



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

REDA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Kong Leong Toh, UNOPS

Introduction

1. On 5 February 2018, the Applicant, a former individual contractor of the United Nations Office for Project Services (UNOPS), filed an application with the United Nations Dispute Tribunal (UNDT). The Applicant contests the incorrect labeling of his duties during an investigation conducted by the Internal Audit and Investigation Group (IAIG) of UNOPS in Morocco.

Facts

2. The Applicant was an individual contractor at UNOPS and served as a Civil Engineer in Rabat, Morocco. His last individual contractor agreement covered the period from 1 April 2016 to 31 August 2016.

3. On 5 February 2018, the Applicant filed an application with the UNDT contesting the incorrect labeling of his duties during an investigation conducted by the UNOPS IAIG in Morocco.

4. On 14 February 2018, the Respondent filed a motion for leave to argue the non-receivability of the application as a preliminary issue. The Respondent submits that the Applicant was not a staff member of UNOPS but an individual contractor and therefore lacks *locus standi* before the Dispute Tribunal.

5. On 15 February 2018, the Applicant filed a response to the Respondent's motion. The Applicant submits that he worked in UNOPS under the same conditions as a staff member of the United Nations.

Considerations

Locus standi

6. The issue arising for consideration is the receivability of the present application. In *Christensen* 2013-UNAT-335, the United Nations Appeals Tribunal (“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.

7. Having reviewed the Respondent’s motion, the Tribunal considers it appropriate to examine the preliminary issue of its jurisdiction or competence to entertain this application.

8. In that regard, the Applicant’s *locus standi* or, in other words, the right of the Applicant to be heard on an application before the Dispute Tribunal stands to be determined. Articles 2.1(a) and 3 of the UNDT Statute provide as follows:

Article 2

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 of the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance;

* * *

Article 3

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. The foregoing provisions clearly stipulate that the jurisdiction of the UNDT is limited only to persons who are staff members of the United Nations or who were former staff members as set out in art. 3.1 of the UNDT Statute.¹ To that extent, the UNDT's jurisdiction does not apply to the hearing of applications from non-staff members.

10. The two features that determine the competence of the Dispute Tribunal to entertain a given application before it are: (1) the subject matter of the application must arise from an administrative decision, and (2) the applicant must be a staff member within the meaning of art. 101 of the Charter of the Organization. An individual contractor is not a staff member of the United Nations.

11. The evidence shows that the Applicant signed a contract with UNOPS governed by the terms and conditions of the UNOPS Individual Contractor Agreement which specifically provides in paragraph 1.1 that “[t]he Individual Contractor shall have the legal status of an independent contractor vis-a-vis UNOPS and shall not be regarded, for any purpose, as a staff member of UNOPS or any other entity of the United Nations ...”.

12. The Applicant, not being a staff member of UNOPS or any other entity of the United Nations, has no *locus standi* before this Tribunal. The present application is accordingly incompetent and cannot be entertained.

¹ See *Iskandar* 2011-UNAT-116.

Conclusion

13. This application is struck out as being not receivable.

(Signed)

Judge Nkemdilim Izuako

Dated this 1st day of March 2018

Entered in the Register on this 1st day of March 2018

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi