



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2013/017

Judgement No.: UNDT/2013/118

Date: 25 September 2013

Original: French

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Abena Kwakye-Berko, Acting Registrar

AKOA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT REGARDING
ADMISSIBILITY**

Counsel for Applicant:

Cabinet Nkoa and Partners
Christian Engo Assomou

Counsel for Respondent:

Josiane Muc, UNDP
Fabrizio Mastrogirolamo, UNDP

Introduction

1. In an application dated 23 April 2013, the Applicant challenged the decision not to renew her service contract as well as the classification level of the position she held.
2. The Applicant asked the Court to award damages in the amount of FCFA 169,324,000 (African Financial Community francs).

Facts

3. The Applicant entered on duty at the Yaounde, Cameroon office of the United Nations Development Programme on 9 September 2003 and was employed there until 30 September 2012 under service contract No. 148, renewed several times without interruption. The last position she held was that of “Travel Assistant”.
4. In a letter dated 9 April 2012, the Acting Resident Representative informed the Applicant of the non-renewal of her contract with effect from 30 June 2012. However, following that notification, in a letter dated 12 September 2012, the Representative informed the Applicant that her service contract would in fact be extended until 30 September 2012 and would not be renewed thereafter.
5. In her application, the Applicant contends that the nine-year “temporary employment period” was illegal and that her position was underclassified. She also claims to have been a victim of several kinds of abuse, which she reported unsuccessfully, following internal procedures, and to have been suborned by her Head of Unit to conduct fraudulent activities.
6. For its part, the Respondent alleges that the application is inadmissible *ratione personae* in that the Applicant is a former holder of a service contract under articles 2 (1) (a) and 3 (1) (a) and (b) of the Statute of the Tribunal. In addition, the application is inadmissible *ratione temporis*, inasmuch as it was submitted after the deadline laid down in article 8 of the Statute of the Tribunal.
7. In addition and without prejudice to admissibility, the Respondent argues that (a) UNDP had no obligation to renew the Applicant’s service contract; (b) the

position classification was determined pursuant to the rules applicable to the service contract; and (c) after examining the allegations of abuse and harassment, the UNDP Office of Audit and Investigations closed the case, deeming a formal investigation unnecessary.

Considerations

8. The Tribunal must, in the first instance, consider whether this particular application is admissible.

Jurisdiction of the Court ratione personae

9. Under article 2 (1) (a) of its Statute,

“... 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.”

10. Under article 3 (1) (a) and (b) of the Statute,

“... 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.”

11. Article 3 of the Applicant’s service contract states that “the undersigned shall in no way be deemed to be a staff member of UNDP (or any other United Nations agency) and is not covered either by the United Nations Staff Regulations and Staff Rules or by the Convention on the Privileges and Immunities of the United Nations.

The undersigned acknowledges and agrees that his employment conditions differ from those that apply to UNDP staff under the United Nations Staff Regulations and Staff Rules. The rights and obligations of the undersigned are exclusively defined by the terms and conditions of this Contract. Accordingly, the undersigned is not entitled to receive any benefit, payment, grant, allowance or pension from UNDP except as expressly provided in this Contract.”

12. In addition, the Tribunal’s case law, like that of the Appeals Tribunal, has consistently underscored that, under articles 2 and 3 of the Statute of the Tribunal, applications may be entertained only with regard to staff members’ contracts (see *Mialeshka* UNDT/2011/055; *Ndjadi* UNDT/2011/007; *Roberts* UNDT/2010/142; *Di Giacomo* UNDT/2011/168; *Megerditchian* 2010-UNAT-088; *Gabaldon* 2011-UNAT-120).

13. In *Turner* (UNDT/2010/170), the Tribunal made the following observations:

It is clear that the Charter requires that staff members be “appointed” by the Secretary-General (or those to whom this authority has been delegated). The hallmark of a staff relationship is “appointment”, and this is done through a letter of appointment pursuant to staff regulation 4.1. The Staff Regulations apply to all staff members of the Secretariat, within the meaning of Article 97 of the Charter, whose employment relationship and contractual link with the Organization are through a letter of appointment issued pursuant to regulations promulgated by the General Assembly. Such letter is signed either by the Secretary-General or by an official in the name of the Secretary-General.

14. Hence, the Applicant, who at the time of the disputed facts was neither a serving nor a former staff member within the meaning of article 3.1 of the Statute, cannot address this Tribunal. Therefore, the Tribunal must disclaim jurisdiction in this case.

15. Finally, the Tribunal Court draws the Applicant’s attention to section 15 of the service contract, on dispute settlement, which states that “any claim or dispute concerning the interpretation or execution of this contract that cannot be settled amicably shall be settled by binding arbitration. UNCITRAL [United Nations

Commission for International Trade Law] arbitration rules shall apply. The use of binding arbitration shall in every case be preceded by conciliation initiated under the UNCITRAL rules.”

Decision

16. In view of the foregoing, the Tribunal decides to dismiss the application.

(Signed)
Judge Vinod Boolell
So ruled this 25th day of September 2013

Entered in the Register on 25 September 2013

(Signed)

Abena Kwakye-Berko, Acting Registrar, Nairobi