



Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

SELLAMI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alister Cumming, UNICEF
Chinonyelum Esther Uwazie, UNICEF

Introduction

1. The Applicant, a former staff member of the United Nations Children’s Fund (“UNICEF”) in Algeria, filed an application on 24 October 2023 contesting the non-renewal of his fixed-term appointment.
2. The Respondent filed a reply on 17 November 2023 stating that the contested decision was lawful and urging the Tribunal to reject the application.
3. On 2 February 2024, the Applicant filed a rejoinder to the Respondent’s reply.
4. On 1 November 2024, the parties filed their respective closing statements.
5. For the reasons set out below, the Tribunal rejects the application.

Factual background

6. The Tribunal notes that the information presented in this section of the Judgment is drawn primarily from the chronology of events contained in the parties’ various submissions and their annexes.
7. The Applicant joined UNICEF’s Algeria Country Office (“ACO”) on 8 May 2022 on a one-year fixed-term appointment as a Youth and Adolescent Development Officer, at the National Officer B (“NO-B”) level. His immediate supervisor and first reporting officer (“FRO”) was NA (name redacted for privacy reasons), an Education Specialist at the National Officer C (“NO-C”) level.
8. On 10 May 2022, two days after the Applicant commenced his employment with the ACO, he sought and obtained authorization to avail himself of flexible working arrangements.
9. Nine days later, on 19 May 2022, the Applicant began a series of absences from work using a combination of uncertified and certified sick leave and annual leave. Between May 2022 and June 2023, he was absent from work for a total of 107.5 days, comprising 24.5 days of annual leave, 64 days of certified and

uncertified sick leave with full pay, and 19 days of certified sick leave with half pay. The record shows that the Applicant's absences often coincided with scheduled follow-up meetings or meetings with partners associated with the projects for which he was responsible.

10. In June 2022, the Applicant met with the ACO Deputy Representative and complained that he was being harassed by NA, his supervisor. Between June and November 2022, the Deputy Representative and the Human Resources Officer ("HRO") held several meetings with the Applicant during which they provided him with support to manage his working relationship with NA including by attempting mediation. It was agreed to set up a weekly meeting between the Applicant and NA in the presence of the HRO to discuss any issues that arose, but this meeting did not always take place due to the Applicant's absences from work.

11. The Deputy Representative and NA observed that when the Applicant was at work, his performance was not always satisfactory. Some of the performance shortcomings included: divulging confidential information; inadequate communication with his team members; arriving late and departing early from work; rejecting to be supervised; questioning the integrity of others; and interpersonal conflicts with colleagues.

12. In September 2022, the Deputy Representative and NA received an email from one of UNICEF's external partners with a complaint about the Applicant's communication and behavior that they perceived as disrespectful, embarrassing and offensive.

13. On 25 September 2022, the Applicant requested to be assigned a different supervisor.

14. On 10 October 2022, NA held a mid-term performance review meeting with the Applicant. At the conclusion of the meeting, they did not agree on the competencies that the Applicant was expected to meet. The Applicant had questioned some of NA's managerial decisions. NA also noted that the Applicant had undertaken site visits to some field locations without requesting or receiving the necessary clearance or authorization.

15. In November 2022, the Deputy Representative notified the Applicant of the decision to place him on a one-month Performance Improvement Plan (“PIP”), provided him with a draft of the plan and invited his comments by 29 November 2022. However, on 28 November 2022 the Applicant went on certified sick leave and remained absent from work until 9 March 2023 included, through a combination of certified and uncertified sick leave and annual leave.

16. Also in November 2022, the United Nations Economic and Social Council reviewed the country programme document (“CPD”) for Algeria for the 2023-2027 period, which involved the adoption of a new structure for the ACO and the abolishment of the Applicant’s position effective 31 March 2023.

17. The Applicant returned to work on 12 March 2023 and the ACO did not immediately initiate the PIP that had been suspended while he was on leave. The Deputy Representative had decided to allow him time to reintegrate himself into the office after an absence of approximately three months. However, the Deputy Representative noted that the Applicant’s performance did not improve, and that he continued to have difficulties with his colleagues.

18. On 13 April 2023, the Applicant was placed on a PIP. Given the Applicant’s difficult relationship with NA, it was decided that the Deputy Representative, as the Applicant’s second report officer (“SRO”), would lead the PIP jointly with the ACO Operations Manager.

19. The Applicant was consulted on the content of the revised PIP, which was designed to help strengthen his performance in four key areas: self-awareness and ethical awareness; working collaboratively with others; drive to achieve results for impact; and ensuring the effective implementation of activities under the Youth and Adolescent Development program. Pursuant to sec. 4.11 of UNICEF’s CF/AI/2011-001 Amend. 2 (Performance management), since the Applicant was still in the first 12 months of his initial fixed-term appointment, the PIP was initiated for one month from 13 April to 18 May 2023.

20. The Applicant’s performance was monitored and documented through weekly check-in meetings during which his PIP supervisors and the HRO provided

him with technical and logistical support. They also granted him flexible working arrangements, a coaching referral, and a “360-degree assessment” (involving an external adviser) to help him achieve the expected results. However, the Applicant disregarded and often disputed the feedback he received from his supervisors and attended only one coaching session. The Applicant had also privately prepared audio recordings of the PIP check-in meetings that he later submitted along with his application to the Dispute Tribunal.

21. At the end of the one-month period, the Applicant’s PIP supervisors concluded that the PIP was unsuccessful and that the Applicant had not achieved the expected results. The Applicant’s fixed-term appointment, which was due to expire on 31 May 2023, was extended until 31 July 2023 to allow sufficient time for the rebuttal process to be conducted.

22. On 26 May 2023, the Applicant submitted a rebuttal request against the PIP conclusions. The PIP supervisors provided their comments on 13 June 2023, and the Applicant provided a response to those comments. On 5 July 2023, the rebuttal reviewer issued a report recommending the adoption of the PIP supervisors’ conclusions.

23. This recommendation was endorsed by the Division of Human Resources (“DHR”) and formed the basis for the contested non-renewal decision. By letter dated 10 July 2023, the Applicant was notified that his fixed-term appointment would not be extended beyond 31 July 2023.

The parties’ submissions

24. The Applicant’s primary contentions may be summarized as follows:

- a. From the start of his employment with UNICEF’s Algeria Country Office, the Applicant “endured an ongoing pattern of distressing conduct” orchestrated by NA, who was his FRO. This included acts of “harassment, intimidation, and threats, which have collectively fostered a hostile work environment”. The Applicant believes NA’s actions may have been influenced by the knowledge that the Applicant had previously engaged in

a “protected activity in reporting misconduct” during his tenure with a different employer.

b. The situation “escalated” when the Applicant reported NA’s “distressing behaviors” to the Deputy Representative, who was NA’s supervisor. “Regrettably, rather than addressing the ethical violations”, the UNICEF management responded “with an overly aggressive action—initiating a Performance Improvement Plan” against the Applicant in November 2022. This action was based on a complaint by one of UNICEF’s external partners. When the Applicant “escalated the issue” to the Office of the Ombudsman, “the dynamics shifted dramatically” and the Applicant was offered “a meager three months’ salary to leave the [Organization]”. He rejected “this inadequate proposal” and chose to “elevate [his] case to the regional office for further consideration” and “had to take extended sick leave due to severe depression”.

c. On 15 March 2023, upon returning from sick leave, the Applicant and his FRO (NA) held “a meeting to catch-up on the work and resume working on business as usual”. No work-related emergencies were raised at this meeting and the Applicant was informed that he “should have been aware of the expectations”. At the Applicant’s request, the PIP process was launched on 13 April 2023, but “with a different PIP document version” and this coincided with “an urgent need” for him to complete a program that should have been closed on 28 February 2023 by NA, who served as his backup during his absence.

