



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

KRIOUTCHKOV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant contests the non-advertisement of the post of Russian Translator (P-3), Russian Translation Unit (“RTU”), Translation and Editorial Section (“TES”), Division of Conference Services (“DCS”), United Nation Office at Nairobi (“UNON”).

Facts

2. Between 6 May 2014 and 21 July 2014, the Applicant contacted various officials of DCS and the Human Resources Management Service, UNON, inquiring about any advertised/filled P-3 Russian Translator vacancies with UNON in recent years. He did not obtain the answer he was seeking.

3. By letter dated 22 May 2014, the Applicant requested management evaluation of the “administrative decision not to advertise any posts of RUSSIAN TRANSLATOR, P3”, RTU, TES, DCS, UNON. In its reply letter of 8 July 2014, the Management Evaluation Unit (“MEU”) stressed that the Applicant put this decision to management evaluation without actually knowing if there had been any P-3 Russian translator position at UNON or if any had been filled, and that he had stated that he had submitted his request precisely to receive information on possible vacancies. On these grounds, the request was rejected as vexatious and frivolous.

4. The Applicant avers that, on 5 August 2014, he learnt “by hearsay” that on 1 January 2012, a new incumbent had assumed the functions of a vacant post of Russian Translator (P-3) with RTU, TES, DCS, UNON.

5. On 8 August 2014, the Applicant submitted a request for management evaluation of the “administrative decision on the selection for the RUSSIAN TRANSLATOR post, P3”, RTU, TES, DCS, UNON. He explained that he had no information on the vacancy number or the precise date it was filled, despite his attempts to receive such information, and, therefore, he could not provide it.

6. Not having received any reply from MEU, the Applicant filed the present application on 11 December 2014.

7. The application was served on the Respondent on 29 December 2014, with the instruction to file a reply limited to the issue of receivability, which he did on 28 January 2015.

Parties' submissions

8. The Applicant's principal contentions are:

a. Failure to advertise vacant posts contradicts the principles of art. 101.3 of the Charter and staff regulation 4.2, as both require that the paramount consideration in the appointment, transfer and promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity;

b. Given that he could not compete for the non-advertised litigious post, he was denied any consideration at all for same, in breach of staff regulation 4.4. The contested decision also runs contrary to General Assembly resolutions 33/143 and 51/226, which provide that all existing vacancies should be announced, so as to give equal opportunity to all qualified staff and to encourage mobility;

c. The combined effect of the following have effectively deprived him of any career development and mobility opportunities:

i. the fact that only five duty stations host Russian translators and revisers post;

ii. the application of sec. 2.5 of administrative instruction ST/AI/2010/3 (Staff Selection System), allowing lateral transfers, to the detriment of candidates serving in a different department; and

iii. an over 25-year practice by which P-3 and P-4 promotion of Russian translators have been done strictly within the same services/units at all concerned duty stations;

d. As a result, his career has been stalled, in spite of his excellent performance ratings and his consistently being rostered for P-4 positions, and he has suffered significant financial losses, as well as moral harm.

9. The Respondent's principal contentions are:

a. Before his 8 August 2014 request for management evaluation, the Applicant had submitted another such request in May 2014 contesting the decision not to advertise any posts of Russian Translator, P-3 with UNON, which had been found not receivable, vexatious and frivolous as per reply letter dated 8 July 2014. The Applicant did not appeal the decision to the Tribunal within 90 days since receiving the aforementioned reply—that is, by 6 October 2014; the application is thus time-barred;

b. The Applicant has not identified an administrative decision (under art. 2.1 of the Tribunal's Statute) subject of his appeal. While any applicant carries the duty to clearly identify the contested decision by reference to objective elements and to set out sufficient details to enable the Administration to determine what decision is at issue (*O'Neill* 2011-UNAT-182; *Rosana* 2012-UNAT-273), the Applicant merely states that he learnt by hearsay that a particular person was selected as a P-3 Russian Translator in UNON in 2012 and he does not disclose his source of information. In essence, the Respondent must investigate to determine if the alleged decision has been made, and the Tribunal is not put in a position to identify the contested administrative decision.

Consideration

10. Staff rule 11.2(a) provides:

A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment ... shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

11. Pursuant to this provision and a well-established jurisprudence, this Tribunal must declare irreceivable *ratione materiae* any application filed without having previously fulfilled the pre-requisite of seeking management evaluation of the specific decision contested (*Christensen* 2013-UNAT-335, *Wamalala* 2013-UNAT-300).

12. In the instant application, as per the Applicant's own words, the contested decision is the "*non-advertisement* of the post of a Russian Translator, P-3, Russian Translator Unit (RTU), with the Translation and Editorial Section (TES) of the Division of Conference Services (DCS), United Nations Office at Nairobi (UNON)" (emphasis added), whereas the management evaluation request of 8 August 2014 did not relate to this decision, but rather to "the administrative decision *on the selection* for the RUSSIAN TRANSLATOR post, P3, with the Translation and Editorial Section (TES) of the Division of Conference Services (DCS), United Nations Office at Nairobi (UNON)" (emphasis added).

13. Hence, the present application and the above-referenced management evaluation request of 8 August 2014, obviously concern different decisions. Accordingly, the pre-requisite of staff rule 11.2(a) was clearly not met.

14. The Applicant's earlier management evaluation request dated 22 May 2014, disclosed by the Respondent, concerned the "administrative decision not to advertise any posts of RUSSIAN TRANSLATOR, P3", RTU, TES, DCS, UNON". As such, it is unclear if that request for management evaluation can be deemed to challenge the same decision as the one impugned in the application at hand. However, even if one assumed, for the sake of argument, that it did, the Tribunal cannot but conclude that the Applicant failed to come before the Tribunal within the statutory 90-day time limit prescribed in art. 8.1(d)(i) and staff rule 11.4(a) whereby:

A staff member may file an application against a contested administrative decision, whether or not it has been amended by any management evaluation, with the United Nations Dispute Tribunal within 90 calendar days from the date on which the staff member received the outcome of the management evaluation or from the date of expiration of the deadline specified under staff rule 11.2 (d), whichever is earlier.

15. The Applicant received a reply to his 22 May 2014 request for management evaluation on 8 July 2014; it follows that he should have filed his application with the Tribunal within 90 days from that date, namely by Monday, 6 October 2014. Instead, the present application was filed only some two months later.

16. As a consequence, even assuming that the 22 May 2014 request for management evaluation concerned the same decision as the one contested in the present application, the latter would be time-barred.

17. Therefore, the application must be declared irreceivable.

18. The Tribunal deems it appropriate, at its own initiative and in accordance with art. 9 of its Rules of Procedure, to decide on the present case by way of summary judgment, which has been accepted as an appropriate tool to deal with issues of receivability (see *Chahrour* 2014-UNAT-406, *Gehr* 2013-UNAT-313).

Conclusion

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

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 2nd day of February 2015

Entered in the Register on this 2nd day of February 2015

(Signed)

René M. Vargas M., Registrar, Geneva