



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2010/02/
UNAT/1496
Judgment No.: UNDT/2010/166
Date: 20 September 2010
Original: ENGLISH

Before: Judge Shaw
Registry: Nairobi
Registrar: Jean-Pelé Fomété

LUVAI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
David Andati-Amwayi

Counsel for Respondent:
ALS/OHRM

Introduction

1. This case was transferred from the United Nations Administrative Tribunal (UNAT) to the United Nations Dispute Tribunal in Nairobi on 1 January 2010 pursuant to the provisions of section IV, paragraph 45 of United Nations General Assembly Resolution 63/253 and section 4 of ST/SGB/2009/11 on Transitional Measures Related to the Introduction of the New System of Administration of Justice.

2. The Applicant has applied for “Judicial Review” of UNAT Judgment 1421 delivered on 30 January 2009. The Tribunal has reviewed the file and finds that given the comprehensive submissions filed by both Parties and the nature of the application an oral hearing is not necessary. The matter can be properly decided on the papers as submitted.

Background

3. The Applicant is a staff member of the UN employed as a Security officer. His initial claim before the Nairobi Joint Appeals Board (JAB) was that in his absence and without his consent or knowledge the Respondent opened his locker and without taking an inventory placed the contents in an unsecured cardboard box; that the Respondent failed to communicate this forceful opening of his locker with him or his representative; and that the Respondent failed to take any reasonable precautions to secure his personal effects and sought compensation for the loss of his personal possessions.

4. Following the JAB recommendations, the Applicant appealed to former UNAT. It found (UNAT Judgment 1421) that under the Staff Rules the appeal should have been filed with the Claims Board instead of the JAB. However it was recognised by UNAT that, despite several exchanges of communication between the Applicant and the Administration, the Applicant was never informed by the latter of the proper recourse procedures available to him under the staff rules. It had instead

misleadingly informed him that any recourse should be addressed to UNAT. UNAT noted that the Respondent had requested leave “to submit arguments on the merits of the case, should this matter be found to be receivable” but stated:

The Applicant should be given an opportunity to follow that proper recourse procedure, that is, he should be allowed to submit his claim to the Compensation Claim Committee (sic) to determine whether or not he is entitled to compensation.

5. The case was remanded for correction of the procedure. The Respondent was ordered to pay the Applicant compensation of 3 months salary, plus interest, for loss resulting from procedural delay.

6. On 26 February 2009, the Applicant filed a document with UNAT entitled “Application for Judicial Review.” The applicant wishes to challenge the decision of UNAT to remand the Applicant’s case for institution of the correct procedure.

Application for Judicial review

7. The Applicant’s application to the Tribunal seeks orders for *certiorari*, *mandamus* and prohibition on the grounds of *ultra vires*, unfair hearing and bias.

8. The Applicant submits that UNAT acted *ultra vires* the applicable procedural law because following two days after the remand for institution of the correct procedure, and in the absence of a request for a remand raised by the Secretary General, UNAT should have decided on the substance of the case.

9. He further alleges that he received an unfair hearing because UNAT noted and considered the Respondent’s request to submit arguments on the merits of the case.

10. The last ground is that UNAT showed bias by allowing the Respondent to relitigate the case through the Compensation Claims Committee; that it was unlawful for the Tribunal to remand the case to the Committee without obeying Article 18 of

the Rules; that the Applicant has no legal capacity to file his claim with the Committee directly and; there is no reason for the Tribunal to believe that its judgment will cause the Respondent to forward the claim to the secretary of the Committee without violating the maxim “justice delayed is justice denied.”

11. In responding to the Application, the Respondent makes two main points. First, it submits that in seeking a revision of Judgment 1421, the Applicant has failed to introduce any fact of a decisive nature which was unknown to the Tribunal and to the Applicant at the time the judgment was rendered. It is the Respondent’s submission, therefore, that the Applicant’s application is an attempt to reopen issues settled in the judgment; issues which are *res judicata*.

12. It is very clear from the Applicant’s response to that submission that he rejects any suggestion that his is an application for revision of Judgment 1421. He maintains that it is for Judicial Review.

13. Second, the Respondent submits that the Applicant has been given the opportunity to file his claim for compensation with the Claims Committee and only the Applicant can initiate such a claim. The Applicant does not accept this and responds that it is the Respondent who has ignored and or neglected his duty to submit the claim to the Claims Committee.

CONSIDERATIONS

14. The issue for the Tribunal is whether it has jurisdiction to hear and decide on an application for Judicial Review of a UNAT Judgment. Should this question be answered in the affirmative, the next question is which party bears the responsibility for filing a claim for compensation before the Claims Board for loss of, and damage to, the personal effects of a staff member.

Jurisdiction

15. Judicial Review is a supervisory jurisdiction. It is exercised in national jurisdictions according either to statute or through the exercise of prerogative powers which are generally vested in the head of state. Some national statutes, particularly those in civil law jurisdictions, establish special administrative courts to review the decisions of public bodies. Other national judicial systems vest superior courts with the inherent or statutory power to supervise both public bodies and lower courts and tribunals. It is not a jurisdiction which a tribunal may exercise over itself.

16. The former UNAT and the UNDT were and are creatures of statute. Each has the ability, inherent to all courts and tribunals, to imply powers to prevent abuses of process; however, the jurisdiction of each tribunal is limited by the provisions of its respective empowering statute. In the absence of specific jurisdiction conferred on a statutory tribunal by statute, the power to exercise a supervisory jurisdiction such as judicial review cannot be implied.

17. This conclusion is reinforced by the existence of Article 12 of the Statute of the UNDT which echoes Article 12 in the Statute of the former UNAT. This article gives the Tribunal the power to revise its own decisions subject to the stipulated criteria being met. Article 12 constitutes the full extent of any jurisdiction of the Tribunal to self-review. It falls well short of conferring the significant and powerful jurisdiction of Judicial Review over its own processes or over any other Tribunal such as the former UNAT

18. The Tribunal finds that the UNDT has no jurisdiction to entertain an application for Judicial Review and the application cannot be received.

19. The Tribunal notes and commends the willingness of the Respondent to cooperate in the process once the claim has been submitted appropriately by the Applicant.

DECISION

20. The Tribunal concludes and decides that it has no jurisdiction to hear and determine the application for Judicial Review. The Applicant's application is not receivable and is dismissed.



Judge Shaw

Dated this 20th day of September 2010

Entered in the Register on this 20th day of September 2010



Jean-Pelé Fomété, Registrar, UNDT, Nairobi