



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

FIKRI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Frits E. Bontekoe, UNHCR

Introduction

1. By application filed on 9 December 2015, the Applicant, a former service contractor with the United Nations High Commissioner for Refugees (“UNHCR”) contests the “termination of [her] employment”.

Facts

2. On 2 February 2015, the Applicant signed an individual contractor agreement (“the contractor agreement”) with the United Nations Office for Project Services (“UNOPS”) for the period from 2 February 2015 to 31 December 2015. The contractor agreement, however, stipulated that the offer was issued on behalf of UNHCR, pursuant to an agreement between the latter and UNOPS for the provision of administrative services. The contractor agreement further specified that the Applicant’s contract relationship would be with UNHCR and not with UNOPS.

3. Under sec. 6, the contractor agreement provided that “[t]he Individual Contractor shall have the legal status of an independent contractor vis-à-vis UNOPS, and shall not be regarded, for any purpose, as a staff member of UNOPS or any other entity of the United Nations ... under the Staff Regulations and Rules of the [United Nations]...”. The agreement further stipulated under sec. 17.2 that any disputes would be resolved either amicably or through arbitration, under the Arbitration Rules of the United Nations Commission on International Trade Law (“UNCITRAL”).

4. On 11 September 2015, the UNHCR Representative in Malaysia sent a letter to the Applicant, stating that her service was terminated on 4 September 2015, pursuant to her having—as he purported it—expressed her intention to resign.

Applicant's submissions

5. The Applicant states that the decision of 11 September 2015 was illegal, since she did not have the intention to resign.

Consideration

6. The Tribunal first has to determine whether in view of the Applicant's contractual status, the present application is receivable *ratione personae*.

7. Article 2.1(a) of the Tribunal's Statute provides:

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.

8. Article 3 of the Tribunal's statute further stipulates the following in its relevant parts:

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.

9. It results from the provisions above that the Tribunal has jurisdiction only over applications filed by a staff member, a former staff member or a person making claims in the name of an incapacitated or deceased staff member, with respect to an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment.

10. The above quoted sec. 6 of the Applicant's contractor agreement unambiguously provides that the Applicant's legal status was that of an independent contractor, which "shall not be regarded, for any purpose, as a staff member of UNOPS or any other entity of the United Nations ... under the Staff Regulations and Rules of the [United Nations]".

11. It follows that, as an individual contractor, the Applicant was not a staff member and, therefore, the application is not receivable, *ratione personae* (cf. *Ghahremani* 2011-UNAT-171).

12. In addition to the above, the Tribunal recalls that it has jurisdiction to consider applications only against an administrative decision for which an applicant has timely requested management evaluation (*Egglesfield* 2014-UNAT-402).

13. With respect to the deadline to request management evaluation, staff rule 11.2(c) provides:

A request for management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

14. The Tribunal also recalls the established jurisprudence of the Appeals Tribunal according to which statutory time limits have to be strictly enforced (*Mezoui* 2010-UNAT-043; *Laeijendecker* 2011-UNAT-158; *Romman* 2013-UNAT-308).

15. Furthermore, pursuant to art. 8.3 of its Statute, and equally to the established jurisprudence of the Appeals Tribunal, the Dispute Tribunal has no discretion to waive the deadline for management evaluation or administrative review (*Costa* 2010-UNAT-036; *Rahman* 2012-UNAT-260; *Roig* 2013-UNAT-368; *Egglesfield* 2014-UNAT-402).

16. The Tribunal notes that the contested decision is dated 11 September 2015; at the time of her filing the application, the Applicant had not submitted a request for management evaluation. Based on the deadline indicated above, she is also not in a position to make up leeway in a timely way. Therefore, the application is equally irreceivable, *ratione materiae*.

17. It results from the foregoing, that the present application being irreceivable *ratione personae* and *ratione materiae*, the Tribunal is not competent to consider it.

18. The above is a matter of law, which may be adjudicated even without serving the application to the Respondent for reply, and even if it was not raised by the parties (see *Gehr* 2013-UNAT-313, *Christensen* 2013-UNAT-335).

19. Therefore, the Tribunal decides on the present application by way of summary judgement, 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.

20. Finally, the Tribunal notes that although the Applicant has no access to the internal justice system of the United Nations, as per the terms of sec. 17.2 of her contractor agreement, she has access to arbitration services under the Arbitration rules of UNCITRAL.

Conclusion

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

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 18th day of December 2015

Entered in the Register on this 18th day of December 2015

(Signed)

René M. Vargas M., Registrar, Geneva