the non-renewal of a staff member's fixed-term appointment (*Said*, referring to *Morsy* 2013-UNAT-298; *Ahmed* 2011-UNAT-153). The Appeals Tribunal further held that a staff member whose performance was rated as "Partially meets performance expectations" has no legitimate expectancy of renewal of his or her contract (*Said*; *Dzintars* 2011-UNAT-175; *Jenning* 2011-UNAT-184). This principle applies *a fortiori* when a staff member is given the lowest rating of "Does not meet performance expectations".

39. Nonetheless, it is also well-established that if the reason not to renew an appointment is related to the staff member's poor performance, which is the case at hand, the Secretary-General has to present a performance-related justification for the non-renewal decision (*Schook* 2012-UNAT-216; *Das* 2014-UNAT-421).

40. In *Said*, the Appeals Tribunal stressed that the Dispute Tribunal shall give deference to the decision-maker's assessment of the staff member's performance. It is not the Tribunal's role to place itself in the role of the decision-maker, and determine whether it would have renewed the contract based on the performance appraisal (para. 40). However, in *Sarwar* 2017-UNAT-757, the Tribunal recently held that:

> In *Said,* this Tribunal clearly stated that the UNDT must accord deference to the Administration's appraisal of the performance of staff members, and cannot review *de novo* a staff member's appraisal, or place itself in the role of the decision-maker and determine whether it would have renewed the contract, based on the performance appraisal. Performance standards generally fall within the prerogative of the Secretary-General and, unless the standards are manifestly unfair or irrational, the UNDT should not substitute its judgment for that of the Secretary-General. The primary task is to decide whether the preferred and imposed performance standard was not met and to assess whether an adequate evaluation was followed to determine if the staff member failed to meet the required standard. There must be a rational objective connection between the information available and the finding of unsatisfactory work performance.

41. The Appeals Tribunal initially insisted that rules on performance evaluation be followed in order to ensure the legality of a decision not to renew an appointment based on unsatisfactory performance. It held in *Rees* 2012-UNAT-266, at para. 65, that:

> [I]it is imperative that the Administration adheres to the rule of law and standards of due process in its decision-making. Given that Ms. Rees' performance was the principal reason for the decision to reassign her, the Administration was required to provide a performance-related justification for its decision. This could have been properly done with the PAS, in accordance with ST/AI/2002/3.

42. The Appeals Tribunal further held in *Tadonki* 2014-UNAT-400 that:

> 55. The objectiveness, transparency and legality of a performance evaluation stems primarily from the procedures indicated in the applicable Administrative Instruction, which were established in a detailed manner to ensure that these objectives are reached, that the staff member acknowledges the faults or reasons for his or her under-performance, and that the managers properly guide, advise and supervise their staff, provide adequate performance improvement goals and communicate goals to be achieved.
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> 56. If the Administration does not follow the clear norms which apply to evaluate staff members' performances, it risks arbitrariness and bears the burden of proof that an evaluation reached after an irregular procedure is nonetheless objective, fair and well based.

43. Recently, in *Sarwar*, the Appeals Tribunal adopted a more nuanced approach, insisting that "the determination of whether [a staff member] was denied due process or procedural fairness, in the final analysis, must rest upon the nature of any procedural irregularity and its impact". The Tribunal further stated that "the ultimate question of procedural fairness is whether the staff member was aware of the required standard and was given a fair opportunity to meet it".

44. In view of the above and of the parties' submissions, the Tribunal will examine:

a. Whether the first PIP complied with the requirements of sec. 10 of ST/AI/2010/5;

b. Whether the duration of the PIPs complied with the requirements of sec. 10 of ST/AI/2010/5 for not renewing the Applicant's FTA;

c. Whether the Administration had a duty to allow the Applicant to complete his second PIP prior to deciding not to renew his FTA and, if so, whether this obligation was fulfilled; and

d. If the procedures set out in ST/AI/2010/5 were not followed, whether the Applicant was made aware of the required standard and was given a fair opportunity to meet it.

45. Before examining each of these issues, the Tribunal notes that the present case triggers an interpretation of the rules set out in sec. 10 of ST/AI/2010/5 entitled "Identifying and addressing performance shortcomings and unsatisfactory performance", which are reproduced below for ease of reference:

> 10.1 During the performance cycle, the first reporting officer should continually evaluate performance. When a performance shortcoming is identified during the performance cycle, the first reporting officer, in consultation with the second reporting officer, should proactively assist the staff member to remedy the shortcoming(s). Remedial measures may include counselling, transfer to more suitable functions, additional training and/or the institution of a time-bound performance improvement plan, which should include clear targets for improvement, provision for coaching and supervision by the first reporting officer in conjunction with performance discussions, which should be held on a regular basis.
>
> 10.2 If the performance shortcoming was not rectified following the remedial actions indicated in section 10.1 above, and, where at the end of the performance cycle performance is appraised overall as "partially meets performance expectations", a written performance improvement plan shall be prepared by the first reporting officer. This shall be done in consultation with the staff member and the second reporting officer. The performance improvement plan may cover up to a six-month period.
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> 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.
>
> 10.5 Should unsatisfactory performance be the basis for a decision for a non-renewal of a fixed-term appointment and should the appointment expire before the end of the period covering a performance improvement plan, the appointment should be renewed for the duration necessary for the completion of the performance improvement plan.

Whether the first PIP complied with the applicable rules

46. Sec. 10.1 of ST/AI/2010/5 establishes the duty of the first and second reporting officers to proactively assist their staff members improving their performance. It necessarily implies an obligation to identify the performance shortcomings and to clearly inform the staff member before taking any remedial measures. It also establishes, as an implied legal obligation for the supervisors, to engage in consultations with the staff member to improve his or her performance. It is not required, however, that the supervisors advise the staff member that the performance is "unsatisfactory". A constructive approach at that stage may entail a subtler language. What is important is that the staff member be made aware that his or her performance is in need of improvement, and that the language be sufficiently precise to allow him or her to identify the areas where additional efforts must be deployed.

47. Sec. 10.1 proposes a series of measures to remedy performance shortcomings. The use of the word "may" in sec. 10.1 indicates that it is the manager's discretion to choose, from a pool of different possible measures, the one/ones he considers/consider the best suited to help the staff member improving his/her performance. This provision does not contemplate a pre-established hierarchy of measures to improve staff members' performance. The use of the conjunctions "and/or" in referring to the implementation of a PIP also makes it clear that the supervisors do not have to follow any previous steps before having recourse to this measure.

48. The Applicant seeks to rely on the Guide for Managers, which identifies counselling, offering training opportunities and ensuring performance goals under "Step one" in addressing performance issues. Under "Step two", the Guide for Managers states that "if [Step one] methods do not work, a time-bound performance improvement plan may need to be considered".

49. The Tribunal notes that the Guide for Managers suggests some measures of a more informal nature before a PIP is implemented in order to guide the supervisors in their management of performance. However, it does not create any obligation on the supervisors to follow a particular process that would go beyond the regime set

forth in sec. 10.1 of ST/AI/2010/5, nor give staff members any subjective right. In this connection, the Appeals Tribunal held in *Charles* 2013-UNAT-286 that "[r]ules, policies or procedures intended for general application may only be established by duly promulgated Secretary-General's bulletins and administrative issuances". It further held in *Asariotis* 2015-UNAT-496 that the Recruiter's Manual on the Staff Selection System, which is an instrument of a similar nature to the Guide for Managers, does not vest staff members with any entitlement.

50. The Tribunal finds that the discretion given to the supervisors through sec. 10.1 of ST/AI/2010/5 is warranted as they are best placed to choose and evaluate which are the more adequate managerial tools to improve a staff member's performance since they are aware of the goals that need to be achieved.

51. Consequently, the Tribunal does not endorse the Applicant's view that the PIP is to be considered as a last resort management tool and that previous measures have to be implemented beforehand. However, the Tribunal concurs with the Applicant that his supervisor had a duty to inform him in clear terms of his alleged performance shortcomings and to assist him in resolving these.

52. In the case at hand, and after having analysed the evidence produced by the parties, the Tribunal finds that the duty to inform the Applicant of his shortcomings and to assist him in improving his performance was fulfilled by his supervisors, particularly the FRO. The documentary evidence and the testimonies during the hearing show that the Applicant was made aware early on and on different occasions of his performance shortcomings and confronted with them. Efforts were also made to clarify the goals to achieve and to provide support to the Applicant, as detailed below.

53. At the outset, it is recalled that the Applicant was appointed to a senior position, at the P-5 level, which by nature requires a level of autonomy and leadership. The post, as per the job opening and as described by the FRO, involved, in essence, identifying the needs of countries with economies in transition for technical advice in the area of sustainable energy, developing technical advisory projects and identifying the source of funding or, if necessary, undertaking fundraising activities. In this connection, the job opening specifically required that

the selected candidate be "an internationally-recognized expert with a strong network across the range of stakeholders in energy".

