



Before: Judge Coral Shaw
Registry: Nairobi
Registrar: Abena Kwakye-Berko, Acting Registrar

STAEDTLER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Self- represented

Counsel for the Respondent:

Katya Melliush, UNON

Introduction

1. The Applicant has two applications before the United Nations Dispute Tribunal in Nairobi (UNDT). In Case No. UNDT/NBI/2013/021 he has challenged his performance evaluations for the periods 2011-2012 and 2012-2013, and the administrative decisions not to grant him protection against retaliation and not to renew his fixed-term contract.

2. In the present case the Applicant has challenged the decision not to include him in the roster following his non-selection for two posts and the Respondent's refusal to disclose information subsequently requested by the Applicant about the roster process.

3. As the Respondent alleges that the Applicant's claims in this Application are not receivable and both parties have made written submissions on receivability, the Tribunal will decide that as a preliminary issue. Both Parties indicated that they did not wish to have an oral hearing. The following facts are taken from the Application and responses to the Application.

Facts

4. The Applicant served as a staff member of the United Nations Human Settlements Programme (UN-Habitat) on a one year fixed-term appointment from 13 September 2011 to 31 December 2012. He was initially based in the UN-Habitat Regional and Technical Cooperation Division (RTCD) office in Tripoli, Libya, and subsequently reassigned to Amman, Jordan on 1 April 2012.

5. Issues arose between the Applicant and UN-Habitat and on 26 November 2012, he was informed that his contract would not be extended beyond 31 December 2012. The Applicant was separated from service effective 1 January 2013.

6. Before his contract with UN-Habitat ended, the Applicant had applied for two posts.

7. On 26 May 2012, he applied for the post of Senior Human Settlements Officer in the Regional Office in Cairo (Cairo post). He underwent a competency-based interview in July. On 13 October 2012, he was notified that he had not been selected for the post.

8. On 18 October 2012, he applied for the post of the Senior Human Settlements Officer in the Regional Office in Fukuoka (Fukuoka post). He underwent a competency-based interview in February 2013 and was notified on 6 June 2013 that he had not been selected for the post.

9. Following his non-selection for the Cairo post, the Applicant invoked the assistance of the Ombudsman, who was already involved in the issues in Case No. UNDT/NBI/2013/021, to obtain information on the rostering process.

10. On 16 January 2013, the Applicant requested the UN-Habitat personnel officer to supply information about the Cairo job opening and how he could be included in the roster. This request was repeated eight times between January and March 2013.

11. In May, the Ombudsman wrote on behalf of the Applicant to the Human Resources Officer/Officer-in-Charge (HR Officer) of the Recruitment and Planning Section, of the Human Resources Management Service of the United Nations Office at Nairobi (HRMS/UNON) asking for a response to the Applicant's questions about the roster following his competency based interview for the Cairo job opening. That letter also requested disclosure of documentation about the selection process and the roster decision.

12. HRMS/UNON responded on 23 May 2013. It declined to grant access to the documents sought.

13. On 6 June 2013, the Applicant was notified in writing that he had not been selected for the Fukuoka post.

14. On 17 June 2013, the Applicant requested HRMS/UNON to provide information about the roster following his competency-based interview for the Fukuoka post. HRMS/UNON responded on 17 June 2013.

15. On 19 June 2013, the Applicant requested the HR Officer to disclose: the membership of the Central Review Body (CRB) that had reviewed his case; the identity of the persons who had provided recommendations for non-inclusion in the roster; and the criteria for being endorsed by the CRB. This request was refused on 25 June 2013.

16. On 13 July 2013 the Applicant requested management evaluation. He received the management evaluation decision upholding the contested decisions on 26 August 2013.

The Application

17. On 30 August 2013, the Applicant filed the present Application before the Tribunal contesting three administrative decisions: a) not to disclose the records concerning the selection process for the two job openings; b) not to disclose the members of the CRB concerning reviews; and c) not to include the Applicant in the professional roster following his application for both positions.

