



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.:	UNDT/NBI/2024/079
Judgment No.:	UNDT/2025/094
Date:	24 November 2025
Original:	English

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**Before:** Judge Sean Wallace

**Registry:** Nairobi

**Registrar:** Wanda L. Carter

NABISUBI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Patrick Mugalula

**Counsel for Respondent:**

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Victoria Mujunga, AS/ALD/OHR, UN Secretariat

## Introduction

1. On 20 December 2024, the Applicant, a former G-4 Team Assistant with the United Nations Office of Internal Oversight Services (“OIOS”) based in Entebbe, Uganda, filed an application contesting the 25 June 2024 outcome of a performance appraisal (“ePAS”) rebuttal process which she commenced on 25 April 2024; and the consequential 17 April 2024 decision to not renew her fixed-term appointment (“FTA”) due to poor performance.
2. The Respondent filed a reply on 7 February 2025 arguing, *inter alia*, that the application is not receivable *ratione temporis* because it “was one hour late.” The Applicant submitted that the brief delay was due to technical difficulties encountered in uploading the application into the UNDT case management system.
3. On 16 October 2025, the Tribunal issued Order No. 194 (NBI/2025) in which it determined: that the application is receivable; and that no oral hearing is necessary for a fair and expeditious disposal of the case. It directed the parties to file closing submissions by 30 October 2025, which they did.

## Facts

4. The Applicant joined the Organization in 2019 as a G-4 Team Assistant in OIOS on a Fixed-Term Appointment (“FTA”). She served in this position until the non-renewal of her appointment on 30 June 2024.
5. In the performance cycle covering 1 April 2022 to 31 March 2023, the Applicant was evaluated as “Partially meets expectations”.
6. On 25 May 2023, the Applicant was placed on a Performance Improvement Plan (“PIP”) for the period 1 June 2023 to 30 September 2023.
7. The Applicant requested a rebuttal of the 2022 - 2023 ePAS, however, a rebuttal panel upheld the rating on 21 September 2023.
8. On 27 October 2023, the Applicant lodged a report of harassment and abuse of authority against her Second Reporting Officer (“SRO”), referring to incidents

on 27 and 31 October 2023, and alleging that her SRO had created a “toxic intimidating, hostile, fearful, and offensive work environment” since being transferred to the office in June 2022.

9. On 2 November 2023, the Applicant was placed on a second PIP for the period 15 November 2023 to 16 February 2024.

10. On 19 February 2024, the Applicant’s First Reporting Officer (“FRO”) sent her the second PIP document for her review and signature. On that same date, the Applicant submitted a request for protection against retaliation to the Ethics Office pursuant to ST/SGB/2017/2/Rev.1 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations). In her request, the Applicant alleged that her FRO had been influenced by her SRO to terminate her appointment.

11. The Applicant was assessed as “Does not meet performance expectations” for the 2023-2024 ePAS cycle.

12. On 17 April 2024, the Applicant was notified of the non-renewal of her FTA in the following terms:

Subsequent to the negative rating given in your e-Performance for 2023 – 24, this is to advise that the decision has been taken by the USG to not renew your fixed-term appointment beyond 30 June 2024 COB.

Should your appointment require an extension beyond this date, it would only be done on a short-term basis for administrative purposes if applicable.

13. The Applicant submitted a rebuttal statement of her 2023-2024 ePAS on 29 April 2024. On 25 June 2024, the Rebuttal Panel upheld the rating of “Does not meet performance expectations”.

14. On 15 August 2024, the Applicant requested management evaluation of the Rebuttal Panel decision. One of the remedies she sought in the management evaluation request was a recommendation for the renewal of her appointment.

15. On 19 September 2024, the Under-Secretary-General for Management Strategy, Policy and Compliance endorsed the recommendations of the Management Advice and Evaluation Section (“MAES”) to uphold the decision not to renew the Applicant’s FTA.

