



UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NBI/2024/078
Judgment No.:	UNDT/2025/110
Date:	15 December 2025
Original:	English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

NASSER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Maître Maximilian Girod-Laine

Counsel for Respondent:

Jérôme Blanchard, UNOG

Introduction

1. The Applicant is a staff member with the Office of the United Nations High Commissioner for Human Rights (“OHCHR”) who contests the imposition of a three-month performance improvement plan (PIP); modification of her contractual terms of reference, including withdrawal of supervisory functions; non-renewal of her fixed term appointment (FTA); reassignment to an advisory role before completion of the PIP; and transfer to the Nairobi Office.
2. The Respondent filed a timely reply to the application; and the Applicant filed a rejoinder to the reply.
3. The Applicant subsequently filed a motion requesting that certain annexes to her rejoinder be treated as confidential. By Order No. 208 (NBI/2025), the Tribunal indicated that it would rule on the motion as part of its judgment, which is done under the Considerations heading of this judgment.
4. Both parties were afforded the opportunity to file closing submissions and did as much. Thus, the case is ready for adjudication.

Facts

5. The Applicant joined the Office of the High Commissioner for Human Rights (OHCHR) on 26 April 2021. On 31 July 2021, she was deployed to Sudan as a Human Rights Officer and Head of the Darfur Sub-Office. Her duty station was El Fasher, North Darfur.
6. On 15 April 2023, armed conflict broke out in Sudan, resulting in evacuation of international staff. At the time, the Applicant was on annual leave in Lebanon, her place of Home Leave, so she began to work remotely from there. A decision was made to relocate the Sudan Country Office to Nairobi, Kenya, and on 20 September 2023, all international staff were told they must relocate to Nairobi. The Applicant request addition time to relocate, and her relocation was deferred until mid-May 2024. However, the Applicant never relocated to Nairobi.

7. The Applicant alleges that she was subjected to a hostile work environment by several male colleagues beginning in 2023. According to her, this escalated following her report of a mass grave in West Darfur in July 2023.

8. On 6 August 2023, the Applicant says she was verbally challenged by a former supervisee. She reported the incident to her supervisors on 10 August 2023.

9. Between August and October 2023, the Applicant submitted multiple complaints regarding what she described as offensive conduct by colleagues. On 4 October 2023, she requested a formal investigation into “serious accusations” levelled against her by three different supervisees. On 22 October 2023, she reported a further incident of misconduct by another supervisee.

10. On 24 October 2023, the Applicant informed her supervisors that she did “not feel safe working in an office where there is an environment of impunity for staff members who launch barrages of attacks” on her and requested to undertake only “simple tasks”. Her supervisors acknowledged her email and empathised. The Applicant took certified sick leave between 20 November and 4 December 2023.

11. On 3 December 2023, the Head of Office wrote to the Applicant describing her understanding that during the 6 August meeting the Applicant’s first reporting officer (FRO), who was chairing the meeting, intervened with the offending supervisee at the time. The Head of Office then advised that if the Applicant wanted further action to be taken, she should look at the options listed in an attached Secretary-General’s Bulletin (SGB) and discuss it with a designated legal officer.

12. Regarding the 22 October 2023 incident, the Head of Office told the Applicant that she had spoken with the offender several times, as had another supervisor. As a result, the offender would be removed from the Applicant’s team “while reiterating to him the concerns raised by his emails to you.” Again, the Head of Office reiterated that, if the Applicant would like additional action to be taken, she should look at the options in the SGB and speak with the legal officer.

13. Finally, the Head of Office referred to their discussions about flexible working arrangements (FWA). She reminded the Applicant that FWA was only available for six months and that all international staff working remotely would need to report to a duty station by mid-April. Most staff would be working from Nairobi, but there was a possibility that the Applicant may be able to work from Chad.

14. On 20 February 2024, the Applicant's former FRO instructed staff to complete workplans for the 2023/2024 performance cycle, which had been disrupted by the conflict. He also advised that staff contracts would only be extended pending completion of a successful evaluation.

15. In March 2024, two additional supervisees raised concerns about the Applicant's management of the team and the workplace environment. As a result, the Applicant's new FRO discussed the possibility of her heading a newly created unit. The Applicant said she was open to the possibility and requested the terms of reference (TOR).

16. On 24 April 2024, the Applicant met with her second reporting officer (SRO) and her former FRO to discuss her performance. She was told that she had shortcomings related to three competencies: accountability, teamwork and communication. Thus, a Performance Improvement Plan (PIP) would be put in place, and her performance cycle would be extended to 30 July 2024 to allow for the PIP to be completed. Simultaneously, she would be assigned new functions, as discussed with her current FRO, and laterally transferred to a new position with advisory rather than supervisory responsibilities. According to the Respondent, the Applicant agreed to the transfer and new functions. Finally, the need for her to arrive at the Nairobi duty station by mid-May was discussed, "noting that all other international staff were asked to return by 15 April."

17. The transfer was approved by the Sudan Country Office of 30 April 2024 and on 8 May 2024, OHCHR Human Resources (HR) sent the Applicant a formal transfer notification letter. In response to the Applicant's inquiries, HR confirmed on that day, and twice more over the next three weeks, that the transfer would not

affect the Applicant's appointment. On 17 May 2024, the Applicant's FRO sent her the approved terms of reference for the new policy and research position. Despite repeated requests, apparently the Applicant never accepted the transfer in the Inspira system.

18. Meanwhile, a draft PIP was sent to the Applicant on 3 May 2024, along with a request for her comments. The Applicant demanded specific examples of her shortcomings and blamed any shortcomings on her colleagues' behaviour. The Administration provided, as an example, the Applicant's refusal to follow an instruction involving a staff member she alleged had treated her offensively.

19. On 28 May 2024, following inquiries from the Applicant, a legal officer at HR confirmed "the PIP was a way to address performance shortcomings, another way to address your performance shortcoming was to move you to a different position with no supervisory functions given that you had faced challenges with supervisees in the past."

20. The Applicant went on extended certified sick leave from 3 June 2024. This caused the PIP to be further suspended and then her FTA to be extended. In the end, the Applicant never reported for duty.

Applicant's Submissions

21. The Applicant submits that the impugned decisions were unlawful, tainted by procedural irregularities, and motivated by improper considerations. According to her, she was subjected to a hostile work environment and harassment by several colleagues from 2021 to 2024. She claims that she repeatedly informed her supervisors, but management failed to take timely or adequate remedial action, thereby breaching the Organization's duty of care.

22. The Applicant submits that the performance management process was irregular from the outset. There were no “milestone discussions” during the relevant performance cycle, retroactive workplans were imposed only in February 2024 after the conflict had disrupted normal procedures, and the decision to extend the 2023/2024 performance cycle past 31 March 2024 was contrary to ST/AI/2021/4. She further contends that her e-PAS was completed by individuals who were not her legitimate reporting officers.

23. The Applicant argues that the imposition of the PIP was unlawful and constituted an abuse of authority. She notes that the PIP was introduced after the original performance cycle had ended, lasted less than the minimum period required, did not address the managerial issues alleged against her, and required interaction with colleagues despite medical instructions recommending restricted engagement. She maintains that she was never informed of any performance shortcomings prior to 24 April 2024. The Applicant claims that she completed the PIP and contends that reference to the PIP in her performance evaluation adversely affects her professional prospects.

24. The Applicant submits that the reassignment decision and the withdrawal of her supervisory functions amounted to a functional demotion with unclear terms of reference. She claims that the sudden change in her functions caused further anxiety, exacerbated her health issues, and interrupted her career progression. She also says that the Respondent’s rationale for her reassignment - from performance shortcomings to conflict mitigation - demonstrates improper motives and irregularity in the decision-making process.