54. It is undisputed that the regional advisor position had been vacant for 16 months prior to the Applicant's arrival and little if no documentation was handed over to him. The SED was also in a transition period, recovering from tumultuous times. In this context, the Applicant and the FRO worked together, in consultation with the ARO, to establish a workplan in June 2014. The FRO testified that he intended to give the Applicant a wide margin of discretion and autonomy in revamping the regional advisory program, which is key to the success of the SED and also heavily relied upon by other colleagues, as it has a pivotal role to liaise with member states, in order to, *inter alia*, identify their needs and deliver technical assistance to them.

55. On 10 September 2014, after the Applicant had been on the post for a few months, he and the FRO had an informal discussion about the Applicant's progress since his arrival, in lieu of the formal mid-point review that the Applicant suggested to defer given that his workplan had only been established in June. At the hearing, the Applicant and his FRO presented different versions of this conversation. The Applicant testified that this was "a general chat about how he was going", what he had learned and how to deal with the lack of cooperation of the ARO. He insisted that no feedback was given on his performance. In turn, the FRO testified that he encouraged the Applicant to visit more countries, to build more contacts and to reach out to the team, including other regional advisors. The FRO acknowledged that he tried to remain positive in his feedback to the Applicant but insisted that the message was that what he was doing at the time was not enough.

56. On 10 December 2014, the FRO completed the Applicant's mid-point review comments for the 2014-2015 performance cycle in *Inspira*, wherein he wrote that a mid-term review had been conducted with the Applicant on 10 September 2014, when the latter's expected functions were "revisited". He wrote in this respect that:

> The intention is for the regional advisor to connect with member States with economies in transition to explore their needs and to see how UNECE energy activities can assist, to conceive projects that can assist the countries, to coordinate with the division on delivery of our work into the countries, and to explore with potential donors the possibility of supporting/funding energy projects in those countries. The idea is to be an "ambassador", a "marketing manager", or a division liaison with member States – all of the terms are correct and apply, though they have slightly nuanced differences.

57. The FRO also stated that the Applicant was asked to "accelerate his activities" in respect of four specific areas, more specifically to:

> 1. Connect with member States at first in the missions and then in capitals to explore needs and opportunities; 2. To pursue more active implementation of the regional advisor's action plan for the region; 3. To expand his horizons beyond the two countries he has visited to date; and 4. To connect more deeply in the activities of the Division. (As an example he has been asked to prepare a project proposal for the next tranche of the UN development account and to provide input to the annual report).

58. The Tribunal finds that the comments on the Applicant's functions were in line with the workplan and his job description, such that these cannot be seen as moving targets. As to the areas for improvement, the Tribunal considers that they are generally in line with the feedback that the FRO claimed to have given to the Applicant in September 2014, although they appear to be a little more detailed and direct and the example provided on the request to prepare project proposals came afterwards, in October 2014, as acknowledged by the FRO.

59. Irrespective of the conversation that took place in September 2014, the Tribunal finds that the mid-point review comments of 10 December 2014 from the Applicant's FRO indicated to the Applicant that his performance was in need of improvement, although the tone remained constructive. The Tribunal notes that the areas for improvement remained broadly defined but this is not unreasonable when dealing with a senior staff member who, by the nature of his role, is granted a wide autonomy in the fulfilment of his responsibilities. In any event, if the Applicant considered that the directions given were not clear enough, it was open to him to ask for clarifications. He did not do so but rather persistently claimed, even at the

hearing, that the comments were not negative and that he did not receive any indication that his performance was in need of improvement.

60. The FRO further testified that in the Fall of 2014, it became clear to him and to other colleagues that the Applicant was not performing to the expected level. He did not deliver at the expected level in his participation in meetings with stakeholders and his speeches had to be redrafted. Colleagues complained that the Applicant was nowhere to be found and that he only travelled to the United States and Armenia, the two countries with which he had personal ties. These grievances were confirmed by two colleagues of the Applicant.

61. The Chief, Energy Industries Section, ECE, testified that the Applicant had been received warmly in the Division and that she extended him her support. She explained how the Applicant's work was critical to hers, notably in bringing extra budgetary funds and to build contacts with Permanent Missions. She invited the Applicant to meetings of her section, but his presence was disruptive and unproductive as he constantly arrived late, left early and made meaningless contributions to the discussions. She said that she attempted to provide guidance to the Applicant but he would perceive it as criticisms. She described the Applicant as being more interested in his status than in the substance of the work. For example, when returning from mission, the Applicant discussed about a gift he had received rather than on the substance of the discussions. She also explained how she tried to organize a workshop with the Applicant in Geneva in October 2014 but that the latter failed to deliver on the work, which had to be carried out by her assistant. She also testified about how the Applicant missed the opportunity to have bilateral meetings with Deputy Ministers during that event, thereby showing a lack of engagement in his work. She also referred to the Applicant having missed an opportunity to present a project proposal in August or September 2014, for which there were available funds.