### **Considerations**

16. The threshold issue for determination is whether the non-renewal of the Applicant’s FTA based on her under-performance was lawful. The Applicant argues that the non-renewal was unlawful for the following reasons:

- a. The [second] rebuttal outcome was procedurally and substantively defective because: the Panel confined itself to spelling, formatting, and stylistic matters, ignoring her documented achievements; the Panel failed to address the fact that only 4 out of 11 success criteria were evaluated; and this resulted in a manifestly skewed and unrepresentative decision on her performance.
- b. The Administration failed to accommodate her known medical condition. The FRO and SRO were aware of the Applicant’s condition, yet neither offered structured accommodation nor sought medical advice, thereby setting an unaccommodated workload and rendering the subsequent appraisal inherently flawed despite the fact that the Applicant sought more medical leave which was not granted.
- c. She filed a formal harassment complaint against her SRO on 27 October 2023 but both her SRO and FRO subsequently co-signed her ePAS and participated in the rebuttal proceedings contrary to staff rule 1.2(c) and the principle of apparent impartiality.
- d. The temporal proximity between the harassment complaint and the adverse appraisal creates a presumption of retaliation, and because the non-renewal of her appointment relied solely on the contested appraisal, it was therefore infected by the same procedural defects and bias.

*Applicable Law*

17. The law is very clear that appointments do not carry any legal expectation of renewal. United Nations staff rules 4.12 and 4.13. See also, *inter alia*, Syed 2010- UNAT-061, para. 13; Badawi 2012-UNAT-261, para. 33; Appellee 2013- UNAT-341, para. 16; Hepworth 2015-UNAT-503, para. 42; Munir 2015- UNAT-522, para. 24; Nouinou 2020-UNAT-981, paras. 65-66.

18. However, a decision not to renew an appointment, like any other exercise of discretion by the Secretary-General, must be reached fairly and not in an arbitrary manner. See generally, Barud 2022-UNAT-1204, para. 32. If the reason not to renew an appointment is related to the staff member's poor performance, the Secretary-General has to present a performance-related justification for the non-renewal decision. Almasri 2023-UNAT-1377, para. 70 (citing Ncube 2017- UNAT- 721, para. 17).

Special care must be taken by the United Nations when a staff member's appointment is not renewed based on poor performance, given the implications that such decision might have on the staff member's career. In the review of a non-renewal decision based on poor performance, however, 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 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. *Id.*, para. 71 (citing Sarwar 2017-UNAT-757, para. 74).

The [performance appraisal] process is one method by which the Administration may establish, by following proper procedures, a reasonable performance-related justification for non-renewal decisions. *Id.*, para. 72 (citing Ncube, *op. cit.*, para. 18).

The Tribunal must establish whether the conclusion reached regarding an applicant's performance was not arbitrary but instead objective, fair and well-based. *Id.*, para. 74.

*A) Applicant's contentions that the second rebuttal outcome was procedurally and substantively defective.*

19. In this case, the Applicant requested rebuttals to two consecutive negative ePAS ratings. The first was in respect to the 2022-2023 ePAS cycle where the Applicant was evaluated as "Partially meets expectation".

20. The first Rebuttal Panel decided that the Applicant's overall rating should remain as "Partially meets expectations," having considered both procedural and substantive reasons. The Applicant does not challenge this outcome.

21. The second request for rebuttal was for the 2023-2024 ePAS cycle where the Applicant was evaluated as "Does not meet performance expectations". The Rebuttal Report for this ePAS cycle was finalized on 25 June 2024. Following its deliberations, the second Rebuttal Panel retained the Applicant's overall rating as "Does not meet performance expectations" for the following reasons:

a. The Applicant was aware of the performance standards expected at the beginning of the 2023 to 2024 ePAS cycle. She was given clear goals to achieve building on her previous appraisal in 2022 to 2023. The FRO had regular performance meetings with the Applicant and her lack of performance in key areas was made clear throughout. She was provided with clear advice as to where her performance was lacking and this was seen within her creation of a Standard Operating Procedure ("SOP") and planning of the Audit Retreat in 2024.

