



Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ELHABIL

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. On 23 July 2015, the Applicant, a staff member in the Gaza Field Office of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), filed an Application with the United Nations Dispute Tribunal (UNDT). The Applicant avers that he is contesting the disqualification of his candidacy from posts in the United Nations and, in particular, unfair treatment by management by denying him full and fair consideration for many posts.
2. The Application was served on the Administrative Law Section, Office of Human Resources Management (ALS/OHRM) on 23 July 2015.
3. On 28 August 2015, the Chief, Appeals Unit, ALS/OHRM, informed the Tribunal that ALS does not act as respondent in cases brought by UNRWA staff.
4. On 6 August 2015, the Tribunal issued Order No. 248 (NBI/2015) directing that the Application be served on ALS/OHRM as the Section that represents the United Nations Secretariat in cases before the Dispute Tribunal.
5. The Respondent filed a Reply on 7 September 2015.
6. On 22 October 2015, the Tribunal issued Order No. 335 (NBI/2015) in which it decided, pursuant to art. 16.1 of the Dispute Tribunal's Rules of Procedure, that a hearing was not necessary to determine the issues arising in this case and that it would rely on the Parties' written pleadings.

Applicant's submissions

7. On 25 July 2010, he was informed that he was not allowed to submit an online application on Inspira (United Nations recruitment website) because the online form did not allow him to register his nationality Palestine as it is not on the list. He therefore decided to apply as a Stateless candidate.
8. On 27 February 2015, the Inspira Support Centre informed him that he had reached the maximum number of submitted applications allowed per Inspira

account and they suggested that he register with a new Inspira account for future applications.

9. Between 22 October 2013 and 27 February 2014, he applied for more than 166 posts. The Applicant submits that he received confirmation for each application but technical problems “upheld” his “application to reach hiring managers, all applications were registered mistakenly 2010!!”.

10. By emails dated 9 and 22 April 2014, the Chief, Staffing Service - Strategic Planning and Staffing Division, Office of Human Resources Management, took note of his concerns and the inconvenience created by the technical problem. The Applicant submits that it was confirmed that the technical issue with his applications which were “upheld” by the Inspira system had been resolved and that the applications have been released for hiring managers’ review and due consideration. He was subsequently informed that the hiring managers for the positions he had applied for were no longer in a position to review his applications.

11. The Applicant submits that these technical problems in Inspira denied his candidature for the posts he applied for from being given full and fair consideration in violation of ST/AI/2006/3. The Applicant submits that he was specifically denied full and fair consideration for promotion to the position of Principal Electoral Affairs Officer, D1-426150.

Respondent’s submissions

Receivability

12. The Application is not receivable because the UNDT is not competent to hear and pass judgment on applications brought by UNRWA staff members. In the case of *Achkar* 2012-UNAT-267, the United Nations Appeals Tribunal (Appeals Tribunal) upheld the Dispute Tribunal’s judgment dismissing the appeal of an UNRWA staff member because UNRWA does not fall under the jurisdiction of the UNDT.

13. As an UNRWA staff member, the Applicant does not challenge an administrative decision as defined in art. 2.1(a) of the Statute.

14. The contested decision in this case had no direct legal consequences to the legal order or on the Applicant's terms of appointment. There is no legal obligation that exists between the Secretary-General and the Applicant. The Applicant has no more rights to access the UNDT than an external applicant for a position with the United Nations Secretariat. An external applicant cannot contest decisions of the Secretary-General before the Dispute Tribunal. Neither can the Applicant.

15. The Applicant has no contract governed by the United Nations Staff Rules and Regulations. The Staff Rules and Regulations expressly state that they apply to the administration of staff of the Secretariat and the separately administered funds and programmes. Similarly, art. 3.1 of its Statute grants the UNDT jurisdiction to review applications brought by staff of the United Nations Secretariat and the separately administered funds and programmes.

16. The Applicant is not a staff member of the Secretariat or the separately administered funds and programmes and the Staff Rules and Regulations are not incorporated into his terms of appointment. The Commissioner General of UNRWA appointed the Applicant in accordance with UNRWA's staff rules.

17. The Applicant was appointed by the Commissioner General of UNRWA and the terms of his appointment are governed by UNRWA's staff rules. The Applicant recognizes that the Secretariat staff rules do not govern his appointment and even rejects the applicability of the Staff Selection Administrative Instruction to him.

Considerations

Locus standi

18. The issue arising for consideration is the receivability of this Application. In *Christensen* 2013-UNAT-335, the Appeals Tribunal held that "the UNDT is

competent to review its own competence or jurisdiction in accordance with Article 2(6) of its Statute” when determining the receivability of an application. The Appeals Tribunal went on to state,

This competence can be exercised even if the parties or the administrative authorities do not raise the issue, because it constitutes a matter of law and the Statute prevents the UNDT from receiving a case which is actually non-receivable.

19. The Tribunal has accordingly chosen to proceed by way of a judgment on receivability without a hearing as it is perfectly and legally permissible to raise the issue of jurisdiction *sua sponte*.

20. On the question of the Applicant’s *locus standi* or, in other words, the right of the Applicant to be heard on an application filed before the Dispute Tribunal the Tribunal recalls art. 3 of the UNDT Statute which provides that:

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;

(c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes.

21. The issue is whether the Applicant, though he is challenging a decision of the Secretariat, is a staff member within the meaning of art. 3 of the Statute of the Dispute Tribunal.

22. Article 101, paragraph 1, of the Charter of the United Nations reads:

The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

23. Under the above provisions the power of appointment of staff members rests with the Secretary-General subject to regulations made by the General

Assembly. And the legal act by which the Organization legally undertakes to employ a person as a staff member is by a letter of appointment signed by the Secretary-General or an official acting on his behalf¹. The terms and conditions of the employment contract of a staff member are set forth in the letter of appointment and its express incorporation by reference of the Organization's Regulations and Rules and all pertinent administrative issuances².

24. The jurisdiction of the UNDT is limited to persons having acquired the status of staff members of the United Nations or former staff members, as set out in art. 3.1 of the UNDT Statute³. The UNDT has no jurisdiction to hear applications from UNRWA staff members⁴. The jurisdiction of the Tribunal is governed not only by the subject matter or nature of the litigation, which must be an administrative decision, but also on the status of the individual, that is, whether the individual is a staff member within the meaning of art. 101 of the Charter of the Organization.

25. At the time of the contested decision, the Applicant was a staff member of UNRWA. This entity does not fall under the jurisdiction of the UNDT nor does the Applicant fulfil the requirements of arts. 2.1(a) and 3 of the Statute of the UNDT. He therefore has no *locus standi* to challenge a decision of the Respondent before this Tribunal.

Conclusion

26. The Application is accordingly rejected as being not receivable.

(Signed)

Judge Vinod Boolell

Dated this 23rd day of October 2015

¹ *Gabaldon* 2011-UNAT-120.

² *Slade* 2014-UNAT-463.

³ *Iskandar* 2011-UNAT-116.

⁴ *Achkar* 2012-UNAT-267.

Entered in the Register on this 23rd day of October 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi