



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2018/073

Judgment No.: UNDT/2019/011

Date: 28 January 2019

Original: English

Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

AHMED

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

ALS/OHRM

Introduction

1. By application filed on 25 July 2018, the Applicant, a former P-3, Chief Fuel Unit, Abidjan, United Nations Operation in Côte d'Ivoire ("ONUCI"), contests the decision not to select him for a vacant position at the United Nations Support Office in Somalia ("UNSOS"), published under Job Opening No. 89177, Supply Officer, P-3_Nairobi/Mogadishu ("JO 89177").

Facts

2. On 26 November 2016, the Applicant, who was working under a fixed-term appointment, was separated from the Organization, due to the closing of ONUCI.

3. On 19 December 2017, the Applicant applied for JO 89177.

4. On 21 March 2018, the Applicant received an email from the Administration Unit, Office of the Chief, Central Warehousing Section, Mogadishu Logistics Base, Supply Chain Management Service, UNSOS, informing him of his non-selection for the post advertised under the above-mentioned job opening.

5. On 18 May 2018, the Applicant requested management evaluation of the decision not to select him for said post.

6. By letter of 30 May 2018, the Management Evaluation Unit replied to the Applicant that since he was not "a staff member at the time of [his] application to the Post, [he] [does] not have standing to challenge the non-selection decision pursuant to Staff Rule 11.2(a)".

Parties' submissions

7. The Applicant's main contentions may be summarized as follows:

- a. He was pre-approved, selected and rostered for such vacancy and consequently, could not be denied such post; and
- b. He should have been considered an internal candidate.

Consideration

Receivability

8. The issue of the receivability of an application is a matter of law that may be assessed even if not raised by the parties, and even without serving the application to the Respondent for reply (see *Gehr* 2013-UNAT-313, *Christensen* 2013-UNAT-335). Bearing this in mind, and in light of the circumstances of the case, the Tribunal deems it appropriate to rule on the application by summary judgment, in accordance with art. 9 of its Rules of Procedure.

9. Pursuant to art. 2 of the Tribunal's Statute:

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. 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[.]

10. Further, art. 3 of the Statute, provides that:

1. An application filed 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. In the case at hand, it results from the file that the Applicant was separated from service on 26 November 2016 due to the closing of ONUCI.

12. More than one-year later, on 19 December 2017, he applied for JO 89177, and, on 21 March 2018, he received an email informing him of his non-selection.

13. For an application to be receivable pursuant to arts. 2 and 3 of the Tribunal's Statute, an Applicant has to contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment. The Tribunal notes that at the time the Applicant applied for the contested post at UNSOS as well as at the time of the contested decision (non-selection), he was no longer a staff member. While he is a former staff member, the decision not to select him for the post advertised under JO 89177 was not linked to his (previous) contract of employment or terms of appointment with the United Nations. Consequently, the application is not receivable.

Conclusion

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

The application is rejected.

(Signed)

Judge Teresa Bravo

Dated this 28th day of January 2019

Entered in the Register on this 28th day of January 2019

(Signed)

René M. Vargas M., Registrar, Geneva