



United Nations Dispute Tribunal

Case No.: UNDT/GVA/2009/24
Judgment No.: UNDT/2009/042
Date: 16 October 2009
English
Original: French

Before: Judge Jean-François Cousin
Registry: Geneva
Registrar: Víctor Rodríguez

ISHAK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Self-represented

Counsel for respondent:
Shelly Pitterman, DHRM/UNHCR

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.

Application

1. In his appeal to the Joint Appeals Board in Geneva, registered on 22 December 2008, the applicant requested it to recommend that:

- The decision of the United Nations High Commissioner for Refugees regarding promotions to the P-5 level during the 2007 promotion session should be rescinded;
- The High Commissioner’s decision not to promote the applicant to the P-5 level during the 2007 promotion session should be rescinded; and
- He should be awarded compensation for the injury suffered as a result of the High Commissioner’s actions.

2. In its resolution 63/253, the General Assembly decided that all cases pending before the Joint Appeals Board as at 1 July 2009 would be transferred to the United Nations Dispute Tribunal.

Applicant’s submissions

3. On 22 August 2008, the applicant submitted a request to the Secretary-General for a review of 11 administrative decisions. As he did not obtain satisfaction, he decided to exercise his rights to submit an application and request a hearing.

4. In 24 years of service in the Office of the United Nations High Commissioner for Refugees (UNHCR), the applicant’s performance was consistently rated “outstanding”. He devoted a third of his career to his work for the UNHCR Staff Council, of which he was the chairman, and this work brought him into conflict with the Administration. It seems unfair that his qualifications and experience, which go beyond what is necessary for promotion, were not recognized even though he was recommended for promotion every year since 2004. The 2007 promotion session lacked transparency. The Secretary-General should review: (i) the refusal to promote him; (ii) the High Commissioner’s decision to follow the recommendations of the Appointments, Postings and Promotions Board; (iii) the High Commissioner’s decision to reduce the number of P-5 promotion slots; (iv) the High Commissioner’s decision, after the recourse session, to add names to the list of those promoted; (v) the Administration’s failure to provide information on why promotion was denied; (vi) the decision of the Director of the Division of Human Resources Management and the Co-Chairs of the Appointments, Postings and Promotions Board to consider the 2007 promotions on the basis of the Methodological Approach and (vii) the decision to allow the Co-Chair to participate in the work of the Board.

5. The High Commissioner’s statements on the promotions system in themselves demonstrate the irregularity of the methodology used.

6. The applicant maintains that his appeal is admissible since the Joint Appeals Board granted him an extension of the deadline for submitting his appeal. He does not wish to withdraw his appeal, and calls on the Joint Appeals Board to rule on the matter.

Respondent’s observations

7. UNHCR observes that the applicant must be considered as having intended to withdraw his appeal to the Joint Appeals Board as he did not meet the deadline for submitting his appeal in full.

Judgment

8. After being summoned to a hearing by letter of 26 August 2009, the applicant requested, on several occasions, including in his last letter of 23 September 2009, that the hearing scheduled for 24 September 2009 should be postponed until his health permitted him to attend. When faced with such a request, the judge has to decide whether the applicant's presence at the hearing would contribute to the effective administration of justice.

9. Article 10 of the rules of procedure of the Geneva Joint Appeals Board reads as follows:

“1. An incomplete statement of appeal will be accepted by the secretariat as evidence of an attempt to comply with the time limits stipulated in Staff Rule 111.2 (a). Upon receipt of an incomplete statement, the secretariat will request the Appellant to provide within one month a full statement of appeal containing all the information stipulated in Article 9.

“2. If the Appellant, without explanation, fails to submit a full statement of appeal within the month, the appeal shall be deemed to have been abandoned (see Article 18), and shall be removed from the list of appeals pending before the Board.”

10. It appears from the documents in the file that on 28 October 2008 the applicant contested the reply from the Secretary-General, received on 9 October 2008, to his request for a review of the refusal to promote him to the P-5 level. In response to the applicant's requests, the Joint Appeals Board granted him one last extension of the deadline for submitting his appeal in full, setting the deadline at 19 December 2008. While the applicant told the Board of the difficulties he was having in finalizing his appeal, he did not request any further extension of the submission deadline and it was not until 22 December 2008 that the Board received the full appeal, that is, after its deadline had expired. Pursuant to the above-cited provisions, the appeal must be deemed to have been abandoned and must be removed from the list of appeals pending before the Board. Pursuant to General Assembly resolution 63/253, the present Tribunal is competent to rule on appeals submitted to the Joint Appeals Board only if they were pending as at 1 July 2009, which is not the case in this instance.

11. It is clear from the above that the applicant's appeal was inadmissible in any case and therefore that his presence at the hearing would not have contributed to the settlement of the dispute. The application must therefore be dismissed as having been erroneously submitted to a tribunal lacking jurisdiction in the matter.

12. For these reasons, the Tribunal DECIDES:

The application is rejected.

Judge Jean-François Cousin

Dated this 16th day of October 2009

Entered in the Register this 16th day of October 2009

Víctor Rodríguez, Registrar, UNDT, Geneva