62. The Chief, Sustainable Energy Section, ECE, similarly testified that she tried to engage with the Applicant but the latter showed little interest and cooperation. She explained, for example, that she had asked the Applicant to prepare a written presentation for a Committee meeting in July 2014 but that his contribution was

inadequate so she gave feedback to the Applicant and made comments on ways to improve the draft document. He produced a second draft, which she said was still inadequate.

63. On 16 and 17 December 2014, the SED held a retreat where the team, which was newly constituted, gathered to establish a vision and workplan for the Division. On this occasion, the role of the regional advisor was thoroughly discussed, as it was central to the work of several other key players in the Division. The FRO as well as the two Chiefs of Section mentioned above testified that the team shared with the Applicant that he was not delivering and needed to do more. According to one of them, the message was delivered "elegantly", in a constructive manner. The facilitator reformulated the criticisms made in respect of the Applicant's work but the Applicant did not acknowledge them and refused to hear what was said to him. The notes of the retreat, which were prepared by the facilitator, stated in respect of the Applicant's role that it was important that he developed relationships with the PMU and the various sections in the SED, that he played a "proactive role", that he got "[m]ore involved", for example by organizing "back-to-back workshops" and "A-Z studies", although there were budget constraints and it may have been required to hire a consultant to assist, and that he needed "to go out and deliver projects, contacts and bring money". The notes also emphasised that the role of the regional advisor involved four core functions, namely:

> a. Liaison with states. Connection with countries discovering what they need;
>
> b. Be more actively engaged in our deliveries to countries, e.g. developing funds to do work;
>
> c. In delivery of or WP we need assistance and support through connections and fundraising, and
>
> d. Enhance product delivery.

64. The FRO and the two Chiefs of Section consistently testified that it became clear from the retreat that the Applicant had to deploy more efforts in his work and that clear areas for improvement had been identified, as well as support extended to the Applicant to rebuild the regional advisory program. However, the Applicant,

even at the hearing, persistently maintained that no negative feedback was given to him on his work at the retreat.

65. The FRO testified that after the retreat, it was apparent that "it was not working". He met with the Applicant on 8 January 2015 and asked him what he had accomplished. The Applicant responded that "he had surveyed the landscape", which the FRO considered was not enough given the time elapsed. The FRO then presented the Applicant with a PIP that he had prepared in consultation with Human Resources, the ARO and the SRO.

66. The FRO and the Applicant presented different versions of events as to the way the PIP was introduced to the Applicant. The FRO testified that the PIP was presented to the Applicant on 9 January 2015, whereas the Applicant stated that a first version, unsigned, was presented to him by the FRO during their meeting on 8 January 2015 and a second version, signed by the FRO, the SRO and the ARO and which contained a few modifications, was sent to him by email on 16 January 2015. The Tribunal is of the view that these differences in the testimonies are not material to the determination of the case and finds it more plausible, in light of the documentary evidence, that a first version was presented by the FRO to the Applicant on 8 January 2015 and a second one on 9 January 2015 in light of the fact that two documents with these two dates were produced.

67. The Applicant and the FRO discussed the matter in the following days and the Applicant provided written comments on the first version of the PIP dated 8 January 2015, whereby he essentially opposed the implementation of a PIP. He made no specific comments as to how to adjust it.

68. . At the hearing, the Applicant took issue with the fact that the second version of the PIP added that after each contact, he should prepare a note to the file and share it with the FRO, SRO and Chiefs of Section. However, he could not provide any convincing reason as to why it was unreasonable in the context of a PIP where one of the goals was to monitor more closely the Applicant's progresses and to support him, including by the Chiefs of Section.

69. The Applicant claimed that the PIP was unrealistic in putting deadlines that were too short and that it was meant to set him for failure. In this connection, the Tribunal finds that the PIP set four specific goals for the Applicant, with deadline and performance measures, which were in line with his workplan. The Tribunal notes that the deadlines set appeared to have been relatively tight, and the FRO indeed acknowledged that. However, he explained that the goals set were not new but just a continuation of what the Applicant was meant to do since his arrival in the SED, which the Applicant claimed to have done indeed. The Tribunal finds no evidence of bad faith or abuse of discretion on the part of the FRO and, consequently, is of the view that setting goals and deadlines remained within the scope of his managerial discretion, which he exercised appropriately. It is clear that the PIP was intended to put some pressure on the Applicant to deliver concrete results given his low performance since his arrival and, thus, it cannot be considered that the deadlines set, which also appear not to have been set in stone, were unreasonable. The Tribunal also notes that the Applicant did not propose any alternative timetable.

