



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/077

Judgment No.: UNDT/2012/053

Date: 17 April 2012

English

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: René M. Vargas M.

KAMANOU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant contests the decision of the Statistics Division of the Department of Economic and Social Affairs (“DESA”), in the United Nations Secretariat, not to publish the Handbook on Poverty Statistics: Concepts, Methods and Policy Use (“the Handbook”).

2. She requests the Tribunal to declare that the decision followed a common course of conduct of abuse of authority and discrimination against her and to order the Respondent to pay her compensation equivalent to two years’ net base salary for the moral and material damage suffered as a result of the said decision.

Facts

3. The Applicant entered the service of the United Nations on 11 December 1989 at the P-2 level on a short-term appointment in DESA. On 1 April 1995, she was granted a permanent appointment and in 1997, she was promoted to the P-3 level as a Statistician in the Statistics Division of DESA.

4. The Applicant contributed to the drafting of the Handbook, the manuscript of which was completed in December 2005.

5. On 1 January 2006, the Handbook was published on the website of the Statistics Division.

6. The Applicant also worked on revising the manuscript for several months in 2006.

7. By letter dated 16 July 2010, the Applicant requested a management evaluation of the decision not to publish the Handbook.

8. On 19 May 2011, the Applicant’s request for a management evaluation was rejected as not receivable.

9. Following an extension of the relevant deadline, the present application was received by the New York Registry on 25 August 2011 and the Respondent submitted his reply on 26 September 2011.

10. By Order No. 263 (NY/2011) of 8 November 2011, the judge hearing the case at the New York Registry ordered that it be transferred to the Geneva Registry.

11. On 3 April 2012, the Tribunal held a hearing on the case, in which the Applicant and Counsel for the Respondent participated by videoconference.

Parties' submissions

12. The Applicant's contentions are:

a. While the Statistics Division had discretionary power to publish the Handbook or not, that power was not properly exercised and the decision was vitiated by irregularities and prejudicial to her. The decision not to publish the Handbook was taken with the aim of punishing her and depriving her of due credit for her work;

b. The failure to publish the Handbook, as well as the decision of the Statistics Division to relieve her of three other projects, is evidence that may be used to support her other applications before the Tribunal;

c. Between 2003 and 2006, she worked on two major publications, namely the Handbook and its regional companion, the Economic Community of West African States ("ECOWAS") Poverty Profile. In December 2005, she finished the manuscript of the Handbook and sent a copy to the Editorial, Terminology and Reference Service for final review;

d. From May to August 2006, the Chief of the Statistical Services Branch made numerous changes to the chapters of the Handbook that she had written, after which she was asked to review the contents of the Handbook in July 2007. In November 2007, the Statistics Division published the ECOWAS Poverty Profile.

13. The Respondent's contentions are:
- a. The application is not receivable as the decision whether or not to publish a document is an operational decision of the Organization that does not have any direct consequence for the rights or contract of the Applicant. The contested decision is therefore not an appealable administrative decision;
 - b. The case is confined to the decision that was submitted for management evaluation. In her request for management evaluation, the Applicant did not claim that the contested decision was vitiated by irregularities;
 - c. Contrary to the Applicant's assertions, the Handbook was published on the Internet and the Applicant's contribution was recognized. Moreover, the Applicant has not established any nexus between the decision to publish the Handbook on the Internet and her list of perceived setbacks to her career;
 - d. The application constitutes an abuse of process that justifies the award of costs against the Applicant.

Consideration

14. In asking the Tribunal to dismiss the application contesting the decision of the Statistics Division not to publish the Handbook, the Respondent maintains that the application is not receivable as it contests a decision that does not concern the terms of the Applicant's appointment or her contract of employment.

15. Article 2, paragraph 1, of the Statute of the Tribunal provides that:

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:

(a) To 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. It follows from the aforementioned article that staff members may appeal before the Tribunal only administrative decisions that affect their rights as derived from their contract or the applicable staff regulations and rules.

17. Yet staff rule 112.7 (Proprietary rights) in force when the Handbook was published, as well as current staff rule 1.9, provides that:

All rights, including title, copyright and patent rights, in any work performed by a staff member as part of his or her official duties, shall be vested in the United Nations.

18. It is not disputed that the work carried out by the Applicant in drafting the Handbook was assigned to her by her supervisors as part of her duties and that she worked on it under their supervision. Therefore, that document belongs solely to the Administration, even if the Applicant made a significant contribution to it.

19. Consequently, the decision as to whether or not to publish it and as to the manner of its publication is merely an internal organizational measure which has no legal consequences for the staff member and is therefore not appealable by the Applicant before the Tribunal.

20. Thus, the application is not receivable and must be dismissed.

21. While the Respondent requested that the Tribunal apply article 10.6 of its Statute, which allows it to award costs against a party, the Tribunal holds that all that is called for in this case is to strongly caution the Applicant to appeal before the Tribunal in future only those decisions that may be prejudicial to her.

Conclusion

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

The application is rejected, as is the Respondent's request for the award of costs against the Applicant.

(Signed)

Judge Jean-François Cousin

Dated this 17th day of April 2012

Entered in the Register on this 17th day of April 2012

(Signed)

René M. Vargas M., Registrar, Geneva