



Before: Judge Thomas Laker

Registry: Geneva

Registrar: Víctor Rodríguez

GONZALEZ-RUIZ

APPLICANT 1

BUSCAGLIA

APPLICANT 2

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant 1:

None

Counsel for Applicant 2:

Winston Sims

Counsel for Respondent:

Linda Starodub, UNODC

Notice: The format of this judgment has been modified for publication purposes in accordance with Article 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. The application deals with delay of proceedings within the former system of administration of justice and refers to events transpiring in 2003.

Facts

2. On 3 June 2009, the Geneva Joint Appeals Board (JAB) received a submission dated 29 September 2008 on behalf of the Applicants, “related to the Secretary-General’s decision as announced in the letter of the Under-Secretary-General for Management” dated 9 April 2007. In their submission, the Applicants requested the JAB “to determine” the following:

“1) the detailed reasons for the JAB not having prepared the report for almost three years;

2) what information was provided to [Ms...] related to the disposition of the appeals;

3) if the wrong information was provided to her, i.e., that the cases had not yet been heard,

4) if the recommendation had been made to her that she should merely request that the older cases be heard as soon as possible,

5) the exchange of notes between the USG/DM and the ED/UNODC or the DG/UNOV and the Director/DM/UNOV related the appeals of [Applicant 2] and [Applicant 1] between 13 March and 19 April 2007”

3. In addition, the JAB was requested to recommend:

“1) there should be an apology;

2) if the USG/DM reached that decision on her own, in the absence of any consultation with UNOV or UNODC, she would be requested to apologize;

3) if the JAB Secretary had not been offered the necessary time to enable her to prepare the report, the ED/UNODC should apologize”

4. Having noted that the submission did not contain any letters from the Applicants authorizing their counsel to act on their behalf, the JAB requested them to provide an original letter signed by them confirming the person who had signed the application as their counsel. The Applicants, however, did not reply.

5. As per Secretary-General’s Bulletin ST/SGB/2009/11 dated 24 June 2009, the application was transferred to the Geneva United Nations Dispute Tribunal as of 1 July 2009.

6. By letters dated 18 August 2009, the Applicants were requested again to provide an original letter signed by them authorizing [Mr...] as their counsel.

7. In the absence of a reply from the Applicants, by Order dated 23 September 2009, they were requested to *“show cause by submitting an original signed letter authorizing [Mr...] as their Counsel on or before 30 September 2009”*. The Applicants were also informed that the Dispute Tribunal intended to decide on the case by summary judgment in case they failed to provide the requested information.

8. Applicant 1 did not reply to the Order issued by the Tribunal. By e-mail dated 28 September 2009, Applicant 2 confirmed [Mr...] as his counsel.

Considerations

9. According to art. 9 of the Rules of Procedure (RoP) of the United Nations Dispute Tribunal (UNDT RoP), which are based on art. 7.2 of the Statute of the United Nations Dispute Tribunal (UNDT Statute), the Dispute Tribunal may determine, on its own initiative, that summary judgment is appropriate. This may usually happen when there is no dispute as to the material facts and judgment is restricted to a matter of law. It may be even more appropriate for issues with reference to whether an application is receivable. The crucial questions in this case - first, the absence of authorization of the counsel to act on behalf of

Applicant 1 and second, the remedies requested in the application - are such matters of law.

10. According to art. 8.1 (b), 3.1 and 2.1 of the UNDT Statute any case before the Dispute Tribunal has to be filed by way of individual application. According to art. 12 of the UNDT RoP on representation, a party may present his or her case before the Dispute Tribunal in person, or may designate counsel from the Office of Staff Legal Assistance, or counsel authorized to practice law in a national jurisdiction.

11. In the present case, Applicant 1 has neither filed an application in person nor by way of designating counsel. It is clear that he did not file an application in person. The application has never been signed by him and the file does not contain any other relevant sign that he wanted or wants to file an application. Since he did not respond to several requests to do so, it is also clear that he did not designate counsel – including the person who had filed an application in his name. For this reason, the Tribunal deems the application made on behalf of Applicant 1 as not receivable.

12. Every decision of the judiciary has to be based on the powers transferred to a court. Thus, the Dispute Tribunal has to respect the borders of its mandate as defined by its Statute, approved by resolution A/RES/63/253 of the United Nations General Assembly. According to art. 10.5 of the UNDT Statute, as part of its judgment, the Dispute Tribunal may order one or more of the following:

“(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b);

(b) Compensation, which shall normally not exceed the equivalent of two years’ net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of

a higher compensation and shall provide the reasons for that decision”.

13. In the application of the case at hand, requests for rescission of an administrative decision or an amount of compensation in that sense cannot be found. Requests are restricted to “detailed reasons for the JAB not having prepared the report for almost three years”, or “what information was provided [to a certain person]” and so on. The only remedy sought is an apology from the Administration. Setting aside the merits of the case, the Tribunal focuses on the remedy requested in the application. It is noted that an apology is beyond the remedies, which may be ordered by the Dispute Tribunal as per art. 10.5 of its Statute. The Tribunal hence declares the application as out of its mandate.

Conclusion

14. For the reasons described above the application has to be dismissed in total.

(Signed)

Judge Thomas Laker

Dated this 6th day of October 2009

Entered in the Register on this 6th day of October 2009

(Signed)

Víctor Rodríguez, Registrar, Geneva