25. The Applicant maintains that the Respondent failed to take her health condition into account, including certified medical documentation evidencing anxiety, depression, and work-related stress. She asserts that management acted inconsistently and without regard for medical advice, including by directing her to relocate to Nairobi, at short notice, despite earlier discussions about her need to be geographically separated from certain colleagues.

26. The Applicant submits that the Respondent mischaracterised her conduct by alleging unavailability, refusal to carry out assignments, and absenteeism, and that these claims are contradicted by documentary and audio evidence. She maintains that these mischaracterisations formed part of a pattern of retaliation.

Respondent's Submissions

27. The Respondent submits that the Tribunal should find the PIP portion of the application not receivable as it does not constitute an appealable administrative decision within the meaning of article 2(1)(a) of the UNDT Statute.

28. The decision to place the Applicant on a PIP, was a preliminary step instituted to address her performance shortcomings during a performance cycle. The implementation of a PIP does not produce direct legal consequences on the staff member's terms of appointment and cannot therefore be reviewed by the Tribunal.

29. As far as the non-renewal is concerned, the Applicant's appointment has since been extended until 31 March 2026. This development renders the Applicant's challenge to the putative non-renewal moot.

30. The Respondent maintains that all administrative actions contested by the Applicant were a lawful and proper exercise of the Secretary-General's broad discretionary authority to assign and reassign staff members in the interest of the Organization.

31. The Applicant bears the burden of proof to rebut the presumption of regularity, which burden she has failed to meet. To succeed, the Applicant must demonstrate that the contested decisions were procedurally flawed, tainted by extraneous factors, or were otherwise arbitrary or unreasonable. The medical evidence submitted by the Applicant is deficient as it is insufficient to discharge the evidentiary burden and, in some instances, demonstrates conditions which existed prior to the contested administrative actions, thereby failing to establish causality.

32. The Respondent asserts that all procedural steps mandated by the relevant administrative issuances regarding performance management and staff assignment were duly complied with, and the Applicant was afforded due process throughout the administrative process.

Considerations

Applicant's motion for confidentiality

33. Initially, the Tribunal will consider the Applicant's motion that certain annexes submitted with her rejoinder be treated as confidential. These documents consist of medical records of the Applicant and her child. The motion indicates that these annexes were originally submitted without an *ex parte* designation, and the Applicant requests the Tribunal to order the Respondent to treat them as *ex parte*. The motion references their right to privacy, dignity, and protection of vulnerable persons.

34. Having read the motion and the annexes at issue, along with the entirety of the case, the Tribunal finds that there is no reason to describe these documents in any greater detail in this judgment and no reason for the Respondent to share these details beyond counsel. Accordingly, the motion shall be granted.

Standard of Review and Burden of Proof

35. In reviewing the Secretary-General's exercise of discretion in this matter, the Tribunal is to follow the well-established standard of review as provided in *Sanwidi* 2010-UNAT-084, para. 40:

When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters

have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

36. The presumption of regularity has been recognised in UNAT's jurisprudence as applicable to the Respondent's decision making. As a result, the Respondent has a minimal burden of proof to justify a contested administrative action or decision. Once that minimal burden is discharged, the burden remains with the staff member to prove that the actions of the Respondent were unlawful or unjust. This must be done by clear and convincing evidence (*Rolland* 2011-UNAT-122).

The Performance Improvement Plan (PIP)

37. The record indicates that, late in the performance cycle, the Administration received complaints from two of the Applicant's supervisees regarding her mismanagement of the Darfur team including an unhealthy and offensive work environment. Additionally, it appears that the Applicant had not completed some of her responsibilities, including the performance appraisals for her team members and an overdue report.

38. Theoretically, the Administration could have closed the performance cycle and included these matters in her rating. However, based on advice from OHCHR HR, the 2023-2024 performance cycle was extended until the end of July, due to disruption in the Sudan Country Office operations, including a pending management transition and changing supervisors. This extension worked to the Applicant's advantage. The end of cycle meeting was treated as a benchmark discussion, remedial measures were set out (including the removal of supervisory responsibilities), the Applicant was given additional time to complete her assigned responsibilities and address her performance shortcomings. As such, her claims seem to be unfounded.

