



Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

SANCHEZ CALERO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Teresa López Posse, UNDP

Introduction

1. On 17 November 2014, the Applicant, a former service contractor with the United Nations Development Programme (“UNDP”) in Cuba, filed an application by email, together with a number of annexes in Spanish. The Applicant challenged the following decisions: (a) refusal to provide a certification of service upon the conclusion of her functions; (b) withholding of her last salary payment; (c) the placement of a Note to the File in her personnel file; and (d) refusal to allow her to view her personnel file and the Note to the File.

2. A Duty Judge instructed the Registry to translate into English the case file submitted by the Applicant and to serve the application on the Respondent.

3. The English translation of the application became available on 30 January 2015. By Order No. 15 (NY/2015), dated 3 February 2015, the Tribunal ordered the Respondent to file a reply by 5 March 2015.

4. On 6 February 2015, the Respondent filed a motion, together with four annexes in Spanish, requesting the Tribunal to strike out the application as manifestly inadmissible on the ground that the Applicant is not a former staff member but rather an individual who held a contract for services, which expired on 30 June 2013. It was submitted that, accordingly, she has no standing to file a claim before the Dispute Tribunal.

5. By Order No. 26 (NY/2015), dated 11 February 2015, the Tribunal ordered the Applicant to file a response to the Respondent’s motion within five days of receipt of the Spanish translation of the motion and its annexes. On 30 March 2015, the Applicant filed her response.

6. By Order No. 88 (NY/2015), dated 15 May 2015, a Duty Judge ordered that the case join the queue of pending cases and that consideration of the Respondent's motion to strike out the application would be a matter for the Judge to whom this case was assigned.

7. On 21 July 2015, the case was assigned to the undersigned Judge.

Considerations

8. The Tribunal has regard to the expectations of the General Assembly in resolutions 66/237 (Administration of justice at the United Nations), adopted 24 December 2011, and 67/241 (Administration of justice at the United Nations), adopted 24 December 2012, that effective measures be adopted to deal with frivolous and manifestly inadmissible applications. In particular, para. 42 of resolution 67/241 states that the General Assembly:

Recognizes the importance of effective measures against the filing of frivolous applications [and] encourages the judges to make full use of those measures currently available to them ...

9. Consistent with the General Assembly's resolutions, the Tribunal has on several occasions considered matters of admissibility or receivability on a priority basis.

10. The question whether the Applicant has standing to bring this case is governed by the Statute of the Dispute Tribunal, which states, insofar as it is relevant:

Article 2

1. The Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute ...

...

Article 3

1. 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. The parties submitted copies of the Applicant's last service contracts with UNDP (i.e., consultancy or individual contractor agreement), which each included the following clauses:

3. STATUS, RIGHTS AND OBLIGATIONS OF THE SUBSCRIBER

The Subscriber serves in a personal capacity and not as representative of a Government or of any other authority external to the United Nations. The Subscriber is neither a "staff member" under the Staff Regulations of the United Nations nor an "official" for the purpose of the Convention of 13 February 1946 on the privileges and immunities of the United Nations. ... The Subscriber recognizes and accepts the fact that the terms of engagement as set forth in this Contract are different from those that apply to UNDP staff members under the Staff Regulations and Rules. The rights and obligations of the Subscriber are strictly limited to the terms and conditions of this Contract. Accordingly, the Subscriber is not entitled to any benefit, payment, subsidy, compensation or pension from UNDP, except as expressly provided in this Contract.

...

15. SETTLEMENT OF DISPUTES

Any claim or dispute relating to the interpretation or execution of the present Contract, or the termination thereof, which cannot be settled amicably shall be settled by binding arbitration under the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules. Binding arbitration must in all cases be preceded by a conciliatory procedure under UNCITRAL Conciliation Rules.

12. For an applicant to have standing to appear before the Tribunal, he or she must be a staff member, former staff member, or someone making claims on behalf of an incapacitated or deceased staff member. The United Nations Appeals Tribunal in *Basenko* 2011-UNAT-139 and *di Giacomo* 2012-UNAT-249 affirmed the Dispute Tribunal's findings that the Tribunal was not competent to hear cases brought by parties who were not considered staff members as they did not meet a necessary condition for access to the Tribunal.

13. Paragraph 3 of the Applicant's service contract specifically states that under the terms of her employment she is not considered a staff member and that she is not covered by the United Nations Staff Rules and Regulations.

14. Further, the Applicant's service contract specifically states that disputes relating to her contract that cannot be resolved amicably shall be dealt with via binding arbitration under the arbitration rules of the United Nations Commission on International Trade Law.

15. The finding that the Applicant was not a staff member effectively disposes of the application.

Conclusion

16. The Tribunal has no jurisdiction to consider this application.

Observation

17. Demonstrating concern for the wellbeing of those who work within the Organization, regardless of their contractual status, is entirely consistent with the Organization's ethos and values. Any issue of substance raised in this application that may merit proper consideration is a matter for the UNDP Administration and not this Tribunal.

Judgment

18. The application is dismissed.

(Signed)

Judge Goolam Meeran

Dated this 12th day of August 2015

Entered in the Register on this 12th day of August 2015

(Signed)

Hafida Lahiouel, Registrar, New York