18. The Applicant claims that these decisions violated his due process rights and his right to “good faith and fair dealing”.

Respondent's Submissions

Ratione temporis

19. The non-inclusion of the Applicant in the professional roster as a result of the recruitment to the Cairo position is not receivable *ratione temporis*.

20. The Applicant was notified of his non-selection for this position on 13 October 2012. If it were not immediately evident that he had not been included in the roster following that recruitment process, the Applicant would have become aware of it on accessing the Inspira website to complete his application on 18 October 2012 for the Fukuoka position.

21. Under section 9.4 of ST/AI/2010/3 (Staff selection system), candidates endorsed by the CRB and placed on the roster are notified within 14 days of the selection decision. At the latest, the Applicant would have been aware that he had not been placed on the roster on 27 October 2012, that is, 14 days after receiving notice of his non-selection.

22. The Applicant's request for management evaluation should therefore have been made, at the very latest, on the 60th day after 27 October 2012. As no such request was made until 14 July 2013, the Application before the Tribunal is time-barred and should be dismissed as such.

Ratione materiae

23. The Respondent submits that in this case the Applicant does not contend that his right to full and fair consideration for the jobs he applied for was violated. The decisions relating to the non-disclosure of the records relating to the selection exercises (HR Officer's email dated 23 May 2013) and of the membership of the

CRB (dated 25 June 2013) in respect of both the Cairo and Fukuoka positions do not amount to “administrative decisions” within the jurisdiction of the UNDT.

24. As a former staff member, the Applicant had no right to receive or examine the records and documentation relating to the recruitment process. The decision not to grant him access to the requested information did not, in and of itself, breach any of his rights. A staff member applying for a job opening within the United Nations has the right to be given full and fair consideration for the position, breach of which, the Applicant is not contending was violated in the recruitment process.

25. The Application is therefore beyond the subject-matter jurisdiction of the Tribunal.

Applicant’s Submissions

26. The Applicant submits that after a staff member has been interviewed, the decisions: not to roster him/her, not to inform him/her properly and not to disclose requested information related to the selection process constitute appealable administrative decisions.

27. The Respondent’s failure to give the Applicant actual notice about his non-inclusion in the roster in accordance with ST/AI/2010/3 caused a lack of the requisite objective elements that put both parties in a position to determine accurately the date of the corresponding administrative decision, and consequently, an unequivocal starting date for the 60 days for submitting a management evaluation.

28. The Applicant persistently sought clarification about the roster. The Respondent provided substantive information only on 23 May 2012 and that put the Applicant in the position to request management evaluation.

29. It was the responsibility of the Hiring Managers for the Cairo and Fukuoka posts to inform the Applicant that he was not placed on the roster.

30. The Administrative decision to include or not to include a staff member in a roster directly affects his/her opportunity to be considered as a roster candidate and therefore has direct legal consequences in relation to career development as affects loss of chance.

31. The Applicant has the right to be put in a position to challenge an administrative decision that, by extension, constitutes a right to be provided with the information necessary to challenge the administrative decision.

32. The Applicant contends that his request for documentation relating to the selection process is properly made and that the Respondent's submissions with regard to policy and confidentiality are incorrect.

Considerations

33. If the Applicant has a receivable substantive claim relating to either of the posts for which he applied then his rights to documentation relating to that claim becomes a relevant issue. However if there is no such claim before the Tribunal, the Applicant has no rights to disclosure of documents as they would be irrelevant and lack probative value (Article 18.5 of the Tribunal's Rules of Procedure).

34. In this case, the substantive challenge made by the Applicant is to the administrative decisions not to include him in the professional rosters after being interviewed for the Cairo and Fukuoka posts.

35. Section 10.1 of ST/AI/2010/3 provides that:

Candidates endorsed by the central review body and placed on a roster shall be informed of such placement within 14 days after the decision is made by the hiring manager or occupational group

manager and be advised that they may be selected from the roster for similar positions that may become available within the stipulated time frame as described in sections 9.3 and 9.4. *Other candidates convoked for assessments but not selected or placed on a roster shall be so informed by the hiring manager or the occupational group manager within 14 days after the selection decision is made in writing* (emphasis added by both the Applicant and Tribunal). Applicants eliminated prior to the assessment exercises shall be informed.

36. This section requires that candidates who have been assessed but are not selected or placed on the roster are to be advised of this within 14 days after the selection decision is made.

Cairo Post

37. Pursuant to article 8.1(c) of the UNDT Statute, an application to the Tribunal is receivable, inter alia, where an applicant has previously submitted the contested administrative decision for management evaluation, where required. The time limit for making a request for management evaluation is 60 days.¹

38. The time for the Applicant to challenge his non-inclusion on the professional roster following the selection decision for the Cairo post ran from the date he had knowledge of the decision. The date of the decision or when it came to the Applicant's knowledge must be objectively determined by the Tribunal.

39. The record indicates that the Applicant was made aware that he was not selected for the Cairo position on 13 October 2012. On 18 October 2012, the Applicant accessed the INSPIRA system to apply for the Fukuoka position. INSPIRA would have shown that he had not been placed on the roster following his assessment for the Cairo post.

¹ Staff rule 11.2(b).

40. However, in the unlikely event that such information was not on INSPIRA, meaning that at that stage the Applicant had no knowledge that he had not been placed on the roster after the Cairo selection process, his 16 January 2013 letter to the UN-Habitat personnel officer asking how he could be included in the roster demonstrates that by then he had the relevant knowledge. The Applicant's request for management evaluation was not made until 14 July 2013, which was outside the 60-day time limit for such requests.

41. The Application in respect of the Cairo post is not receivable by the Tribunal, as the Applicant did not submit his request for management evaluation in time.

Fukuoka Post

42. On 13 July 2013, the Applicant requested management evaluation of the decisions notified to him on 16 June 2013. This was well within the time limit of 60 days.

43. The issue is whether the Applicant's claims in respect of the Fukuoka decisions relate to administrative decisions that are within the jurisdiction of the Tribunal. Article 2.1(a) of the UNDT Statute provides that an applicant may bring a claim to the Tribunal concerning an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment.

44. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of the alleged non-compliance. The administrative decision must be one that has direct legal consequences on an individual's rights and obligations.²

45. The Administrative decision not to place the Applicant on the professional roster was made pursuant to rules in force at the time of his engagement by UN-

² *Planas* UNDT/2009/086; *Andati-Amwayi* 2010-UNAT-058.

Habitat and is one that directly affected the Applicant's rights. The Applicant did not challenge his non-selection but he has challenged the part of the recruitment process as it related to the roster.

46. The Respondent's decisions not to disclose documentation relating to the decision not to include the Applicant in a professional roster or information about the membership of the Central Review Body were administrative decisions relating to that substantive issue. They are within the jurisdiction of the Tribunal and are receivable.

47. The selection and consequent roster decisions were not made until after the Applicant's existing contract ended. Although he was by then a former staff member, this does not deprive the Applicant of the opportunity to challenge that decision or, as the Respondent contends, to the right to receive or examine the records and documentation relating to the administrative decision being challenged.³

48. The Application relating to the Fukuoka post is receivable *ratione materiae*.

Conclusion

49. The Applicant's claims relating to the Cairo post are not receivable.

50. The Applicant's claims relating to the Fukuoka post are receivable and will be considered by the Tribunal at the same time as *Staedtler* UNDT/NBI/2013/021 in 2014.

³ *Appleton* Order No. 289 (NY/2010).

(Signed)

Judge Coral Shaw

Dated this 24th day of December 2013

Entered in the Register on this 24th day of December 2013

(Signed)

Eric Muli, Officer-in-Charge, UNDT Nairobi