



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2011/092

Judgment No.: UNDT/2012/182

Date: 19 November 2012

Original: English

**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Hafida Lahiouel

UR REHMAN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Shelly Pitterman, UNHCR

## **Introduction**

1. The Applicant filed this application on 7 December 2011, contesting the decision of the United Nations High Commissioner for Refugees (“UNHCR”) not to select and appoint him to the post of Telecom Operator in Pakistan.

2. In his application, the Applicant “requested to be represented” by the Office of Staff Legal Assistance (“OSLA”). On the same day, the New York Registry sent an email informing the Applicant that OSLA was not part of the United Nations Dispute Tribunal, but a separate office, and that all requests for legal advice and representation should be addressed directly to OSLA. The Registry also provided the Applicant with contact information for OSLA. No further communications have been received by the Registry from the Applicant in this regard.

## **Background**

3. The Applicant applied for a position of a Telecom Operator with the regional headquarters of UNHCR in Peshawar, Pakistan. He was interviewed on 13 October 2010. The Applicant claims that he was contacted approximately one week later and informed that he had been selected for the post and was required to report to the UNHCR regional headquarters for official training. He states that he reported to the Office and was given a one-day formal training on radio equipment and other technical issues. The Applicant does not recall the name of the person who gave him the training and claims that he was told at the end of the training day that UNHCR would complete his documentation and would call him “in a short while to join [his] duty station” (in the Applicant’s words).

4. The Applicant submits that thereafter he waited for approximately 10 months, and, despite his requests, received no further information or documents, and that he

has “never been told about [his] job status, never informed of any administrative decision”.

5. The Applicant submitted a copy of his email dated 29 November 2010 to the Human Resources Unit of UNHCR in Peshawar, stating:

My name is [...], newly recruited Telecom Operator[.] After completion of training the HR told me that I will be called after paper work in Head Office.

It has been quite a while that I have been waiting for the call from UNHCR and some times feel a bit insecure because I am not accepting interview calls anymore from any organization saying that I have joined UNHCR.

You had made it clear that it [i]s not possible for you to predict how much time is it going to take to complete the documentation, but you can at least send me the letter of selection or something like that (appointment letter) just for the ease of my nerves. I am not aware that if it is your domains? If not, I request you to please forward my email to the concerned authorities.

6. It is unclear from the parties’ submissions whether any response was provided by UNCHR in response to the Applicant’s email of 29 November 2010.

7. The Respondent states that UNHCR did indeed conduct training for a group of candidates in October 2010. However, the Respondent states that the Applicant’s description of the purpose and scope of the training is incorrect. According to the Respondent, a number of candidates, including the Applicant, were selected to participate in a training exercise lasting several hours for the purpose of testing and evaluating their technical capacities and knowledge.

8. The Respondent submits that the recruitment, however, did not materialize and no offer was made to the Applicant, nor to any other candidates, due to the fact that the position was eventually managed and funded by the United Nations Department of Safety and Security, as opposed to UNHCR. The Respondent also

submits that UNHCR, including its office in Peshawar, communicates all its offers of employment strictly in writing.

### **Consideration**

9. In the Reply, the Respondent requests the Tribunal, without consideration of the merits, to dismiss the application as not receivable *ratione personae*, *ratione materiae*, and *ratione temporis*.

10. Whilst, in fairness to all parties, it is the practice of the Dispute Tribunal to deal with cases in chronological order of filing, the General Assembly has requested in its resolution 66/237, adopted on 24 December 2011, both the Dispute Tribunal and the Appeals Tribunal to review their procedures in regard to the dismissal of “manifestly inadmissible cases”. It is a matter of record that the Dispute Tribunal has, with a view to fast tracking cases, entertained matters of admissibility or receivability on a priority basis in appropriate cases, and similarly rendered summary judgments under art. 9 of the Rules of Procedure. However, any application for dismissal of cases that appear manifestly inadmissible or devoid of merit have to be dealt with on a case-by-case basis bearing in mind the wise words of Megarry J in *John v. Rees* [1970] Ch 345 at 402 (U.K.):

As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change.

