

**UNITED NATIONS APPEALS TRIBUNAL**  
**TRIBUNAL D'APPEL DES NATIONS UNIES**





intended to proceed, based on the Management Evaluation Unit and the Tribunal's finding that ST/AI/2010/5 was applicable.

... On 31 December 2011, the Applicant was separated from service.

... On 3 January 2012, the Applicant's supervisor transmitted to the Applicant his completed PAS for the period 1 April to 31 December 2011, giving an overall rating of "partially meets performance expectations". The supervisor signed the document on 3 January 2012; he signed it twice, as he was acting as first as well as second reporting officer. The Applicant signed the PAS on the same date, with no comments.

... On 15 January 2012, the Applicant submitted to the Director, Division for Management, UNODC, a rebuttal statement in relation to his performance appraisal for the period 1 April to 31 December 2011.

...

... On 17 April 2013, [the Human Resources Management Service (HRMS)] informed the Applicant that a new rebuttal panel list ("the new list") had been issued upon expiry of the term of the previous one and that another panellist would be promoted to the D-2 level effective 1 May 2013. The new list was attached. The next day, the Applicant wrote back asking HRMS to elaborate on what he should do to rebut his 2011 PAS in compliance with the applicable rules, and to identify the legal basis for its advice.

... On 22 April 2013, HRMS recalled its previous advice and stated that the Applicant could choose the three panel members from the new list. [...]

... On 25 May 2013, after receiving the aforementioned UNAT Judgment, the Applicant selected three staff members from the new list to sit on his panel, and requested that his interview be conducted in French.

... After the nominated panellists confirmed their availability, on 30 May 2013, the rebuttal statement was officially transmitted to the reporting officer for reply; he submitted it on the same day explaining that he had prepared the reply—dated 27 January 2012—upon first receiving the rebuttal statement ... On 31 May 2013, HRMS transmitted the written reply and related documentation to the panel and to the Applicant.

... The panel met on 18 June 2013. It interviewed the Applicant on 20 June 2013, in French, and requested additional documentation from HRMS. On 21 June 2013, the first (and also second) reporting officer was interviewed, in English.

... In response to an HRMS inquiry on the progress made, the Chairman of the panel provided reasons, on 21 August 2013, for the time taken to finalise the review, assuring that the case had taken a great deal of attention on the part of the panel.

... After further deliberations in written form, the panel drafted its final report, dated 22 September 2013, and transmitted it to HRMS and the Director, Division for Management, UNOV/UNODC, on 6 October 2013. HRMS transmitted the report to the Applicant on 7 October 2013.

... The Applicant filed [an] application [with the UNDT] on 5 November 2013 and the Respondent filed his reply on 9 December 2013.

4. On 20 February 2015, the UNDT issued Judgment No. UNDT/2015/019, in which it determined that Mr. Gehr's application challenging his performance evaluation for the period of 1 April through 31 December 2011, was receivable despite Mr. Gehr's failure to seek management evaluation. The UNDT rescinded Mr. Gehr's performance appraisal for the period of 1 April 2011, to 31 December 2011, and ordered that its Judgment be placed in his Official Status File.

5. On 17 April 2015, the Secretary-General appealed the Judgment to the Appeals Tribunal. On the same date, the Registry served the appeal on Mr. Gehr, at his e-mail address of record, and advised him that he had 60 days to file an answer. Mr. Gehr did not file an answer.

### **Submissions**

#### **The Secretary-General's Appeal**

6. The UNDT erred in examining the merits of Mr. Gehr's application challenging his 2011 performance evaluation. The application was not receivable as Mr. Gehr had not requested management evaluation. Despite acknowledging that a rebuttal panel is not a technical body, and did not fall within an exception to the management evaluation requirement, the UNDT examined the merits of the application "on the basis that [Mr. Gehr] could have relied on the UNDT's position [in a prior case] that the rebuttal panel was a technical body for the purpose of the exception to the prerequisite of a management evaluation request".

7. The UNDT Judgment is contrary to Staff Rule 11.2(a), and the UNDT does not have the competence to set aside the mandatory prerequisite of seeking management evaluation and to receive an application without a prior management evaluation request having been submitted.



12. “Management evaluation is to afford the Administration the opportunity to correct any errors in an administrative decision so that judicial review of the administrative decision is not necessary.”<sup>4</sup> The Appeals Tribunal has reiterated this view repeatedly over the years, emphasizing that in order for management eval

15. Second, the Dispute Tribunal also erred by waiving the management evaluation requirement.<sup>8</sup> Even if Mr. Gehr mistakenly believed, for whatever reason, that he was not required to seek management evaluation of the cl

Dated this 24<sup>th</sup> day of March 2016 in New York, United States.

*(Signed)*

Judge Chapman, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Simón

Entered in the Register on this 13<sup>th</sup> day of May 2016 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar