



1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Tariq Osman against Judgment No. UNDT/2 012/057, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 19 April 2012. Mr. Osman appealed on 14 June 2012, and the Secretary-General filed his answer on 21 August 2012.

Facts and Procedure

2. The following facts are uncontested:<sup>1</sup>

... The Applicant joined the United Nations in October 1991. He served in various peacekeeping missions and, on 19 February 2007, started serving at UNAMI [United Nations Assistance Mission for Iraq], as a Fuel Supply Assistant at the FS-3 level under a fixed-term appointment. His contract, which was initially for six months, was renewed on several occasions.

... On 19 March 2008, a performance improvement plan was made for the Applicant.

... By memorandum dated 20 October 2008, the Chief of Mission Support, UNAMI, informed the Applicant that his function was being abolished in the budget for 2009 and that he would be reassigned, together with his post, to the Movement Control Unit, in Baghdad, Iraq.

... On 28 August 2008, another performance improvement plan was prepared for the Applicant.

... On 9 December 2008, the Applicant's supervisor sent him an email raising shortcomings in his performance. In addition, the Applicant's team leader recorded in an email dated 27 January 2009 that his performance for the previous three months had been inadequate. In a memorandum dated 29 January 2009, the Administration noted that the Applicant had acknowledged his shortfalls and showed interest in being part of the team. On 17 March 2009, a performance improvement plan was again put into place for the Applicant.

... In accordance with the rotation plan for April 2009 of the Baghdad International Airport, where the Applicant was discharging his duties, he was due to leave Iraq for rest and recreation ("R&R") in the second half of the month, with a

return date on 30 April 2009. On 14 April 2009, the Applicant made a request through the matrix system for R&R from 23 to 30 April 2009 and annual leave from 1 to 4 May 2009.

... This request was approved by the Applicant's direct supervisor, but refused, on 15 April 2009, by his second reporting officer, i.e., the Chief Aviation Officer, on the ground that the Applicant was required to make progress on his special performance monitoring and associated training programme.

... The Applicant wrote to the Chief Aviation Officer stressing that he had requested annual leave in order to attend to his mother, who was in a serious medical condition. In reply, the Chief Aviation Officer reiterated, on 16 April 2009, that he would not approve the leave request as submitted, while stating that the Applicant would receive full cooperation if he wished to use some of the uncertified sick leave balance available for compassionate purposes, as provided for in former staff rule 106.2(c). He advised the Applicant to consult with the Human Resources Section for this matter.

... The Applicant did not do so; he took his leave as planned, with the concurrence of his first reporting officer. He decided to relocate his mother to Karthoum on 23 April 2009, after she had spent two months in Amman awaiting to undergo surgery. The Applicant returned to work on 5 May 2009.

... On 25 May 2009, the Applicant was called to Kuwait by his supervisor to discuss his performance. On the same date, his e-PAS for the period 2007-2008 was finalized, rating his performance as "partially meets performance expectations", and on the following days some discussions took place between the Applicant and his hierarchy on performance matters. He returned to Baghdad on 31 May.

... On 3 June 2009, the Chief Aviation Officer informed the Applicant that he would be transferred to Kuwait. On 7 June, he travelled to Amman for his last R&R.

... The Applicant was informed, by memorandum from the Chief of Mission Support, dated 9 June 2009, that his contract, which was to expire on 18 July 2009, would not be extended due to unsatisfactory performance. It was pointed out that efforts had been exerted to absorb the Applicant after his initial post had been declared redundant, but he had not cooperated to perform satisfactorily.

... The Applicant's mother died on 14 June 2009. As he learnt it upon his arrival to Kuwait on 15 June, he intended to obtain uncertified sick leave for family-related emergencies in order to travel for the burial; however, he could not travel as his passport had expired and he had to wait until 21 June for it to be renewed. He was on

**THE UNITED NATIONS APPEALS TRIBUNAL**

Judgment No. 2013-UNAT-301

... On 17 September 2009, the same panel issued the final report on the Applicant's rebuttal of his 2008-2009 e-PAS, which stressed that the Applicant had benefited from performance improvement plans in a timely manner for the reporting period, as well as from support and guidance by both his first and second reporting officers; it concluded that the Applicant should have been reasonably aware of what was expected from him in terms of performance. The rating "partially meets performance expectations" was maintained.

