



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

NIELSEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Andreas Ruckriegel, UNFPA

Facts

1. On 16 March 2014, the Applicant, a former Procurement Assistant (G-5) in the United Nations Population Fund (“UNFPA”), filed an application contesting the decision to place her on special leave with full pay (“SLWFP”), dated 23 September 2013. The application was registered under Case No. UNDT/GVA/2014/009.

2. Together with her application, the Applicant filed a ‘Motion for intervention’, explaining that on 14 February 2014 she had “applied for the end of the year appraisal rebuttal (PAD rebuttal) in UNFPA”. The Applicant requests the Tribunal to “urgently intervene into the PAD rebuttal process” by requesting the Respondent to give her access to her former UNFPA email inbox. Considering that this motion deals with different matters than those raised in Case No. UNDT/GVA/2014/009, the Tribunal registered it under Case No. UNDT/GVA/2014/010.

3. On 20 March 2014, the Applicant filed a ‘Motion for interim measures pending proceedings’ as “an addition to the motion for intervention”, which hence was included in the file of Case No. UNDT/GVA/2014/10. In that additional motion, she asks the Tribunal “to request UNFPA not to make the PAD rebuttal conclusion until the UNDT will make a decision” on her request to grant her access to her former UNFPA email inbox.

Consideration

4. Pursuant to art. 22.3 of its Rules of Procedure, the Dispute Tribunal shall decide on the admissibility of an application for intervention.

5. Considering its title ‘Intervention by persons not party to the case’, art. 22 of the Tribunal’s Rules of Procedure is addressed to persons who are not parties to the case. The parties of a case are the applicant and the respondent. Therefore, in the instant case, the Applicant as a party cannot file a motion for intervention in her own case. Such a motion is obviously not receivable.

6. In addition, the Applicant's request "to urgently intervene into the PAD rebuttal process" is not receivable *ratione materiae*. According to art. 2.1 of its Statute, the Dispute Tribunal shall be competent to hear and pass judgement on an application to "appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment". It is not for the Tribunal to intervene in ongoing administrative procedures such as the rebuttal the Applicant herself initiated on 14 February 2014 and which is still pending.

7. Regarding the Applicant's motion for interim measures, the Tribunal notes that such interim measures can only be ordered "during the proceedings" (see art. 10.2 of the Tribunal's Statute). Since the Tribunal hereby decides on the Applicant's motion for intervention, the proceedings of Case No. UNDT/GVA/2014/10 are now closed and, as a result, there is no legal ground for an interim measure.

8. The issues discussed above are a matter of law, which may be adjudicated even without serving the application to the Respondent for reply and even if they were not raised by the parties (see *Gehr* 2013-UNAT-313; *Christensen* 2013-UNAT-335; see also *Bofill* UNDT/2013/141; *Lee* UNDT/2013/147). As such, the Tribunal deems it appropriate to decide on the instant case by summary judgment, in accordance with art. 9 of its Rules of Procedure, which provides that the Tribunal may determine, on its own initiative, that summary judgement is appropriate.

Conclusion

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

The motions constituting Case No. UNDT/GVA/2014/10 are rejected and said case is hereby closed.

(Signed)

Judge Thomas Laker

Dated this 21st day of March 2014

Entered in the Register on this 21st day of March 2014

(Signed)

René M. Vargas M., Registrar, Geneva