



UNITED NATIONS DISPUTE TRIBUNAL

Cases No.: UNDT/GVA/2009/75
UNDT/GVA/2009/81
Judgment No.: UNDT/2009/062
Date: 03 November 2009
Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: Victor Rodríguez

HASTOPALLI
STIPLASEK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

None

Counsel for Respondent:

Steven Dietrich, ALU/OHRM

Introduction

1. The two Applicants, former staff members of the United Nations Mission in Kosovo, contested the Secretary-General's decision dated 23 February 2009 to terminate, with effect from 28 February 2009, their 300-series appointment of limited duration prior to its expiration date on 31 March 2009, without appropriate termination indemnity and without appropriate compensation in lieu of notice.

Facts

2. It would appear that on 23 February 2009,¹ the Applicants were notified of the decision to terminate their appointment.

3. On 25 February 2009, the two Applicants and ten staff members who had also been notified of the decision to terminate their appointment wrote a joint letter to the Secretary-General to request review of the decision.

4. On 26 May 2009, a number of staff members who had sent the above-mentioned request for review to the Secretary-General filed a joint, incomplete statement of appeal to the New York Joint Appeals Board (JAB). The name of the two Applicants was not on the list of staff members purported to have filed the appeal.

5. On 26 June 2009, 14 former staff members, including the Applicants, filed, with the heading "class action", a joint, complete statement of appeal to the JAB.

6. Pursuant to the transitional measures set out in resolution 63/253 of the General Assembly, the JAB case was transferred to the United Nations Dispute Tribunal (UNDT) on 1 July 2009.

7. By order dated 09 October 2009, the Tribunal, considering among other things that all 14 individual cases did not raise the same issues and that the file transferred to the Tribunal did not contain all the information necessary for it to pass judgment on each individual case, ordered that the original JAB case be split into 14 separate cases. On the same day, the Applicants were instructed to submit additional information on their case by 16 October 2009.

¹ The parties never provided a copy of the contested administrative decision to the Tribunal.

8. Neither Applicant provided the information requested or otherwise responded to the Tribunal.

9. By order dated 23 October 2009, the Tribunal instructed the two Applicants to provide by 30 October 2009 the information previously requested on 9 October 2009, failing which the cases would be adjudicated by summary judgment. Neither Applicant responded to the Tribunal.

Considerations

10. Since the facts and legal issues are exactly the same in the two cases, the Tribunal decided to dispose of them by a single judgment.

11. According to article 9 of the UNDT rules of procedure (RoP), the Tribunal may determine, on its own initiative, that summary judgment is appropriate. This usually would happen when there is no dispute as to the material facts of the case and judgment is restricted to a matter of law. The question of abandonment of proceedings raised by these two cases is such a matter of law.

12. In the absence of specific provisions in the Tribunal's RoP applicable to abandonment of proceedings, the Tribunal will deal with it under article 36 of the RoP, which provides that all matters that are not expressly provided for in the RoP shall be dealt with by decision of the Tribunal on the particular case, by virtue of the power conferred on it by article 7 of the statute of the UNDT.

13. It is a general principle of procedural law that the right to institute legal proceedings is predicated upon the condition that the person using this right has a legitimate interest in initiating and maintaining legal action. Access to the court has to be denied to those who are not in need of judicial remedy, as well as to those who are obviously no longer interested in the proceedings they instituted.

14. The latter applies to the Applicants. The two of them filed a joint appeal with twelve other former staff members through their counsel on 26 June 2009. After the case was transferred from the JAB to the Dispute Tribunal, it had to be split by order dated 09 October 2009 into 14 individual applications. The Tribunal requested the Applicants to provide essential information in support of their application by letter dated 09 October 2009. As no answer was received within

two weeks, the Tribunal reiterated its request by order dated 23 October 2009, while warning the Applicants that failure to comply with the order by 30 October 2009 would lead to the case being adjudicated by summary judgment. Since the Applicants still did not react, it is clear without any reasonable doubt that the Applicants are no longer interested in the outcome of the legal proceedings they instituted, which must therefore be deemed to have been abandoned.

Conclusion

15. In view of the foregoing, the applications are rejected in their entirety.

(Signed)

Judge Thomas Laker

Dated this 3rd day of November 2009

Entered in the Register on this 3rd day of November 2009

(Signed)

Victor Rodríguez, Registrar, UNDT, Geneva