b. Remedial measures were put in place by the FRO in the form of an extensive PIP in line with her role but set at a basic level for a G-4 Administrative Assistant to enable her to achieve them. Although the Applicant subsequently felt that the one of the goals of creating an SOP was beyond her role, the Panel was of the view that this was a basic task and easily achievable for her as an Administrative Assistant.

c. The Rebuttal Panel found no evidence to support the Applicant's assertion of bias in the appraisal against her by her FRO and SRO.

d. Remedial actions were put into place to assist the Applicant in improving her performance by way of the PIPs and regular update meetings. She was also encouraged to take available training in LinkedIn, the teammate training and reading of the Audit Manual. The Panel assessed that the goals of this PIP were achievable based on the requirements of the Applicant's role.

e. The Applicant was provided with regular feedback and support to assist her in achieving her PIP goals. She did not meet the goal of creating an SOP by an agreed date of 15 July 2023. The quality of the submissions was once again assessed by the FRO and SRO as not meeting the standards.

22. The Applicant asserts that the second Rebuttal Panel failed to address the fact that only 4 of 11 success criteria were evaluated and that this omission offends the duty to ensure a full and fair consideration of the performance appraisal against agreed, measurable expectations.

23. Section 9.8 of ST/AI/2021/4 requires that a rating of "does not meet performance expectations" should be considered if the staff member did not meet the defined success criteria or performance expectations for the majority of the goals, key results and achievements and demonstrates an inability to develop and apply the required skills or a lack of commitment thereto."

24. Section 15.4 of ST/AI/2021/4 requires a rebuttal panel to prepare, "within 14 days of the review of the case, a brief report setting forth the reasons that the original rating should or should not be maintained. In the event that an overall rating should not be maintained, the rebuttal panel should designate the new rating on the performance evaluation."

25. In this case, to justify maintaining the "does not meet performance expectations" rating, the Rebuttal Panel was required to demonstrate in its report that the Applicant failed to meet the criteria set out in section 9.8 "for the majority of the goals, key results and achievements".

26. The Applicant's assertion that the second Rebuttal Panel failed to address all of the 11 success criteria is misconceived. Her workplan for the 2023-2024

performance cycle had three Goals. Goal 1, “Manage administrative work of the Entebbe office”, had five key success criteria, while both Goal 2, “Support Audit activities” and Goal 3, “Maintain a professional, efficient, and harmonious work environment in the office” each had three success criteria. These are the 11 success criteria she refers to.

27. However, in reviewing her case, the Rebuttal Panel considered, as would be expected, the goals as set out in the Applicant’s PIPs. The first PIP concluded that one goal had not been met and the three other goals were partially met. The second PIP concluded that she had not met the expectations. Additionally, the Applicant agreed that she had not met several of the expectations for reasons that were rejected by the Rebuttal Panel. For example, she felt that writing an SOP for her administrative tasks was beyond her role, but the panel found that “this was a basic task and easily achievable as an Administrative Assistant”.

28. In its report, which is required to be brief, the Rebuttal Panel did not expressly enumerate each of the eleven criteria. Indeed, several of the 11 criterion overlapped as they appeared under more than one goal, such as timely execution of assigned tasks and continuous learning/at least five days of training. Nonetheless, the Rebuttal Panel did effectively address them in the evaluation.

29. In view of the foregoing, the Tribunal finds that contrary to the Applicant’s contentions, the second Rebuttal Panel did not confine itself to spelling, formatting, and stylistic matters only when it determined that her ePAS rating should remain “does not meet performance expectations.” Before arriving at its decision, the second Rebuttal Panel also took into consideration the Applicant’s PIP goals and many other issues as described.

30. The Tribunal finds that the Rebuttal Panel’s decision to maintain the rating “does not meet performance expectations” was consistent with section 9.8 of ST/AI/2021/4.