39. More importantly, the Tribunal recalls that, under article 2(1)(a) of its Statute, only an administrative decision producing direct legal consequences affecting a staff member's terms of appointment or contract of employment is subject to judicial review.

40. The consistent jurisprudence of the Appeals Tribunal establishes that the placement of a staff member on a Performance Improvement Plan (PIP) is not an appealable administrative decision. In *Gnassou* 2018-UNAT-865 at para. 31, the Appeals Tribunal held that "the PIP is merely a preliminary step instituted to address a staff member's shortcomings during a performance cycle [...] which may ultimately lead to a reviewable final administrative decision. [S]uch preliminary steps or actions are not administrative decisions subject to appeal." See also *Nguyen-Kropp & Postica* 2015-UNAT-509, para. 34; *Ishak* 2011-UNAT-152, para. 29, and *Dragnea* UNDT/2022/088.

41. In this case, the Applicant challenges (i) the decision to place her on a PIP, and (ii) alleged irregularities, delays or deficiencies in its application. However, no final administrative decision was taken on the basis of the PIP. The Applicant's fixed-term appointment was extended repeatedly to allow completion of the PIP, and there was no non-renewal, withholding of benefits, or other adverse action flowing from it. Indeed, it appears from the record that the Applicant's appointment is not due to expire until March 2026.

42. The Applicant's challenge to the PIP and to alleged irregularities in its administration is therefore not receivable.

Reassignment and modification of functions

43. The Applicant challenges her reassignment to a different P-4 position within the Sudan Country Office, the withdrawal of supervisory responsibilities, and her relocation to Nairobi.

44. Staff regulation 1.2(c) provides that staff are subject to the authority of the Secretary-General and may be assigned to any of the Organization's activities. The jurisprudence affirms that the Administration enjoys broad discretion in assigning functions and reassigning staff. (See *Chemingui* 2019-UNAT-930; *Silva* 2022- UNAT-1223.)

45. In *Abbas Abbas Koura* 2024-UNAT-1486, the Appeals Tribunal restated its guidance on the breadth of the Secretary General's discretion as follows:

44. [I]t is the settled jurisprudence of this Tribunal, that the Administration has broad discretion to reorganize its operations and departments to adapt to its economic vagaries and challenges. In taking a decision, the Administration is under a duty to act fairly, justly and transparently, and is not to be motivated by bias, prejudice or improper motive. There exists a presumption of regularity in respect of administrative acts, with it falling to the employee to rebut that presumption.

48. In deciding whether a staff member has suffered discrimination or been treated in a discriminatory manner, it falls to the UNDT to consider whether, considered objectively, that person has been treated differently to another in a way that is unfair and unwarranted, has the potential to impair their dignity as a person or affect them adversely in a comparably serious manner. For conduct to have been prejudicial to a staff member it must be shown to have been harmful to them in circumstances in which this was unfair and unwarranted.

46. With regard to the relocation to Nairobi, that decision was not directed at the Applicant. The entire Sudan Country Office was relocated when war broke out in Sudan in April 2023. All international staff were evacuated and told to work remotely until an alternate location the Sudan Country Office was relocated. Once Nairobi was identified as the alternate location, the Administration called all of its international staff back to work at the new location. That decision is patently lawful.

47. Regarding the transfer to a newly created post, the Respondent submits, and the record supports, that the reassignment was taken against a background of ongoing interpersonal tensions between the Applicant and her team supervisees,

concerns raised by and against the Applicant, and a need to stabilise the work environment. The Appeals Tribunal has held that maintaining a harmonious work environment constitutes a legitimate operational reason for reassignment. *Humackic* 2024-UNAT-1470, para. 53.