d. During the Applicant’s sick leave, he received a “personal invitation” from the European Union’s Ambassador to Algeria to attend a function. This invitation was extended to him “on a personal basis due to [his] friendship with the Ambassador and his spouse” and the event was “not an official work-related meeting, but rather a private engagement”. However, during the PIP rebuttal process this was used against him by the Deputy Representative. The Applicant had also attended the United States Embassy’s celebration of American Independence Day, during which he

had introduced the Deputy Representative “to influential figures from both government and civil society”. This interaction “contradicts” the negative comments about the Applicant’s activities during his sick leave.

e. A significant issue arose during the PIP process concerning the evaluation of the Applicant’s work product. “The shock of PIP notice understandably exacerbated [his] depression symptoms”. His PIP supervisors “conducted a partial and biased assessment” whereby only three out of the five “meticulously crafted products” he had produced were considered. This “skewed evaluation” “raises concerns about the fairness and transparency of the evaluation process”. The PIP itself had been “hastily initiated” following a complaint from an external partner who had “transparency issues” and was “from the same hometown” as the Applicant’s supervisor, NA. Moreover, the external consultant subsequently engaged to conduct the PIP rebuttal review had “a tendency to prioritize strict adherence to regulations and rules” and to overlook “the broader context” of the Applicant’s situation, including his “battle with depression” and the “injustices” he faced. The audio recordings which the Applicant’s legal counsel advised him to maintain, together with the testimony of an external partner, illustrate the context and highlight “the discrepancies between written documents and spoken communication”.

f. Certified and uncertified sick leave are “entitlements granted by the [O]rganization” and the Applicant’s “absences demonstrate the negative impact on [his] mental health and well-being” of the treatment he received from NA. In his case, the absences on leave were always “medically justified and approved”. Contrary to the assertions made by the ACO management, the Applicant was frequently “among the last” to leave the office after work, and he believes the security logs can confirm this. He should not be criticized for questioning operational decisions as that was his “only means to understand processes not explained by [his] supervisor”. Moreover, the ACO management should be required to “substantiate claims of inadequate communication” on the Applicant’s part and the allegations

of conflicts with his colleagues. Further, he is being unjustly reprimanded for undertaking a field trip that was duly authorized.

g. The PIP, as implemented, “lacked a clear, objective foundation” and the timing “coincided directly with [the Applicant’s] whistleblowing activities”. The process also failed to take into account the fact that the Applicant was “undergoing treatment for severe reactional depression caused by the toxic work environment and isolation from colleagues”. Moreover, the medication he was taking had “side effects including lack of concentration and forgetfulness”. Besides, the ACO management’s “discriminatory language and behavior” towards the Applicant should have been acknowledged, examined and resolved. Furthermore, contrary to the ACO’s account, the Applicant “did not receive the 360-degree assessment” (from an external adviser) because the Deputy Representative “neglected to approve the assessment in the system”.

h. The UNICEF management’s “underlying intent” to terminate the Applicant’s employment is evident from the “simultaneous launch” of both the PIP and the proposal to abolish his recently established position. This is particularly concerning in light of the priority placed by the President of Algeria on the Youth Sector. The “concerning circumstances” surrounding the Applicant’s tenure at UNICEF are “unethical at the very least, and potentially discriminatory at their worst”. The facts of this case “present a disturbing narrative of retaliation, intimidation, threatening behavior, misconduct, and a failure to provide a safe and harmonious work environment”. The circumstances show that the Applicant was “unjustly targeted”.

i. The non-renewal of the Applicant’s appointment has left him in a “precarious” situation where he is unable to meet his financial obligations and his “professional reputation has been tarnished” making his future job prospects “uncertain”. Consequently, the Applicant requests the renewal of his employment contract and compensation in the amount of USD70,000 for the “severe mental and physical health damages” inflicted on him.