*B) Alleged failure by the Administration to accommodate the Applicant's known medical condition.*

31. The case record contains the Applicant's medical documentation dated 9 July 2022, her certified sick leave requests for two periods (15 July to 15 August 2022 and 30 August 2022 to 30 September 2022), and a medical referral dated 23 April 2024.

32. According to the Applicant, upon her return from certified sick leave on 30 September 2022, no structured reintegration or workload adjustment was provided, contrary to sections 2.2 and 3.1 of ST/SGB/2019/3 (Flexible working arrangements) and the United Nations Disability Inclusion Strategy. She also argues that the Administration had a duty of care in accordance with staff regulation 1.2(b) and a specific obligation to consult the Medical Services Division ("MSD") prior to the contested decisions.

33. Sections 2.2 and 3.1 of ST/SGB/2019/3 provide:

2.2. Certain components of the flexible working arrangements may be advised by the Medical Director or a duly authorized Medical Officer as being suitable to accommodate medical restrictions or limitations as part of a time-limited return-to-work programme. In line with the general principles of reasonable accommodations for short-term disability, if that advice is rejected, the manager would be required to establish that the requested accommodations represent a disproportionate or undue burden on the workplace.

3.1. Staff members may adjust the start and end times of their working days, provided they work the required number of working hours as promulgated for their duty station and are present during the core working hours established for their duty station. Staff must complete the balance of working hours for each day before, after or partly before and partly after the core period.

Staff regulation 1.2(b) further provides:

1.2(b) Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.

The Applicant does not cite any particular provisions of the United Nations Disability Inclusion Strategy applicable to support her case.

34. A plain reading of section 2.2 of ST/SGB/2019/3 suggests the Medical Director or a duly authorized Medical Officer “may” advise on certain components of the flexible working arrangements.” In the absence of such advice, there is no requirement placed on the manager.

35. In this case, there is no record that the Medical Director or an authorized Medical Officer had imposed any conditions or restrictions on the Applicant’s return to work after her sick leave. Indeed, there is no evidence in the record regarding any need for accommodations of any sort upon the Applicant’s return to work on 30 September 2022. The only relevant medical records before the Tribunal are the results of a Computed Tomography (“CT”) scan on 9 July 2022, which presumably led to her sick leave until 30 September 2022.<sup>1</sup>

36. The Applicant has provided no evidence that she requested and was denied adjustments to her working hours. She has also failed to explain how staff regulation 1.2(b) obligates the Administration to consult the Medical Services Division (“MSD”) before taking the contested decisions.

*C) Participation of the Applicant’s FRO and SRO in her ePAS and rebuttal proceedings.*

37. The Applicant asserts that the involvement of both her FRO and SRO in her performance appraisal and in the rebuttal proceedings is in violation of staff rule 1.2(c) and the principle of impartiality.

38. Section 5 of ST/AI/2021/4 (Performance Management and Development System) (dated 13 August 2021, which was then applicable) required the participation of the Applicant’s FRO and SRO in her performance appraisal. Section 5.2 of the AI provided that “the [FRO] should normally be the supervisor

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<sup>1</sup> The record also contains a referral in April 2024 to a specialist who “will be better place to help”. The record is irrelevant as it post-dates the period in which the Applicant claims that accommodations should have been made.

of the staff member. Under exceptional circumstances, heads of entity may approve, when warranted, a [FRO] who is not the staff member's supervisor, but who is in a position to fulfil the roles and responsibilities of a first reporting officer as outlined in the present instruction."

39. There is no evidence that the Applicant ever requested the head of entity to appoint a different FRO, nor that she requested the head of entity to intervene and mitigate any perceived shortcomings that would affect the fair implementation of her ePAS. To be clear, the "participation" of her FRO and SRO consisted of their being interviewed by the Rebuttal Panel, just as the Applicant herself was interviewed. Thus, the participation of both the FRO and SRO seems appropriate on its face.

