



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2009/36
Judgment No.: UNDT/2010/076
Date: 30 April 2010
English
Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

GHAHREMANI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Winston Sims

Counsel for respondent:
Linda Starodub, UNOV

Introduction

1. By appeal before the Geneva Joint Appeals Board (JAB) registered on 3 June 2009, the applicant contests the decision of 27 October 1999 barring him from access to the Vienna International Centre (VIC).
2. He asks for the Administration to be ordered to pay him five years' salary at the rate that would have been due to him at the time of the application and to pay his counsel the sum of 25,000 US dollars.

Facts

3. The applicant joined the Organization at Vienna on 12 October 1983 as a Messenger at the G-2 level. On 31 December 1996, his fixed-term contract expired and he left the Organization. He subsequently held various short-term appointments, the last from 22 to 26 February 1999.
4. On 27 October 1999, the United Nations Office at Vienna (UNOV) barred the applicant from VIC for reportedly having brought a gun onto the premises and threatened colleagues with it. At the time he was working for the United Nations Industrial Development Organization (UNIDO) under a special services agreement covering the period 1 July-31 December 1999.
5. The applicant initiated arbitration proceedings as the holder of a special service agreement with UNIDO and the parties reached a settlement regarding the matter.
6. On 7 August 2000, the Chief, Office of the Director-General, UNOV, gave the applicant renewed permission to enter VIC.
7. On 9 June 2008, the applicant filed an application with the United Nations Administrative Tribunal (UNAT Case No. 1601) in which he contested in particular the decision to refuse his counsel access to his official status file.
8. By letter dated 8 December 2008 addressed to the Secretary-General the applicant requested administrative review of the decision to bar him from VIC.

9. By letter dated 4 March 2009 the applicant filed an appeal with the Geneva JAB. JAB received the letter on 3 June 2009.

10. Pursuant to General Assembly resolution 63/253, the case was transferred to the United Nations Dispute Tribunal (UNDT) on 1 July 2009.

Parties' contentions

11. The applicant's contentions are:

- a. He was never informed of the decision to bar him and, being unaware by whom, when and why it was taken, had been unable to contest it earlier;
- b. The decision constitutes an abuse of power, since the Director, Division for Management, UNOV, decided to bar him from VIC without conducting an investigation;
- c. Contrary to the respondent's contention, there was a legal relationship between the applicant and the UNOV Administration;
- d. His terms of appointment were affected by the decision to bar him from the premises.

12. The respondent's contentions are:

- a. The contested decision of 27 October 1999 came after the date of 31 December 1996 on which the applicant ceased working at UNOV. The appeal is therefore inadmissible *ratione personae* since the decision could not under any circumstances affect the applicant's terms of appointment at UNOV, he having at the time it was taken no employment or employment relationship with UNOV and consequently no right to recourse under the Staff Regulations and Rules;
- b. The appeal is time-barred as the applicant contests a decision more than ten years old;
- c. The dispute was settled by agreement between the applicant and UNIDO.

Judgment

13. The applicant contests the decision of 27 October 1999 barring him from access to VIC.

14. Before ruling on the respondent's contention of irreceivability on the ground of late submission, the Tribunal must determine whether the contested decision is appealable.

15. The then staff regulation 11.1 provided that staff members could appeal "against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules". The then staff rule 111.2(a) provided that staff member wishing to appeal an administrative decision must do so "pursuant to staff regulation 11.1".

16. Article 1 of the Rules of Procedure of the Geneva JAB provided that "[a]dministrative decision' shall mean a unilateral decision, not necessarily in writing, taken by the Administration in a specific, individual case, affecting the rights of the staff member which derive from her/his appointment". Article 2 provided that "[p]ursuant to Staff Regulation 11.1 and Staff Rule 111.1(a), the Geneva ... JAB has been established at the United Nations Office at Geneva to consider and advise the Secretary-General about appeals".

17. The applicant, who was a UNOV staff member until 31 December 1996, was barred from access to VIC on 27 October 1999. Hence, even though he had signed a special services agreement with UNIDO, he was no longer subject on that date to the Staff Rules and the barring cannot have adversely affected his terms of appointment as a former staff member.

18. Consequently, pursuant to the above-mentioned provisions, the contested decision was unappealable before JAB and is unappealable before the present Tribunal and, without there being any need to rule on its receivability *ratione temporis*, the application must be rejected.

Decision

19. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(signed)

Judge Jean-François Cousin

Dated this 30th day of April 2010

Entered in the Register on this 30th day of April 2010

(signed)

Víctor Rodríguez, Registrar, UNDT, Geneva