



UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/NY/2019/028
UNDT/NY/2019/029
UNDT/NY/2019/031
UNDT/NY/2019/033
Judgment No.: UNDT/2019/130
Date: 24 July 2019
Original: English

Before: Judge Joelle Adda
Registry: New York
Registrar: Nerea Suero Fontecha

RUSSO-GOT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Jameel Baasit, UNOPS

Introduction

1. On 6 May 2019, the Applicant, a former Project Manager with the United Nations Office of Project Services (“UNOPS”), filed an application contesting a decision not to select him for a position as “Head of PMO” with UNOPS on an International Individual Contractor Agreement (“International ICA”) (Case No. UNDT/NY/2019/028).

2. On 10 May 2019, the Applicant filed an application contesting a decision not to select him for a position as Project Manager with UNOPS on an International ICA (Case No. UNDT/NY/2019/029).

3. On 13 May 2019, the Applicant filed an application contesting a decision not to select him for a position as Chief Information Security Officer with UNOPS on an International ICA (Case No. UNDT/NY/2019/031).

4. On 15 May 2019, the Applicant filed an application contesting a decision not to select him for a position as Project Support Officer with UNOPS on an International ICA (Case No. UNDT/NY/2019/033).

5. In the reply to all four applications (dated 6, 10, 12 and 14 June 2019, respectively), the Respondent contends that each application is not receivable since an application contesting a non-staff position is not capable of review by the Dispute Tribunal.

Factual background

6. On 22 January 2019, the Applicant was informed that his fixed-term appointment as project manager with UNOPS would not be extended beyond 31 January 2019.

7. At various times in 2018, while the Applicant was still a staff member of UNOPS, he applied for the above referenced international individual contractor positions with UNOPS.

8. In May 2019, the Applicant filed the above referenced applications to contest UNOPS's decisions not to select him for these contractor positions.

Consideration

9. This judgment concerns all four cases as referenced above since the Respondent raised the same claim on the application not being receivable.

10. Article 2.1(a) of the Dispute Tribunal's Statute provides that the Dispute Tribunal shall be competent to hear and pass judgment on an application:

... 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 noncompliance;

11. Regarding what type of "appointment" or "contract of employment" that the Dispute Tribunal may review, the General Assembly resolutions founding the current internal justice system made it clear that access to the Dispute and the Appeals Tribunals is limited to staff of the United Nations, for which reason issues with non-staff positions, such as International ICAs, therefore are not reviewable (see, for instance, General Assembly resolutions 61/261, 62/228 and 63/253 (Administration of justice at the United Nations)).

12. In line herewith, in *Megerditchian* UNDT/2010/035, the Dispute Tribunal held that according to art. 2.1(a) of the Dispute Tribunal's Statute, it is not competent to consider an application when it concerned the decision not to award a service contract, even if the applicant was a staff member at the time of the contested decision. The Dispute Tribunal reasoned that while the applicant in that case was still

a staff member on the date of her application for a service contract, a service contract is not governed by the Staff Rules and Regulations and thus it is not part of a staff member's terms of appointment. This finding was affirmed by the Appeals Tribunal in *Megerditchian* 2010-UNAT-088.

13. Similarly, in the instant cases, the Applicant challenges the decisions not to select him for a contractor position.

14. The fact that the Applicant was a staff member of UNOPS when he applied for these contractor positions is not relevant to appreciate the receivability of the Applicant's claims since, in the four instant cases, he contests four decisions not to select him on non-staff positions.

15. Therefore, in application of the jurisprudence mentioned above, the current applications are not receivable.

Conclusion

16. The Tribunal rejects the applications in case numbers UNDT/NY/2019/028, UNDT/NY/2019/029, UNDT/NY/2019/031, and UNDT/NY/2019/033 as not receivable.

(Signed)

Judge Joelle Adda

Dated this 24th day of July 2019

Entered in the Register on this 24th day of July 2019

(Signed)

Nerea Suero Fontecha, Registrar, New York