70. It was established that the Applicant had to work with budget constraints and under the oversight of the Chief of the PMU, who was in charge of budget approval and was also the Applicant's ARO. It was also established that there were some areas of disagreements between the FRO and the ARO, who was in charge of the PMU, as to the work of the Applicant and the constraints he had to deal with. That being said, there is no evidence that these constraints actually prevented the Applicant from delivering his work.

71. In view of the foregoing, the Tribunal finds that from at least December 2014, the Applicant was fully informed about what was expected from him as Regional Advisor and that he was also provided with detailed information about what he should have achieved by then. The Tribunal also finds that some more informal measures of the nature described in the Guide for Managers were taken before implementing a PIP, notably to ensure that the performance goals were clear and to counsel the Applicant as to how to reach them. Assistance was offered, notably by colleagues, to help the Applicant in rebuilding the advisory program but it appears that the Applicant was not willing to take on the offer.

72. The Tribunal further finds no discernible error in the implementation of the first PIP. It appears that the PIP was prepared by the FRO and presented to the Applicant. There is no evidence that the Applicant was specifically asked for his input or given a real opportunity to comment on the PIP before its implementation, which was set to start immediately. However, the Applicant did provide some oral and written comments which conveyed his categorical refusal to implement a PIP and he made no proposal to adjust it, as he could have possibly done if he deemed that the terms had to be reviewed. The Tribunal stresses that the requirement to consult the staff member in the preparation of a PIP does not entail that the agreement of the concerned staff member is ultimately necessary to implement it, and that the consultation process presupposes cooperation on the part of the staff member and willingness to engage in a constructive dialogue. A staff member cannot block the implementation of a PIP by simply opposing it. In these circumstances, the Tribunal finds that while more efforts could have been initially deployed to engage the Applicant in the drafting of the first PIP, it cannot be concluded that its implementation was in violation of sec. 10.2 of ST/AI/2010/5, given the lack of cooperation that the Applicant displayed.

Whether the duration of the PIPs complied with the requirements of sec. 10 of ST/AI/2010/5 for not renewing the Applicant's FTA

73. The parties have divergent views about whether this case falls under the provision of sec. 10.3 or 10.4 of ST/AI//2010/5 quoted in para. 45 above, such that it would require (or not) the implementation of a three-month PIP prior to making a decision not to renew the Applicant's appointment. The Tribunal acknowledges that the drafting of sec. 10 of ST/AI/2010/5 is not the most limpid and may warrant clarification through legislative action. However, when read holistically and in light of the various types of contractual relationships between the Organization and its staff members, a coherent interpretation may be distilled and, contrary to the Applicant's submissions, it cannot be concluded that there is a lacuna or typo in this provision.

74. Sec. 10.3 of ST/AI/2010/5 establishes a general rule that is applicable both to "non-renewal" and "termination" of appointments, whereas sec. 10.4 is a specific norm that is only applicable to "termination" of appointments. Sec. 10.4 applies to cases involving the termination of temporary or fixed-term appointments prior to the expiry of their terms or the termination of continuing and permanent appointments, which have no finite duration. In this connection, the Tribunal recalls that pursuant to staff rule 9.6(b), "[s]eparation as a result of … expiration of appointment … shall not be regarded as a termination within the meaning of the Staff Rules". There is no cogent reason to retain a different interpretation in the context of ST/AI/2010/5.

75. The rationale for the different regimes established for the non-renewal of a fixed-term appointment and the termination of any type of appointment prior to the expiry of its term, or for which the term is indefinite, is that there is a greater flexibility for the Organization to decide whether or not to engage in a new contractual term when dealing with the renewal of a fixed-term appointment, which, by nature, carries no expectancy of renewal. By contrast, staff members have a legitimate expectation to work until the end of their appointment if it is subject to a specific term, or to continue their employment if their contractual relationship with the Organization has no finite duration, in which cases the requisites for terminating the contractual relationship are stricter and more demanding.

76. As a consequence, sec. 10.4 requires the Administration to implement a PIP of at least three months before deciding to terminate an appointment whereas no such formal requirement exists under sec. 10.3. In fact, sec. 10 of ST/AI/2010/5 does not even create a formal obligation to institute any PIP prior to deciding not to renew an appointment when the performance was rated as "Does not meet performance expectations" (see secs. 10.1, 10.2 and 10.3, read in conjunction). It is sufficient that some remedial action be taken under sec. 10.1, the choice of which, as discussed above, is left at the discretion of the supervisors. That being said, it is certainly a good managerial practice to implement a PIP prior to deciding not to renew an appointment of a staff member whose performance is rated as "Does not meet performance expectations" and sec. 10.4 indicates that a three-month period

would generally be a reasonable time frame, although this is not a formal requirement.