25. The Respondent's main contentions may be summarized as follows:

a. The decision not to renew the Applicant's fixed-term appointment was due to unsatisfactory services and was lawful. It followed from the Applicant's failure to improve his performance or to reach the desired outcomes of the PIP that was initiated to address his performance shortcomings.

b. The placement of the Applicant on a formal time-bound PIP in April 2023 was in accordance with secs. 4.3 and 4.4 of UNICEF's CF/AI/2011-001 Amend. 2 (Performance management). During the 2022 performance period, the Applicant's FRO and SRO had identified challenges around the Applicant's interactions with internal and external parties which were negatively impacting his work and that of the ACO team. They informed him of the performance shortcomings and provided him with feedback and guidance on how to remedy the identified problems. This was done through regular meetings with the Applicant and during the mid-term performance review process.

c. Contrary to the Applicant's assertions, given his difficult relationship with his FRO, the Deputy Representative, as the Applicant's SRO, was entitled to initiate and oversee the PIP in accordance with sec. 2.9 of CF/AI/2011-001 Amend. 2. The Applicant was given sufficient opportunity to remedy his performance shortcomings, and the initiation of the PIP was suspended during the period when he was on sick leave and annual leave between November 2022 and March 2023. Upon his return to work on 9 March 2023, he was consulted on the contents of the PIP before it was initiated a month later in April 2023.

d. The PIP included "specific deliverables" in accordance with sec. 4.5 of CF/AI/2011-001 Amend. 2 and the Applicant's performance was monitored and documented through weekly check-in meetings during which he was offered support and advice. Unfortunately, he did not take full advantage of the opportunities provided to him. Contrary to the Applicant's assertions, his performance was fully and fairly assessed by his PIP

supervisors, who jointly concluded that he did not meet the expected results. In fact, the Applicant himself acknowledged in his self-assessment that he did not make the necessary performance improvement but claimed this was due to his mental state.

e. During the PIP rebuttal process, the independent reviewer considered all of the Applicant's submissions, including the personal notes of the PIP check-in meetings that the Applicant had made using his audio recordings of the meetings. Ultimately, however, the rebuttal reviewer agreed with the PIP outcome. The DHR's decision not to renew the Applicant's fixed-term appointment was based on the rebuttal outcome.

f. The Tribunal should disregard the recordings made by the Applicant during the PIP check-in meetings as they are non-consensual in the sense that they were made "without the knowledge and consent of the meeting participants". In making the recordings, the Applicant did not comply with UNICEF's Guidance/DHR/2021/001 (Guidance on non-consensual recordings).

g. The decision not to renew the Applicant's fixed-term appointment was directly related to his unsatisfactory service. The Applicant has failed to provide any evidence to support his assertion that he was subjected to discrimination, bias or other improper motives. It is not the role of the Tribunal to investigate the allegations of misconduct made by the Applicant against several UNICEF staff members. As the Applicant has neither demonstrated any procedural or substantive breach of his rights nor adduced any evidence of harm, he is not entitled to any relief from the Tribunal.

Considerations

Non-consensual recordings

26. As a preliminary matter, the Tribunal will address the issue of the admissibility of the audio recordings prepared and filed by the Applicant as part of his submissions in the present proceedings as evidence under art. 18.1 of the

Dispute Tribunal's Rules of Procedure. The Applicant asserts that he was advised by his lawyer to make audio recordings of the PIP check-in meetings with his supervisors in order to document the discussions and to have evidence of their misconduct. He argues in his closing statement that the recordings "show a pattern of hostile, dismissive, and retaliatory behavior and expose discrepancies between what was discussed in meetings and what was documented in reports".

27. The Respondent, on the other hand, submits that since the recordings were made without the knowledge and consent of the meeting participants, the Tribunal should disregard them.

28. The Tribunal notes that UNICEF's Guidance/DHR/2021/001, effective 28 December 2021, which is "applicable to all UNICEF personnel", makes it clear that the Agency "does not condone non-consensual recordings at workplace settings or activities" since such recordings "undermine the work relationship between employees and UNICEF's core value of Trust, raise confidentiality concerns, and may infringe on the rights of others", among other reasons. The Guidance document also warns that "[m]aking a non-consensual recording is unacceptable behavior and may amount to misconduct". Personnel seeking to make a recording of any work-related activity are required to obtain "express consent from each person being recorded" or, at the very least, notify all participants before the recording starts so that those who do not wish to be recorded may withdraw from the activity.

29. The above UNICEF "Guidance" notwithstanding, since the recordings have been entered into evidence, the Tribunal has an obligation, under art. 18.1 or its Rules of Procedure, to review them and, accordingly, "shall determine the admissibility" of the recordings. As the Appeals Tribunal held in *Ashgar* 2020-UNAT-982, para. 43, "[w]here evidence has been obtained in an improper or unfair manner it may still be admitted if its admission is in the interests of the proper administration of justice". Thus, the issue regarding the recordings is not that they were made without the consent of the meeting participants, but what weight should be accorded to them.

30. In the instant proceedings, the Tribunal has determined that the audio recordings prepared and presented by the Applicant as annexes to his submissions

are admissible in the limited context of his case. However, having carefully listened to the recordings, the Tribunal concludes that they are not relevant to its adjudication of the case as the contents are already included in many of the written documents filed by the parties. Accordingly, the Tribunal will not consider them in the present proceedings.

The issues

31. The Tribunal notes that this case involves the non-renewal of the Applicant's fixed-term appointment based on a negative appraisal of his work performance by his supervisors.

32. In the contested decision, contained in the "Notice of Separation" dated 10 July 2023, the Applicant was informed that his fixed-term appointment would not be extended beyond 31 July 2023. He was also advised that the UNICEF Administration had "taken into account that [his] placement on a Performance Improvement Plan did not result in the satisfactory improvement of [his] performance, and that the rebuttal process endorsed this outcome".

33. The Applicant's claims of misconduct, retaliation or ethical violations by his supervisors are normally addressed under different mechanisms and were not properly submitted for management evaluation. Additionally, there is nothing on the record to establish that the Applicant was a genuine whistleblower and, even if he were, there is no indication that this impacted the contested non-renewal decision. At the time of filing the application, there was also no administrative decision on the abolishment of the Applicant's post. Therefore, the Tribunal will focus only on the contested non-renewal decision and will not consider those additional claims in the present proceedings.

Legal framework

34. Under staff regulation 4.5(c) and staff rule 4.13(c), a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service (except as provided under staff rule 4.14(b)). Pursuant to staff rule 9.4, a fixed-term appointment such as the

Applicant's expires automatically and without prior notice on the expiration date specified in the letter of appointment.

35. The Appeals Tribunal has recognised that whereas underperformance is a lawful reason for not renewing a fixed-term appointment, the alleged underperformance must be adequately documented (see, *Allen* 2019-UNAT-951, para. 35, as well many other judgments). This means a non-renewal decision must be made on a rational basis, and the Administration is required to properly articulate the reasons for a non-renewal in order to ensure that the Tribunals can judicially review the validity of the decision, and this reason must be lawful and supported by the facts (see, for instance, *Nouinou* 2019-UNAT-902, para. 50; *He* 2018-UNAT-825, para. 46; *Obdeijn* 2012-UNAT-201, paras. 33-39; *Islam* 2011-UNAT-115, paras. 29-32).

36. Moreover, a non-renewal decision can be challenged on the grounds that the Administration has not acted fairly, justly, or transparently with the staff member or that the non-renewal decision was motivated by bias, prejudice or improper motive. It is incumbent on the staff member to prove that such factors played a role in the non-renewal decision (see, *Porras* 2020-UNAT-1068, para. 24; *Nouinou*, para. 47; *He*, para. 43; *Said* 2015-UNAT-500, para. 34).