40. The Applicant submits that she filed a report of harassment and abuse of authority against her SRO on 27 October 2023. She followed this up on 19 February 2024 with a request for protection against retaliation to the Ethics Office, pursuant to ST/SGB/2017/2/Rev.1. She also claims that the temporal proximity between the harassment complaint and the adverse appraisal creates a presumption of retaliation. She also avers that the FRO and the SRO "collaborated on the PIP evaluations in the same window as the harassment complaint was pending, raising serious concerns of impartiality" and "taints the process with apparent bias."

41. However, the temporal proximity claim ignores the fact that the Applicant's performance shortcomings were identified in early 2023 and resulted in the first PIP on 25 May 2023. The Applicant's report of harassment was filed months later. Thus, rather than creating a presumption of retaliation, the timing contradicts this claim.

42. In further examining this claim, the Tribunal notes that the Applicant's 27 October 2023 complaint arose from an incident when the Applicant allowed a local contractor to access the SRO's office, while the SRO was absent, to inspect an air conditioning. According to the Applicant, when the SRO returned to the office, he was annoyed to see the contractor, whom he later suspected of stealing his wallet from his jacket in the SRO's office.

43. The SRO eventually recovered the missing wallet from another jacket. When that occurred, the SRO apologized to the contractor and convened a meeting with the Applicant and other witnesses to discuss the incident.

44. Regarding the retaliation complaint, Section 7.4 of ST/SGB/2017/2/Rev.1 requires the Ethics Office to complete its preliminary review within 30 days of receiving all information requested concerning a complaint of retaliation. Based on the date of the Applicant's retaliation complaint, the preliminary review should have been completed by 20 March 2024.

45. The case record does not contain any information regarding the outcome of the Applicant's complaint. Nor is there any indication that the complaints, or subsequent actions thereon, were provided to the Rebuttal Panel. MAES observed that it could neither find, nor did the Applicant provide, any evidence of retaliation from her SRO or discrimination beyond her statement that this may have been the motivation. MAES further observed that the Applicant had already been advised by the Office of the Under Secretary-General/OIOS "of the avenues to address the matter, namely the Ethics Office."

46. Similarly, the Applicant has not provided this Tribunal with any evidence to support her implied allegation that the SRO's involvement in appraising her in the 2023–2024 ePAS cycle is an act of retaliation, not even a follow-up email with the Ethics Office. The Applicant's failure to provide this evidence leads the Tribunal to conclude that the Ethics Office found no credible case of retaliation or threat of retaliation.

47. The SRO's apology regarding the contractor/wallet incident and the lack of any evidence regarding the Ethics Office preliminary review strongly support the conclusion that the SRO's involvement in the Applicant's 2023-2024 ePAS evaluation and in providing his comments to the second Rebuttal Panel was not tainted by ulterior motives.

48. The Applicant also avers that "the FRO's own meeting notes show sustained criticism of the Applicant's character (accusations of "lack of integrity",

“untrustworthiness”, “assassination of character”), which are irrelevant to performance, and indicate retaliatory tone.”

49. This allegation is contradicted by the second Rebuttal Panel’s Report which includes an exhaustive description of the FRO’s attempts to assist the Applicant improve her performance. In this regard, it must be remembered that the Rebuttal Panel independently reviewed the FRO’s and SRO’s evaluations of the Applicant’s performance. As such, the Rebuttal Panel acted as an additional safeguard, and there is no evidence that the Applicant raised concerns about the composition of the Rebuttal Panel.

50. The Tribunal finds that the Applicant’s contentions about the involvement of her FRO and SRO in her performance appraisal and the rebuttal proceedings are unsupported and did not violate the applicable Staff Regulations and Rules.

51. In sum, the Applicant has failed to meet her burden to show that the decision was unfair or arbitrary.

### **Conclusion**

52. In view of the foregoing, the Tribunal rejects the application in its entirety.

*(Signed)*

Judge Sean Wallace

Dated this 24<sup>th</sup> day of November 2025

Entered in the Register on this 24<sup>th</sup> day of November 2025

*(Signed)*

Wanda L. Carter, Registrar, Nairobi