77. In the case at hand, the Applicant held a fixed-term appointment which was due to expire on 2 May 2015 and the Organization, before completing the 2014-2015 performance cycle, decided to implement a PIP for a duration of 2 months and 22 days, in order to align it with the end of the performance cycle on 31 March 2015. A PIP was not formally required at the time, but the FRO decided to implement one in view of the shortcomings that he had already identified, as allowed under sec. 10.1 of ST/AI/2010/5. The duration was also reasonable in the circumstances, being close to three months and corresponding with the end of the performance cycle.

78. During the course of the first PIP, the FRO had discussions with the Applicant to follow-up on his progress, notably on 2 and 24 February, and 9 March 2015. The FRO and the ARO met with the Applicant on 2 April 2015 to discuss the outcome of the PIP. The FRO and the ARO continued to find that the Applicant's performance was below standards but the documentation indicates that they also saw some progress, as appears notably from an email of the FRO to the Applicant dated 12 March 2015 and the Applicant's end of cycle performance appraisal (see para. 13 above). The Applicant claimed that he could not fully accomplish the PIP given the short time frame and the fact that he had been on sick leave from 26 to 30 January 2015 and on annual leave from 13 to 20 March 2015. The FRO consequently decided to implement a second PIP, which was aimed at giving the Applicant more time to deliver on the expected results (see paras. 9 to 12 above), still using his managerial discretion under sec. 10.1 of ST/AI/2010/5 as, once again, no PIP was formally required under the rules. The FRO also elected not to proceed immediately with the end-of-cycle performance appraisal as he could have possibly done, thereby giving more time to the Applicant to improve his performance.

79. On 5 May 2015, the FRO completed the Applicant's end of cycle appraisal, in which he gave him a rating of "D—Does not meet performance expectations". This rating could have justified the non-renewal of the Applicant's appointment pursuant to ST/AI/2010/5 but since the second PIP was still running, the FRO

correctly acknowledged it in the performance appraisal and indicated that it was "intended to provide [the Applicant] with additional time and clarity on what is needed in order to raise [his] performance to expected levels". It was thus clear that the Organization would not immediately act upon this performance appraisal to decide whether to renew the Applicant's appointment, which had by then been extended until 30 June 2015 and intended at that time to give full effect to the second PIP.

80. Since the Organization decided to engage in a second PIP, albeit not required under the rules, the next question is whether it had to allow the Applicant to complete it before deciding whether or not to renew his appointment.

Whether the Administration had a duty to allow the Applicant to complete his second PIP prior to deciding not to renew his FTA and, if so, whether this obligation was fulfilled

81. As recalled above, the second PIP was delivered to the Applicant on 10 April 2015 and it was supposed to run until 30 June 2015. The Applicant's appointment, which was due to expire on 2 May 2015, was extended until 30 June2015 to allow the completion of this PIP, in accordance with sec. 10.5 of ST/AI/2010/5 quoted in para. 45 above.

82. However, the evidence shows that the Applicant only worked under the second PIP for five and a half weeks as he went on sick leave from 11 May 2015 and did not return until 1 October 2015. From 1 July 2015, his contract was extended solely for administrative reasons, namely to allow him to exhaust his sick leave entitlements as per sec. 3.9 of ST/AI/2005/3 and then to complete the rebuttal process against his 2014-2015 performance appraisal, as per sec. 15.6 of ST/AI/2010/5.

83. The second PIP was never formally evaluated due to the Applicant's leave and despite the efforts made by the FRO. Before the Applicant went on sick leave, the FRO contacted him by email dated 7 May 2015 in which he wrote:

> When I asked you to organise our monthly meeting with [the ARO] to discuss progress on your performance improvement plan, you explained that you were not feeling well and would not be able to meet. I trust you are feeling better. As set forth in the plan, the meetings are intended to provide you with feedback and assistance in improving your performance. Please advise when you will be available for the meeting.

84. In another email dated 19 May 2015, the Applicant's FRO shared with the Applicant his and also the Applicant's ARO's observations on the PIP as at that point in time. He noted, amongst others, that expected notes to the files were still missing, that there was a lack of progress in respect of approaches for donor funding and that the Applicant's coordination with weekly section meetings had been "modest". He concluded saying that he hoped that the Applicant would return soon "to continue working" to develop a robust regional advisory plan. The Applicant did not respond to this email.

