



Before: Judge Thomas Laker

Registry: Geneva

Registrar: Víctor Rodríguez

ROBERTS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Self-represented

Counsel for respondent:
Jérôme Blanchard, ALS/OHRM, UN Secretariat

Introduction

1. The applicant worked under a “Personnel Service Agreement” (PSA) contract for the United Nations University (UNU) in Bonn, Germany. She contests the nature of her appointment and claims benefits which PSA contract holders normally are not entitled to. The pre-eminent issue is whether, serving under this type of contract, she has access to the Tribunal.

Facts

2. The applicant worked with UNU from 1 September 2004 until 28 February 2010 mostly under a PSA contract which was renewed several times. She accepted a consultant contract covering the period from 1 January 2007 until 31 May 2007, during which she worked from home for reasons of pregnancy and following the birth of her child.

3. On 25 November 2008, the applicant wrote to the Executive Officer of UNU, deploring amongst other things that: (i) out of 104 UNU employees, only seven were staff members; (ii) all of these seven staff members were male; (iii) out of the PSA holders, seven were supervising staff and heading an entire unit; (iv) most of the PSA holders occupied core functions; and (v) PSA holders lacked basic rights, such as maternity leave, health insurance and other social benefits.

4. On 31 December 2009, the applicant was offered a last renewal of her PSA until 28 February 2010. On 29 January 2010, she was notified by the respondent of the decisions not to offer her a UN staff contract and not to renew her PSA after its term.

5. The applicant requested a management evaluation on 17 February 2010 and received an answer on 1 March 2010.

6. On 30 May 2010, she filed an appeal before the United Nations Dispute Tribunal.

7. By letter dated 7 July 2010, the Judge to whom the case was assigned informed the parties that in his view an oral hearing was not necessary and gave them two weeks to take position thereon. On 19 July 2010, the applicant

confirmed that she did not wish an oral hearing to be held. The respondent did not take any position.

Parties' contentions

8. The applicant's principal contentions are:
 - a. The type of contract (PSA) she held was not appropriate for the type of functions she occupied;
 - b. UNU abused the PSA in order to avoid paying benefits on a large scale;
 - c. UNU discriminated systematically against women, especially when it came to maternity leave: she was refused maternity leave, whereas male staff members received paternity leave at the same time;
 - d. By granting her a last extension for two months only, UNU violated the PSA rules which, according to the applicant, provide that a PSA should not be for less than six months;
 - e. UNU misled its employees by stating in the annexes to the PSA contracts that in case of a dispute, they could contact the "UN Tribunal", just to deny this later.

9. The respondent's principal contentions are:
 - a. The application is not receivable *ratione personae* pursuant to articles 2.1 and 3.1 of the statute of the Dispute Tribunal. Only staff members or former staff members have access to the Tribunal. The respondent recalls that pursuant to paragraph 1 of the Conditions of Service for Personnel Service Agreement, individuals engaged under a PSA are not staff members under the Staff Regulations of the United Nations;
 - b. The General Assembly rejected the Secretary-General's proposal to integrate individual contractors under the scope of the system of administration of justice;

- c. The General Assembly in paragraph 28 of its resolution 63/253 affirmed that the Dispute Tribunal “shall not have any powers beyond those conferred under their respective statutes”. The United Nations Appeals Tribunal confirmed that it would give full effect to the above-cited paragraph;
- d. Paragraph 17 of the Conditions of Service for Personnel Service Agreement provides clearly that any dispute arising from the PSA shall be submitted to arbitration.

Considerations

10. Article 2.1 of the statute of the Dispute Tribunal provides:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute...

11. Article 3.1 of the statute of the Dispute Tribunal further provides:

An application under article 2, paragraph 1, of the present statute may be filed by:

(a) Any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

(b) Any former staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

(c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes.

12. Pursuant to these rules, the status of staff member is a necessary condition for access to the Tribunal.

13. In the present case, there is no dispute that the applicant never acquired the status of a staff member. Furthermore, her PSA contract clearly affirms that it does not confer its holder the status of a staff member. The application must therefore be rejected on the grounds that it is not receivable pursuant to article 3.1 of the statute of the Dispute Tribunal.

14. In Judgment UNDT/2010/098, *Gabalton*, the Tribunal held that the limitation of its jurisdiction to persons having acquired the status of staff member, as reflected in the Tribunal's statute, was not unintentional but was the clear wish of the General Assembly. Indeed, the General Assembly, which had considered proposals to open the Tribunal to non-staff personnel, such as Interns and Type II gratis personnel (e.g., A/62/748, referred to in A/RES/63/253), opted to reject such proposals and to limit the scope of the Tribunal's statute as reflected in article 3.1. Hence, this limitation does not constitute an unintended lacuna and there is no room for a larger interpretation of the actual wording of the statute. The limitation of the scope of the Tribunal's jurisdiction has been confirmed by the United Nations Appeals Tribunal in its Judgment 2010-UNAT-008, *Onana*.

15. The foregoing notwithstanding, the limitations of access to the Tribunal for different categories of non-staff personnel are still the subject of discussions. The General Assembly, in its resolution 64/233 dated 22 December 2009, requested the Secretary-General, with respect to remedies available to different categories of non-staff personnel, to analyse and compare the advantages and disadvantages of several options listed there, including granting access to the Dispute Tribunal and the Appeals Tribunal to non-staff personnel. For the time being, there is however no way to grant access to the Tribunal to other applicants than individuals having acquired the status of a staff member.

Conclusion

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

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 9th day of August 2010

Entered in the Register on this 9th day of August 2010

(Signed)

Víctor Rodríguez, Registrar, UNDT, Geneva