37. Regarding the assessment of the Applicant's performance, which formed the basis for the decision not to renew his fixed-term appointment, UNICEF's CF/AI/2011-001 Amend. 2 (Performance management) provides, in relevant part:

...

4.3 As soon as the supervisor has identified underperformance, he/she should inform the staff member that performance is not at the expected level and provide feedback and guidance on what is expected to improve [...]

4.4 If the staff member's performance does not improve after measures taken in paragraph 4.3, the supervisor shall place the staff member on a time-bound performance improvement plan (PIP).

...

4.11 If underperformance is identified and measures described in paragraph 4.3 have been taken without improvement in the staff

member's performance, a staff member on his/her first 12 months of an initial fixed-term appointment shall be put on a PIP for at least one month.

...

5.3 A staff member can initiate a PIP rebuttal process if he/she does not agree with the supervisor's conclusion that his/her performance did not improve [...]

...

6.1 The final performance ratings and/or comments resulting either from a [Performance Evaluation Review, "PER"] or PIP that has not been rebutted or after rebuttal, are not subject to appeal. However, where a staff member or former staff member has grounds to believe that the procedure followed under this policy was improper, he/she may challenge an administrative decision that stems from the appraisal in accordance with [United Nations] Staff Rule 11.2 and CF/AI/2010-008 on Appeals.

38. The Appeals Tribunal has held that when assessing an administrative decision resulting from a performance appraisal, the role of the Dispute Tribunal is not to conduct a *de novo* review of the performance appraisal or to place itself in the role of the decision-maker. Rather, the Dispute Tribunal's role 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" (see, *Sarwar* 2017-UNAT-757, para. 74, citing *Said*, para. 40).

Discussion

39. The evidence before the Tribunal, as detailed in the "Factual background" section above, shows that the Applicant had a difficult working relationship with his immediate supervisors and with his colleagues from the start of his employment with the ACO. His fixed-term appointment lasted from 8 May 2022 to 31 July 2023 and it is undisputed that his supervisors quickly identified several performance shortcomings on his part. Specifically, the supervisors identified problems with the Applicant's ability to demonstrate self-awareness and ethical awareness and work collaboratively with his colleagues.

40. During the first half of his tenure with the ACO, the Applicant had very contentious interactions with his direct supervisors, consistently rejecting supervision and constructive feedback, as documented in the rebuttal review report and in many of the annexes filed by the parties. His supervisors also received complaints from his colleagues and a representative of a UNICEF implementing partner about the Applicant's language and behavior that they perceived as disrespectful, embarrassing, and offensive. At the mid-term performance review meeting with his FRO in October 2022, the Applicant rejected his supervisor's guidance on how to remedy his performance shortcomings.

41. In the end, it was decided to initiate a PIP to address the identified performance shortcomings. As the Applicant was within the first 12 months of his fixed-term appointment with UNICEF, the PIP was initiated for a period of one month pursuant to sec. 4.11 of CF/AI/2011-001 Amend. 2. The Applicant was consulted on the contents of the PIP, which focused on improving his performance in key areas including his self-awareness, ethical awareness and working collaboratively with others, areas which his supervisors had consistently flagged. However, initiation of the PIP was suspended in November 2022 due to the Applicant's absence on leave for approximately three months.

42. According to the Applicant's supervisors, he had failed to improve his performance after he was informed that it was not at the expected level and after he was provided with feedback and guidance to remedy the performance shortcomings. Therefore, after the Applicant's return from leave, the PIP was initiated for one month from 13 April to 18 May 2023 and it was managed in accordance with the relevant provisions of CF/AI/2011-001 Amend. 2. The PIP included the actions to be taken by the Applicant as well as clear expectations of the desired outcomes. However, as per the PIP supervisors, the Applicant repeatedly refused to follow their clear instructions or to comply with the agreed PIP requirements.