... By letter dated 5 October 2009, the Applicant was notified of the result of the management evaluation concerning the non-renewal decision, i.e., that his request had become moot in view of the successive renewals of his appointment.

... By memorandum dated 6 October 2009 from the Officer-in-Charge of Mission Support, the Applicant was reassigned back to his initial functions as Fuel Supply Assistant effective 11 October 2009, and for that purpose a post was loaned from

Special Representative of the Secretary-General for Iraq was unreasonable or made without due inquiry into, and consideration of, all relevant facts.

... On 30 August 2010, the Applicant lodged a request for management evaluation of the rejection of his two requests for formal investigation into his allegations of harassment. As communicated to the Applicant by letter of

5. Mr. Osman submits that the non-renewal decision was taken before the rebuttal process had been completed and in the absence of any performance evaluation for the period immediately preceding said decision. These procedural irregularities call into question the Organization's motive behind the decision not to renew his appointment.

6. Mr. Osman contends that the UNDT misinterpreted several facts and, as a consequence, erred in finding that the Chief Aviation Officer'

**THE UNITED NATIONS A**



**T**

20. It was not necessary for the UNDT to consider the significance of Mr. Osman not receiving an ePAS for 2009-2010. In considering Mr. Osman's claim of harassment by not having his appointment renewed in June 2009, the UNDT Judge examined the history of his work performance, including his ePAS for 2007-2008 and 2008-2009. The UNDT Judge found "no indication that the non-renewal decision was an act of harassment against the Applicant; all the more since the Applicant was finally kept employed and once the said shortcomings were

not favourable to the Applicant; yet they are not to be regarded as arbitrary or unreasonable. Others, on the contrary, showed a true intention to accommodate the Applicant's interest and preferences, like his third and last reassignment or the advice that he take uncertified sick leave to stay in Amman at the beginning of May 2009. In any case, the behaviours at stake do not point to any kind of prohibited conduct in the sense of ST/SGB/2008/5.

24. Mr. Osman challenges the UNDT's finding in respect of the advice given to him to take uncertified sick leave. He claims that the UNDT erred on a question of law by misunderstanding the policy for the use of uncertified sick leave and how it applied in the present case. He argues that "[w]hile one can use uncertified sick leave for family emergencies, the rules for uncertified sick leave still apply excluding its use for more than 2 consecutive days".

25. There is no merit in Mr. Osman's submission. The UNDT Judge made no error in determining that the use of uncertified sick leave was governed by former Staff Rule 106.2, which was applicable at the time. The Rule provides as follows:

Uncertified sick leave:

c) A staff member may take uncertified sick leave of not more than three consecutive working days at a time, for up to seven working days in an annual cycle starting 1 April of each year, when incapacitated for the performance of his or her duties by illness or injury. Part or all of this entitlement may be used to attend to family-related emergencies, in which case the limitation of three consecutive working days shall not apply. (Emphasis added).

26. The UNDT Judge's findings that the advice given to Mr. Osman by his second reporting officer regarding uncertified sick leave was correct, and that it was Mr. Osman's choice not to take advantage of that advice cannot be faulted. The Judge correctly pointed out that "former staff rule 106.2(c) does provide for the use of the uncertified sick leave entitlement 'to attend to family-related emergencies' ". The Judge did not err on a question of law.

27. Mr. Osman's allegation that the decision not to approve his annual leave request was "arbitrary and capricious" has no foundation whatsoever. This issue was dealt with thoroughly by the UNDT Judge who, in our view, came to the correct conclusion that "this incident does not yield any sign of bad faith or harmful intention on the part of the Applicant's second reporting officer". Mr. Osman now claims that the Officer concerned was not one of his designated reporting officers. He contradicts himself here, because his appeal annexes a document signed

**THE UNITED NATIONS APPEALS TRIBUNAL**

Original and Authoritative Version: English

Dated this 28th day of March 2013 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Faherty

Entered in the Register on this 24<sup>th</sup> day of May 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar