



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/022

Judgment No.: UNDT/2011/128

Date: 13 July 2011

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: Víctor Rodríguez

BUCKLEY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Sarahi Lim Baro, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant, a staff member of the Special Tribunal for Lebanon (“STL”), contests the decision to exclude him, as ineligible, from the selection process for a P-3 post of Investigator in the Office of Internal Oversight Services (“OIOS”).

Facts

2. The Applicant is a former staff member of OIOS, where he worked from October 2005 to February 2008 and of the United Nations International Independent Investigation Commission, from which he separated on 28 February 2009.

3. The Applicant currently serves in The Hague as an Investigator (P-3) at the Special Tribunal for Lebanon, which he joined in March 2009.

4. On 8 March 2011, the Applicant applied for a P-3 post of Investigator with OIOS in Vienna.

5. On 3 May 2011, during a telephone conversation with the Chief of Operations of the Investigations Division of OIOS in Vienna, the Applicant was informed that his application for the above-mentioned post had not been released to the hiring manager.

6. By email dated 4 May 2011, the acting Administrative Officer of the Investigations Division in New York informed the Applicant that his application for the post had been “rejected automatically by the system due to a lack of the required years of work experience, after obtaining [his] bachelor’s degree”.

7. On 10 May 2011, the Applicant filed the present application with the Tribunal to appeal the decision to exclude him from the selection process for the above-mentioned post.

8. On 11 May 2011, the Applicant forwarded to the Tribunal his request for management evaluation which he had sent on the same day to the Management Evaluation Unit, UN Secretariat.
9. On 20 May 2011, the Respondent filed a request for leave to have receivability considered as a preliminary issue. By Order No. 81 (GVA/2011), the Tribunal granted leave to the Respondent.
10. On 10 June 2011, the Respondent filed and served his reply on the receivability of the application.
11. By letter dated 22 June 2011, the parties were informed of the Tribunal's position that an oral hearing was not necessary. They were granted until 6 July to file objections, if any, to the case being considered on the papers without an oral hearing. No objections were filed.

Parties' submissions

12. The Applicant's contentions are:
 - a. He has 23 years of experience as an Investigator, that is significantly more than the five years required by the vacancy announcement. He completed his bachelors' degree in 2009. He thus meets the requirements stipulated in the vacancy announcement in terms of education and work experience;
 - b. The vacancy announcement does not stipulate that work experience is only considered after the gaining of the required educational qualifications.
13. The Applicant did not make any submissions concerning the receivability of his application.
14. The Respondent's contentions are that:
 - a. The application is not receivable *ratione personae* because the Applicant is not a UN staff member, nor is he contesting a violation of his

former terms of appointment or contract with the UN. He is a staff member of the Special Tribunal for Lebanon which is not a UN organization. Pursuant to articles 2.1(a) and 8.1(a) of the Tribunal's Statute, the jurisdiction of the Dispute Tribunal is limited to persons having acquired the status of staff members of the UN or former staff members contesting violations of their previous terms of appointment or contract of employment;

b. The application is not receivable *ratione materiae* because the Applicant failed to exhaust the required management evaluation process. The Applicant filed his application before the expiry of the 45-day period for the Secretary-General to respond to his request for management evaluation.

Consideration

15. 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 ... [t]o appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance.

16. Article 3.1 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 ...

17. Pursuant to these provisions, the status of staff member or former staff member is a necessary condition for access to the Tribunal.

18. In the present case, the Respondent submits that the Applicant, who is currently serving at the Special Tribunal for Lebanon, is not a staff member of the United Nations. In this respect, he makes reference to the website of the Special Tribunal for Lebanon which indicates, on its “Employment” page:

The Special Tribunal for Lebanon (STL) is an international inter-governmental organization with its own independent legal identity and not a UN organization. The STL generally follows the common system of salaries, allowances and the other main conditions of service and is a member of the United Nations Joint Staff Pension Fund.

19. The Tribunal further took note of the Statute of the Special Tribunal for Lebanon and of the Agreement between the United Nations and the Lebanese Republic on the establishment of the Special Tribunal for Lebanon, which is annexed to Security Council resolution 1757 (2007) authorizing the establishment of the STL.

20. According to both documents, the Special Tribunal for Lebanon consists of four organs: the Chambers, the Prosecutor, the Registry and the Defence Office. While article 12 of the STL Statute explicitly provides that the “Registrar shall be a staff member of the United Nations”, there is no such reference for other high-ranking officials such as the Judges or the Prosecutor, nor for any other “Lebanese and international staff” of the STL. From the wording of these documents, the Tribunal draws the negative inference that *only* the Registrar of the Special Tribunal for Lebanon is a staff member of the United Nations, with the exclusion of any other staff.

21. Finally, the Applicant does not contest that as a staff member of the Special Tribunal for Lebanon, he is not a staff member of the United Nations. While he is a *former* staff member of the United Nations, his terms of appointment “in force at the time of the alleged non-compliance” were those of the STL.

22. The application must therefore be rejected on the ground that it is not receivable pursuant to article 3.1 of the Statute of the Dispute Tribunal

Conclusion

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

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 13th day of July 2011

Entered in the Register on this 13th day of July 2011

(Signed)

Víctor Rodríguez, Registrar, Geneva