43. The Tribunal notes that this is in contravention of staff rule 1.2(a), which provides that staff members shall follow the directions and instructions properly issued by the Secretary-General and by their supervisors. Moreover, as the Appeals

Tribunal has held, a staff member's duty to abide by managerial instruction lies at the heart of employment relationships and the Tribunals are expected to accord a measure of deference to managerial authority, including in setting performance standards (see, *Applicant* 2020-UNAT-1030, para. 34).

44. The Tribunal's review of CF/AI/2011-001 Amend. 2 supports a finding that UNICEF followed all the required procedures in conducting its appraisal of the Applicant's performance, and the Tribunal is satisfied that the process was not tainted by bias or improper motive. The incidents that the Applicant has characterized as examples of harassment, abuse or prohibited conduct are more properly defined as performance management issues and workplace disagreements, which do not constitute prohibited conduct and are best handled through other mechanisms.

45. Moreover, the Applicant has not presented any evidence in support of his assertion that he was subjected to offensive or humiliating treatment or any discrimination by his supervisors and colleagues, and "[u]nder the well-established jurisprudence, the burden of proving any allegations of ill-motivation rests with the applicant" (see, the Appeals Tribunal is *Kisia* 2020-UNAT-1049, para. 38). He has not shown that the UNICEF management treated him unfairly or that they took any unwarranted factors into consideration in reaching the contested decision. On the contrary, the tone of the email communications from the PIP supervisors throughout the relevant period and the referrals to additional resources such as coaching opportunities show that the supervisors made significant efforts to help the Applicant.

46. The Applicant submitted several annexes, some showing that he had positive interactions with some of UNICEF's external partners in Algeria as well as with some of his colleagues. However, none of these constitute evidence of ill-motive by his supervisors and they do not detract from the fact that his supervisors had identified clear shortcomings in his work performance. As the Tribunals have routinely held, such matters involving disagreements on programmatic issues, exercise of managerial discretion and work outputs are not normally considered within the framework on prohibited conduct, but rather performance management

(see, for example, *Soares* UNDT/2022/111, *Koumoin* 2011-UNAT-119, *Soliman* 2017-UNAT-788).

47. Further, the Tribunal's review of the record supports a finding that the Applicant was offered numerous opportunities to change his approach and interactions with his supervisors and colleagues, and he was encouraged to make efforts to improve his work performance. This assessment was endorsed not only by the UNICEF management but also by the independent PIP rebuttal reviewer. Regarding the Applicant's complaint that the Administration failed to consider the "context" of his "battle with depression" and his medical needs, the Tribunal expresses its sympathy with the Applicant but notes that this is not a legitimate justification for underperformance. The record shows that during his short tenure with the ACO, the Applicant was granted at least 64 days of certified and uncertified sick leave with full pay, in addition to some 19 days of certified sick leave on half-pay status. Accordingly, the Tribunal finds that in arriving at the contested decision, the UNICEF Administration duly followed the required procedures under CF/AI/2011-001 Amend. 2 and took all the relevant factors into consideration.

48. In addition, the Applicant has not demonstrated any procedural or substantive breach of his rights. In the absence of any evidence that the performance standards applied by UNICEF are manifestly unfair and irrational, the Tribunal cannot substitute its decision for that of the decision-maker to overturn the contested decision. Accordingly, having established that UNICEF followed the proper procedures under CF/AI/2011-001 Amend. 2, the Tribunal also finds that the PIP outcome, and by extension the contested decision, was lawful.

49. Finally, since the contested decision was lawful, there no basis for the Tribunal to consider the Applicant's request for compensation or damages.

Conclusion

50. In light of the foregoing, the Tribunal rejects the application in its entirety.

(Signed)

Judge Joelle Adda

Dated this 18th day of December 2024

Entered in the Register on this 18th day of December 2024

(Signed)

Isaac Endeley, Registrar, New York