85. The FRO recommended not to renew the Applicant's FTA on 1 June 2015, based on the evaluation of the Applicant's performance for the 2014-2015 cycle, the evaluation of the first PIP and the fact that although the second PIP had not been completed, "there still ha[d] been no notable improvement". The FRO also noted that "[he] ha[d] been advised that [the Applicant] intend[ed] to extend his sick leave through mid-September 2015". His recommendation was followed and the Applicant was informed on 22 June 2015 that his contract would be extended only until 31 August 2015, to allow completion of the rebuttal process as per ST/AI/2010/5. The decision not to renew the Applicant's appointment, taken on 22 June 2015, was thus essentially based on the rating for the Applicant's performance for 2014-2015 and without the second PIP having been completed. At that time, it appears that the FRO had lost hope that the Applicant would ever improve his performance.

86. The Tribunal notes that sec. 10.5 of ST/AI/2010/5 requires that an appointment be extended for the completion of a PIP but there is no specific rule dealing with the impact of certified sick leave occurring during that period. The Guide for Managers provides in this respect that "[i]f a staff member is on approved leave for a significant period of time during the [PIP], [the manager] should extend

the period to allow the staff member a reasonable time on the job to improve". However, this provision is not mandatory and does not *per se* create any formal entitlement, as set out in para. 49 above. This provision also leaves a wide margin of discretion to the manager in referring to "a reasonable time on the job to improve" without suggesting that the extension be necessarily equivalent to the expected duration of the PIP.

87. The Tribunal is of the view that the Guide for Managers enacts, not mandates, a managerial practice that is coherent with the fact that the Organization, once it has committed to enter in a PIP with a staff member, shall follow the applicable procedure (see, e.g., *Kucherov* UNDT/2015/106; *Eldam* UNDT/2010/133), which requires completion and evaluation of the PIP, and that a staff member should not be prejudiced for being on certified sick leave. The institution of a PIP creates a legitimate expectation for the concerned staff member to be allowed to complete it, and periods of absence due to certified sick leave have to be taken into account when considering his or her ability to deliver on the PIP. These periods of absence would thus in principle warrant an extension of appointment for a period that is deemed reasonable for the staff member to deliver on the PIP.

88. However, this principle is not absolute, and the Organization retains a level of discretion in deciding not to renew an appointment when the implementation of a PIP becomes in effect impossible or when the period of absence is not the main or the only cause for the staff member's inability to deliver on a PIP. One of the key considerations in this respect is the staff member's cooperation in the implementation of the PIP. The establishment of a PIP engages both parties in a serious and straightforward compromise to reach pre-established goals. This means that both the supervisors and the staff member have a duty to cooperate with each other and to act in good faith, otherwise a PIP is bound to fail.

89. In the instant case, the Tribunal finds that the difficulties in implementing and completing the second PIP cannot be attributed solely to the Applicant's sick leave but were in large part due to his failure to accept the PIP and to cooperate in its implementation. The Organization gave the Applicant several opportunities to improve his performance and to comply with the PIP, but it was at some point faced

with an impasse due to the lack of cooperation and of efforts displayed by the Applicant.

90. The fact that a second PIP was put in place together with the FRO's attempts to follow-up on it (see paras. 83 to 84 above) demonstrate the FRO's efforts to identify the Applicant's shortcomings and help him to address them. The evidence produced before the Tribunal showed that the FRO was indeed the person who recruited the Applicant a year before and that he was making all he could to help him reaching the performance goals. There is no reason to doubt that his efforts were genuine and that the FRO wanted to keep the Applicant within his team, as the Applicant asserted.

91. In this connection, the two Chiefs of Section also testified that the FRO requested them to provide the Applicant with any opportunity to ensure that he would deliver, while at the same time remaining "discreet" about the fact that a PIP had been put in place. They both testified about their additional efforts to engage with the Applicant and to coordinate their work with him. However, they both stated that their efforts were negatively perceived by the Applicant, who developed an aggressive and defensive attitude towards them. The Chief, Sustainable Energy Section, ECE, recalled, in particular, a meeting she had with the Applicant on 23 April 2015, in the presence of the Chief, Energy Industries Section, ECE, to discuss how their respective sections could better support the Applicant in his work. She explained how the Applicant reacted negatively and aggressively, speaking about a conspiracy to get rid of him. Eventually, she had to ask him to leave her office as the conversation was not constructive.