48. The record shows that the Applicant “acknowledged that she was ready to move on from her current functions and open to a lateral move but wished to see what the TORs for her new assignment were.” When the new TORs were shared with her, the Applicant complained that “the assigned tasks were below the responsibilities of a P-4 position and included the removal of her supervisory duties. However, as described this was “another way to address your performance shortcoming was to move you to a different position with no supervisory functions given that you had faced challenges with supervisees in the past.” It was repeatedly made clear to the Applicant that this reassignment was within the same office, at the same grade, to functions commensurate with her skills, so that the conditions of her employment, grade and salary remained unaffected. The record shows that the Administration repeatedly reassured her that this was the case.

49. The Tribunal is not satisfied, on the record before it, that the transfer decisions were motivated by prejudice, retaliation, or extraneous considerations. To the contrary, the reassignment decision was clearly made to accommodate the Applicant in light the bad working environment of her team.

50. The Tribunal therefore finds that the reassignment and related decisions were lawful exercises of managerial discretion and are not unlawful.

Alleged non-renewal of contract

51. The Applicant also challenges what she characterizes as a non-renewal or anticipated non-renewal of her appointment.

52. The Respondent has shown, and the record confirms, that the Applicant’s fixed-term appointment was renewed multiple times, including through 31 March 2026. No decision not to renew the appointment was taken.

53. Regarding any anticipated non-renewal in the future, the Appeals Tribunal was clear in *O'Brien* 2023-UNAT-1313 at para. 30:

Before an administrative decision can be held to be in non-compliance with the contract of employment of a staff member, it must be shown to adversely affect the rights or expectations of the staff member and have a direct legal effect. The impact or consequences of a disputed decision must be based on objective elements that both parties can accurately determine. **Speculation about potential future possible consequences for a staff member's employment record or his reputation is an insufficient basis to conclude that a decision has had (not "may have") a direct and adverse impact** such as to be "in non-compliance with the terms of appointment or contract of employment" as contemplated in Article 2(1)(a) of the UNDT Statute. [Emphasis added]

54. Therefore, this portion of the application therefore merits no further consideration.

Claims relating to performance evaluation, interpersonal conflict and workplace structure

55. The Applicant raises a number of issues concerning: interpersonal conflicts with colleagues; reporting lines and internal team structure; perceived hostility or lack of managerial support; and various disagreements occurring within the course of daily operations.

56. The Tribunal notes that despite being repeatedly made aware of the existence of ST/SGB/2019/8 on *Addressing harassment, including sexual harassment, discrimination and abuse of authority*, the Applicant appears to have chosen not make use of that mechanism. Section 5.4 of the Bulletin mandates an investigation where such a report of prohibited conduct is made: "If a report of possible prohibited conduct is made to the responsible official, the responsible official *shall forward the report of possible prohibited conduct to OIOS* and acknowledge receipt of the report." [Emphasis added.]

57. The Appeals Tribunal *Pierre* 2022-UNAT-1303 at para 36 stated:

While it was underscored in *Messinger* that the Dispute Tribunal can examine harassment allegations if they are relevant background information in determining whether an impugned administrative decision was motivated by ill-will, the important precursor to any such exercise of jurisdiction remains the existence of an “administrative decision.”

58. Regardless of the genesis of these issues,¹ the Applicant has not demonstrated that these matters produced direct legal consequences affecting the terms or conditions of her appointment. They therefore fall outside the Tribunal’s jurisdiction and, in any event, cannot support a finding of unlawfulness in the reassignment or other contested measures.

Conclusion

59. The application is DISMISSED.

(Signed)

Judge Sean Wallace

Dated this 15th day of December 2025

Entered in the Register on this 15th day of December 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi

¹ The record is replete with emails from various people in the Administration correcting the Applicant’s “misunderstandings.” The Tribunal concludes that the Applicant is, at best a poor historian of the facts. Accordingly, the Tribunal gives no weight to her factual assertions.