11. In the instant case, the Applicant faces several preliminary hurdles.

#### *Receivability ratione personae*

12. Articles 2.1 and 3.1 of the Dispute Tribunal’s Statute provide that the Tribunal is competent to hear and pass judgment on an application against an administrative

decision “alleged to be in non-compliance with the terms of appointment or the contract of employment” filed by any current or former staff member of the United Nations or any person making claims in the name of an incapacitated or deceased staff member. The limitations on the Tribunal’s jurisdiction have been affirmed by the United Nations Appeals Tribunal (see *Megerditchian* 2010-UNAT-088, *Gabaldon* 2011-UNAT-120, *di Giacomo* 2012-UNAT-249).

13. An applicant must therefore have legal capacity and legal standing in order to invoke the jurisdiction of the Tribunal (see *Hunter* UNDT/2012/036). As regards the Applicant’s capacity to invoke jurisdiction, the Respondent maintains that he is neither a staff member nor a former staff member as no formal offer was extended by the Respondent and accepted by the Applicant. However, the Tribunal notes, in particular, the Applicant’s email of 29 November 2010 and the fact that that email was not canvassed or addressed in the Respondent’s reply. It is the Tribunal’s view that, on the papers filed, the Tribunal cannot, at the present stage, make a conclusive determination as to whether it has jurisdiction over this case on the grounds of *ratione personae*.

#### *Receivability* *ratione temporis*

14. The Respondent also contends that even if the Applicant was a staff member or former staff member with standing to submit an application to the Dispute Tribunal, and there was an identified administrative decision that was previously submitted for management evaluation, the application would still not be receivable *ratione temporis*. The Tribunal notes that additional questions arise with respect to the receivability of the present application as it was submitted more than a year after the events of October 2010. As the Applicant says he was never notified of any decision, determining when the time started to run would warrant further examination for a conclusive determination to be made.

*Receivability* *ratione materiae*

15. The Tribunal need not address the Respondent's argument that no specific administrative decision is identified by the Applicant, as the present application is nevertheless manifestly inadmissible for the reasons identified below.

*Receivability—failure to comply with a statutory requirement of submitting a management evaluation request*

16. Pursuant to art. 8.1 of the Statute of the Dispute Tribunal, read together with staff rule 11.2(a), an applicant must, as a mandatory first step, request management evaluation of a contested decision before filing an application with the Dispute Tribunal (see *Planas* 2010-UNAT-049, para. 23). The purpose of such management evaluation is primarily to allow the management to review, and possibly correct, an administrative decision, which an individual concerned wishes to challenge, and thereby avoid unnecessary litigation before the Dispute Tribunal (*Kratschmer* UNDT/2012/148).

17. In his application, the Applicant states that he did not request a management evaluation of the contested decision. He provides no explanation for his failure to do so. Therefore, the Applicant has not complied with the mandatory statutory requirement of filing a request for management evaluation prior to filing his application before the Tribunal. As the Applicant failed to follow the established appeal procedures, the present application is not receivable.

18. The Applicant contends that he was not apprised of the Organization's rules and regulations, and therefore cannot argue or satisfy any technical impediments. However, as the Appeals Tribunal stated in *Muratore* 2012-UNAT-191, candidates for a public post are presumed to know the rules applicable to the employing corporation. Further, ignorance of the law is no excuse (see *Diagne et al.* 2010-UNAT-067, *Jennings* 2011-UNAT-184, *Christensen* 2012-UNAT-218).

**Conclusion**

19. In all the above circumstances, the present application is therefore dismissed.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 19<sup>th</sup> day of November 2012

Entered in the Register on this 19<sup>th</sup> day of November 2012

*(Signed)*

Hafida Lahiouel, Registrar, New York