



Before: Judge Thomas Laker

Registry: Geneva

Registrar: Víctor Rodríguez

MIALESHKA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Natalie Boucly, UNDP

Introduction

1. The Applicant, who was then the holder of a Service Contract with the United Nations Development Programme (“UNDP”) in Belarus, contested the decision to deduct from his salary costs generated by his use of the Country Office’s Internet resources.

Facts

2. The Applicant was hired in June 2010 under a Service Contract by UNDP in Belarus to serve as a driver until 31 December 2010.

3. During the months of September, October and November 2010, the Applicant downloaded from the Internet video and audio files using an office computer, which resulted in an increase of the Internet costs incurred by the Country Office.

4. At the end of November 2010, it was decided to recover from the Applicant a partial amount of the Internet costs incurred by the Country Office as a result of his actions.

5. By email of 29 December 2010, the Applicant filed an application with the United Nations Dispute Tribunal contesting the above-mentioned decision.

6. The application was transmitted on the same day to the Respondent, who filed his reply on 27 January 2011. The Respondent submitted that the application was not receivable *ratione personae* because it had been filed by the holder of a Service Contract.

7. After consultation, the parties did not object to this matter being determined on the papers.

Consideration

8. As regards the Tribunal's jurisdiction *ratione personae*, article 2.1 of the Statute of the Tribunal stipulates:

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, against the Secretary-General as the Chief Administrative Officer of the United Nations ...

9. Article 3.1 of the Statute further specifies:

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; ...

10. Finally, article 8.1(b) of the Statute provides that for an application to be receivable, the applicant must be eligible to file it pursuant to article 3 of the Statute.

11. Concerning the Applicant's status, paragraph 3 (Status, Rights and Obligations of the Subscriber) of his Service Contract stipulates:

The Subscriber is neither a "staff member" under the Staff Regulations of the United Nations nor an "official" for the purpose of the Convention of 13 February 1946 on the privileges and immunities of the United Nations ... The Subscriber recognizes and accepts the fact that the terms of engagement as set forth in this Contract are different from those that apply to UNDP staff members under the Staff Regulations and Rules. The rights and obligations of the Subscriber are strictly limited to the terms and conditions of this Contract.

12. It results unambiguously from the foregoing that when the facts at issue occurred, the Applicant was neither a staff member, nor a former staff member within the meaning of the article 3.1 of the Tribunal's Statute. Accordingly, he is not a person having access to the Tribunal and the Tribunal must declare itself not competent to consider the application.

13. With respect to his complaint, the Applicant's attention is drawn to paragraph 15 (Settlement of Disputes) of his Service Contract which provides that: "Any claim or dispute between the Parties relating to the interpretation or execution of the present Contract, or the termination thereof, which cannot be settled amicably will be settled by binding arbitration under the [United Nations Commission on International Trade Law] Arbitration rules."

Conclusion

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

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 21st day of March 2011

Entered in the Register on this 21st day of March 2011

(Signed)

Víctor Rodríguez, Registrar, Geneva