92. Furthermore, the Chief, Energy Industries Section, ECE, provided an example where she tried to give feedback to the Applicant about a workshop held on 28 April 2015 where the Applicant, who had initially been expected to organize and lead the workshop, ended up only moderating a one-hour session. She raised concerns about logistical problems that led some experts to miss part of the event and the lack of quality of the work done by the Applicant as a moderator, where he failed to orientate the discussion and rather engaged in a "monologue" and a "geography lesson on Central Asia", as she witnessed herself and was reported to

her by a number of participants. She explained that the Applicant was not willing to listen to any feedback and displayed an aggressive behaviour. She was also chocked by the fact that during the reception preceding the workshop, the Applicant asked her to introduce him to "important people", which she considered inappropriate as all the experts were important in her view.

93. The Tribunal concludes that there is no evidence contradicting the conclusion of the FRO that there was no sign of improvement in the Applicant's performance before he went on sick leave. Most importantly, the Applicant did not demonstrate any willingness to take the PIP seriously. He refused to sign both the first and the second PIP and revealed a negligent attitude towards his FRO's attempts to book a meeting with him in May 2015. There is no evidence that the Applicant made any effort to ask for the PIP to be extended during his sick leave or to show willingness to complete it once his health would improve. Several witnesses confirmed that the Applicant misconceived the PIP as a tool to dismiss him and did not show any proactive attitude to improve his performance.

94. The Tribunal notes that the Applicant's behaviour after the contested decision and upon his return from sick leave further confirmed that he was not disposed to make any effort to improve his performance and to work collaboratively with his supervisors and colleagues. He rather tried to undermine the working environment and his FRO's image and authority within the Organization.

95. On 28 September 2015, the Applicant sent an email to the Chief, Energy Industries Section, ECE, copied to two representatives of the Staff Coordinating Council, discussing the performance evaluation process in SED and threatening her as follows:

> Should you volunteer to be part of these acts that are ethically controversial and likely to flat-out illegal, you will bear the full risk of being dragged into scandals and becoming part of future investigations.

96. On 16 October 2015, the Applicant provided the rebuttal panel with responses to his FRO's comments, which included pictures of Pinocchio when referring to the FRO and his comments on his performance, inferring that he was a liar.

97. As to the Respondent's claim that the Applicant was given an additional opportunity to deliver on the PIP when he returned from sick leave, the Tribunal notes that the Applicant was back in the office in October 2015 for completion of the rebuttal process and there is no evidence that efforts were made to revive the PIP. The documentary evidence shows that after the decision of 22 June 2015 not to renew the Applicant's FTA was taken, the FRO did not make any effort to engage with the Applicant and was merely waiting for the outcome of the rebuttal process. In this connection, the FRO stated in an email of 29 August 2015: "Your contract extension is only to allow you to exhaust your entitlements and once they are exhausted your contract will lapse. If you decide to pursue a rebuttal then the rebuttal panel will make their findings in line with UN policies", suggesting that there was no longer hope that his contract would be extended otherwise then for administrative purposes.

98. He also stated in a communication to the rebuttal panel on 3 December 2015:

> I was asked about [the Applicant]'s contractual status. As I mentioned, he has been extended at first to allow him to complete the second PIP, then to allow him to exhaust his annual leave and sick leave entitlements, and now to allow him to see the rebuttal process through its conclusion. My recommendation was and remains that his contract not to be renewed.

99. In addition, the FRO did not include the Applicant in the SED retreat held in December 2015, as would normally be expected for a Regional Advisor. The FRO's attitude is, however, comprehensible in the context described above and largely explained by the Applicant's behaviour.

100. The Tribunal is of the view that the period when the Applicant returned from sick leave cannot formally be taken into account to conclude that he had been overall working on the second PIP for over four months, as claimed by the Respondent. However, the Tribunal is of the view that the Applicant could have seized the *de facto* opportunity of being back in the office to show good will and to try to reinstate the PIP or otherwise improve his performance. Instead, he took an attitude that would necessarily alienate the team and break the working relationship

beyond repair. He also made no effort to contact the FRO, nor did he show any willingness to resume the implementation of his PIP.

101. In view of the foregoing, the Tribunal finds that the decision not to renew the Applicant's appointment beyond 31 December 2015, taken on 22 December 2015, was a legitimate exercise of managerial discretion and did not violate the provisions of ST/AI/2010/5. The Tribunal further finds that, in any event, the Applicant was informed of the required performance standard and provided a fair opportunity to meet it so he was overall not denied procedural fairness.

102. Consequently, the decision not to renew his appointment was lawful.

Conclusion

103. In view of the foregoing, the Tribunal DECIDES that the application is dismissed.

(*Signed*)
Judge Teresa Bravo
Dated this 6th day of July 2018

Entered in the Register on this 6th day of July 2018
(*Signed*)
René M. Vargas M., Registrar, Geneva