



Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko

NEGASA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Steven Dietrich, ALS/OHRM
Nicole Wynn, ALS/OHRM

Introduction

1. The Applicant is a staff member of the United Nations Mission in South Sudan (UNMISS). He filed the current Application on 14 May 2014 challenging the decision by the Department of Field Support (DFS) to declare him ineligible for consideration for a continuing appointment (Contested Decision).

2. The Application was served on the Respondent on 19 May 2014 with a deadline of 18 June 2014 to submit his Reply.

3. On 5 June 2014, the Respondent submitted a Motion seeking leave of the Tribunal to have receivability considered as a preliminary issue and a Reply on receivability.

4. The Respondent's Motion and Reply were served on the Applicant on 6 June 2014. He submitted his comments on receivability on 10 June 2014.

Facts

5. The Applicant commenced service with the Department of Peacekeeping Operations (DPKO) on 15 April 2005. He is currently serving with UNMISS as a Security Officer at the FS-5 level.

6. Between 1 August 2012 and 16 December 2013, the Field Personnel Division (FPD), DFS, conducted a review of the eligibility of staff members for consideration for continuing appointments through Inspira.

7. From 1 August 2013 to 12 September 2013, potentially eligible staff members were invited to review the accuracy of their data, attach relevant documents, including performance appraisals, and provide comments in Inspira.

8. FPD/DFS subsequently informed the Applicant that based on the information entered into Inspira, he did not meet the eligibility criteria because the dates on 4 of

his performance appraisals indicated they were for periods of less than 1 year. On 16 March 2014, the Applicant submitted handwritten corrections of the non-qualifying performance appraisals to indicate that each covered a full year.

9. On 18 March 2014, FPD/DFS informed the Applicant that it could not accept his hand written corrections.

10. On 20 March 2014, the Applicant requested management evaluation of the Contested Decision and on 14 May 2014, he filed the current Application before the Tribunal.

11. On 19 May 2014, FPD/DFS informed the Applicant by email that his eligibility had been reviewed again and that he was now deemed eligible for consideration.

Issues

12. In light of the email dated 19 May 2014 from FPD/DFS, is this Application receivable?

Parties' submissions

13. The Respondent submits that the Application is not receivable *rationae materiae* because the Contested Decision has been reversed. The Applicant is now deemed eligible for consideration for a continuing appointment thus there is no dispute for adjudication.

14. The Applicant submits that the Application is receivable because the Tribunal is required to ensure that the Respondent correctly applies the rules and procedures of the United Nations. Noting that he had made an unsuccessful attempt to informally resolve the matter with FPD/DFS, he states that if the Respondent “accepts [his] mistake”, then he is willing to resolve the matter amicably and informally.

Considerations

15. Article 2.1 of the Tribunal's Statute states:

Article 2

1. 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. In Judgment No. 1157, *Andronov* (2003), the former United Nations Administrative Tribunal defined an administrative decision as follows:

A unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules and regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences [...]

17. At the time the Applicant filed his Application on 14 May 2014, there was a contestable administrative decision in that the Contested Decision carried direct and serious legal consequences for him because he was no longer deemed eligible for consideration for a continuing appointment.

18. However, on 19 May 2014, FPD/DFS informed the Applicant as follows by email:

Kindly be informed that the decision regarding your eligibility has been reviewed in light of the information/documents you provided and we are pleased to inform you that you are now deemed eligible. However, this will not be reflected in Inspira because the changes are made manually. You will be informed regarding your continuing appointment in the next few months.

19. Apparently, FPD/DFS decided to overturn its initial finding of ineligibility and by so doing, it effectively expunged the administrative decision upon which this Application was predicated. Consequently, there is no longer an administrative decision that is allegedly in non-compliance with the Applicant's terms of appointment or the contract of employment as stipulated by article 2.1(a) of the UNDT Statute.

20. Although FPD/DFS appeared to be resolute in its decision not to consider the Applicant for a continuing appointment until he requested management evaluation, the Tribunal is pleased that it subsequently decided to review the documents the Applicant submitted on 16 March with a less jaundiced eye and ultimately made a decision that has quickly and justly resolved the matter.

Decision

21. In light of the finding that there is no longer a contestable administrative decision for adjudication, the Tribunal concludes that the current Application is not receivable *rationae materiae*.

22. Consequently, the Application is dismissed in its entirety.

(Signed)

Judge Vinod Boolell
Dated this 17th day of June 2014

Entered in the Register on this 17th day of June 2014

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi