



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

Case No. 2010-132



**Basenko
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

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|---------------|---|
| Before: | Judge Jean Courtial, Presiding Judge Mark P. Painter Judge Mary Faherty |
| Judgment No.: | 2011-UNAT-139 |
| Date: | 8 July 2011 |
| Registrar: | Weicheng Lin |

Counsel for Appellant: Self-represented

Counsel for Respondent: Cristián Gimenez Corte

JUDGE JEAN COURTIAL, Presiding.

Synopsis

1. The United Nations Dispute Tribunal (UNDT) did not err in law in finding that, pursuant to articles 2.1 and 3.1 of its Statute, it was not competent to rule on the application by an intern against a decision to withdraw an offer of internship.

Facts and procedure

2. Karina Basenko began an unpaid internship with the United Nations Office on Drugs and Crime (UNODC) on 2 February 2009. The internship, which was expected to last six months, was interrupted by mutual consent owing to a conflict between the intern and her supervisor.

3. The following day, 14 May 2009, the Division of Management of the United Nations Office at Vienna (UNOV) made an offer to Ms. Basenko, which she immediately accepted, that she complete her internship with the International Trade Law Division from 1 October to 27 November 2009. This offer was withdrawn, however, on 9 September 2009 on the grounds that the appellant had made unauthorized use of her grounds pass after the interruption of her internship.

4. After a number of attempts to resolve the matter with officials of UNOV and subsequently with the Mediation Division, Ms. Basenko submitted a formal appeal to the International Labour Organization Administrative Tribunal (ILOAT). The ILOAT registrar redirected the claim to the UNDT, which, in turn, informed the applicant that she should submit a request for management evaluation. Following that management evaluation, the decision to withdraw the internship offer was upheld.

5. On 27 May 2010, Ms. Basenko filed an appeal against the decision with the UNDT, which rejected her application in its Judgment No. UNDT/2010/145, handed down on 13 August 2010. The UNDT noted that the applicant was neither a current nor a former staff member of the United Nations and that, pursuant to the provisions of Article 3.1 of its Statute, it was therefore not competent to hear her application.

6. Ms. Basenko filed an appeal against the judgment.

Submissions

Basenko's appeal

7. Ms. Basenko submits that, by refusing to consider the merits of her application, the UNDT breached her fundamental rights guaranteed by international law. She is claiming the payment of 17,080.36 euros in compensation for losses incurred due to the withdrawal of the internship offer.

The Secretary-General's answer

8. The Secretary-General answers that the UNDT did not err in finding that it was not competent to rule on an application submitted by a former intern. He requests the Tribunal to reject the appeal in its entirety.

Considerations

9. The UNDT judge did not err on the question of its competence in finding that, pursuant to Articles 2.1 and 3.1 of the Tribunal's Statute, it was limited to cases brought by staff members, former staff members or persons making claims in the name of incapacitated or deceased staff members of the United Nations.

10. In accordance with the purpose clearly enunciated by the General Assembly in paragraph 7 of its resolution 63/253 on the administration of justice at the United Nations, interns do not, as a rule, have access to the UNDT.

11. Even though, in its Judgment *Gabaldon*,¹ this Tribunal recognized that access to the new system of administration of justice could be extended to persons who are not formally staff members but who could legitimately be entitled to rights similar to those of a staff member, in the reasoning for the judgment it explained that the exception, which was based on the fundamental principle of right to an effective remedy enshrined in article 8 of the Universal Declaration of Human Rights, must be understood in a restrictive sense.

¹ *Gabaldon v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-120.

12. In the present case, not only is the appellant an intern, there is also no evidence that any fundamental right has been breached. A dispute arising from the simple withdrawal of an internship offer is not within the competence of the UNDT.

Judgment

13. Ms. Basenko's appeal is rejected.

Original and Authoritative version: French

Dated this 8th day of July 2011 in Geneva, Switzerland.

(Signed)

Judge Courtial, Presiding

(Signed)

Judge Painter

(Signed)

Judge Faherty

Entered in the Register on this 29th day of August 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar