



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2016/066
Judgment No.: UNDT/2016/179
Date: 29 September 2016
Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

UMBA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Thomas Jacob, UNDP

Introduction

1. On 12 September 2016, the Applicant, a former Service Contractor with the United Nations Development Programme (UNDP) in the Democratic Republic of the Congo (DRC), filed an application with the United Nations Dispute Tribunal (the Tribunal) contesting the decision to terminate his service contract. He also contests the decision not to pay him his salary for the month of June 2016, his accumulated days of annual leave and his overtime.

2. The Applicant is seeking: (i) to be retained in service until 31 December 2016, the expiry date of his service contract; (ii) compensation for moral damages; (iii) payment of overtime during the eight years of his work in UNDP; and (iv) termination of his insurance coverage with Van Breda because its services are not adapted to the realities in Africa.

Procedural history

3. The Applicant was working in UNDP as a Radio Operator in Lubumbashi, DRC, on a Service Contract valid until 31 December 2016.

4. On 10 June 2016, the Applicant was notified by the Country Director and Resident Representative (CD/RR), UNDP, DRC, that in accordance with article 8 of his Service Contract, his contract was being terminated due to findings of misconduct against him.

5. By letter dated 17 June 2016, addressed to the CD/RR, UNDP, DRC, the Applicant contested the basis of the decision to terminate his Service Contract. The CD/RR, UNDP, DRC responded to the Applicant's letter on 13 July 2016.

6. On 12 September 2016, the Applicant filed an application with the United Nations Dispute Tribunal (the Tribunal) which was transmitted to the Respondent.

7. On 22 September 2016, the Respondent filed a motion for summary judgment claiming issues of receivability on multiple grounds.

Considerations

8. The Tribunal observes that the Applicant indicated in his application that he was working in UNDP, DRC on a Service Contract, which raises the issue of the receivability of the Application.

9. Pursuant to arts. 2.1 and 3.1 of the Tribunal's Statute, the Tribunal is competent to hear and pass judgment on an application against an administrative decision "alleged to be in non-compliance with the terms of appointment or the contract of employment" filed by any current or former "staff member of the United Nations" or "any person making claims in the name of an incapacitated or deceased staff member". The limitations on the Tribunal's jurisdiction have been affirmed by the United Nations Appeals Tribunal (see *Megerditchian* 2010-UNAT-088, *Basenko* 2011-UNAT-139, *di Giacomo* 2012-UNAT-249).

10. The Respondent submits that the Applicant, as a former Service Contractor, does not have standing to submit an application to the Tribunal. The Applicant identifies the contested decision as *inter alia*, the decision to terminate his Service Contract. While the Applicant attached to his application a copy of his service contract signed on 31 January 2009, the Tribunal observes that another document filed by him, i.e. the CD/RR, UNDP, DRC's letter dated 10 June 2016, indicates that most recently he was the holder of a Service Contract dated 1 January 2012 which has been extended until 31 December 2016. There is, therefore, no dispute and no doubt that the Applicant is neither a staff member nor a former staff member of the United Nations. As a consequence, the Tribunal does not have jurisdiction over this case *ratione personae*.

11. Having found the application not receivable, it is not necessary for the Tribunal to consider the Respondent's other receivability arguments.

Decision

12. The application is not receivable and is therefore rejected.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 29th day of September 2016

Entered in the Register on this 29th day of September 2016

(Signed)

Eric Muli, for
Abena Kwakye-Berko, Registrar, Nairobi