



Before: Judge Margaret Tibulya

Registry: Geneva

Registrar: René M. Vargas M.

ORTEGA ANDRES

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Kong Leong Toh, UNOPS
Tilottama, Puri, UNOPS

Introduction

1. The Applicant, a former staff member of the United Nations Office for Project Services (“UNOPS”), filed an application with the Tribunal contesting the decision not to select him for the position of Senior Field Security Assistant, at the G-7 level, at the United Nations Global Service Centre (“UNGSC”) in Valencia, Spain (“the contested position”).
2. The Respondent submits that the application is not receivable and that the contested decision is lawful.
3. For the reasons stated below, the Tribunal finds the application not receivable and, consequently, dismisses it.

Facts

4. The Applicant served as Senior Field Security Associate, at the G-7 level, in the United Nations Information and Communication Technology Facility (“UNICTF”), UNGSC, in Valencia from 1 August 2018 to 30 September 2021. His fixed-term appointment was administered by UNOPS.
5. The Applicant’s position at UNICTF was among the resources provided by UNOPS to UNGSC pursuant to the UN-UNOPS Financial Agreement FA-01-Technology Programme and Projects Support Services for UNGSC, 2316-001 (“the Financial Agreement”). The Applicant’s position was budgeted for three months in the Financial Agreement that was applicable during the last part of the Applicant’s appointment.
6. During the preparation for the 2021-2022 budget, UNGSC decided to seek approval to establish a G-7 security position as a core post at UNGSC rather than continuing to source it through UNOPS. Consequently, the requirement of UNGSC for the Applicant’s position through UNOPS contracted services was set to end on 30 September 2021.
7. In July 2021, the Controller approved the creation of the contested position, which was advertised on 2 September 2021.

8. On 10 September 2021, the Applicant applied for the contested position.
9. On 30 September 2021, the Applicant separated from service with UNOPS.
10. On 23 April 2022, the Applicant was informed of the decision not to select him for the contested position.
11. On 30 June 2022, the Applicant filed an application challenging the decision referred to in para. 1 above.
12. On 12 August 2022, the Respondent filed his reply.
13. On 18 June 2023, the Applicant filed a rejoinder.
14. On 18 July 2023, the Tribunal instructed the parties to file their comments on several legal issues, including on the Applicant's standing as a former staff member of UNOPS to contest the decision not to select him for the contested position taken by UNGSC, after his separation from service with UNOPS.
15. On 30 July 2023, the Applicant filed his comments on the issues raised by the Tribunal and, on 31 July 2023, the Respondent did the same.

Consideration

16. Art. 9 of the Tribunal's Rules of Procedure provides that:

A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law. The Dispute Tribunal may determine, on its own initiative, that summary judgement is appropriate.

17. Under art. 19 of the Tribunal's Rules of Procedure, the Tribunal may at any time, issue any order or give any direction that is appropriate for the fair and expeditious disposal of the case and to do justice to the parties.
18. In line with the above legal provisions, the Tribunal considers it appropriate to determine the matter of receivability as a preliminary issue by way of summary judgment.

Receivability

19. In *Christensen* 2013-UNAT-335 para. 20, 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.

20. The Tribunal notes that the Respondent challenges the receivability *ratione materiae* and *ratione personae* of the application.

21. The Applicant is a former staff member of UNOPS contesting his non-selection for the G-7 position of Senior Field Security Assistant with UNGSC.

22. The Tribunal notes that the Applicant applied for the contested position on 10 September 2021, while he was a staff member of UNOPS. However, he was informed of his non-selection for the UNGSC position on 23 April 2022, more than six months after his separation from service with UNOPS.

23. Under art. 2.1 of its Statute, the Tribunal is competent to hear and pass judgment on an application filed by, *inter alia*, any former staff member as provided for in art. 3.1(b) of the same Statute. However, “before a person may be regarded as a former staff member in terms of Article 3, there must be a sufficient nexus between them and the contested decision. A sufficient nexus exists when the challenged decision has a bearing on an applicant’s former status as a staff member, specifically when it affects his or her prior contractual rights (see *Hasan* 2022-UNAT-1287 para. 40).

24. In *Hasan* para. 41, the Appeals Tribunal referred to *Ghahremani* 2011-UNAT-171 noting that “a former staff member of the Organization who brings an application which does not allege that the contested decision was not in compliance with his prior terms of appointment does not have standing, because the application has no bearing on the individual’s former status as a staff member, thus rendering the application not receivable *ratione personae*”. In other words, “the contested decision could not have adversely affected the individual’s terms of appointment as a former staff member” (see *Khan* 2017-UNAT-727, para. 28).

25. In the present case, the Tribunal finds the application not receivable *ratione personae* because at the date of filing the application, the Applicant was not a staff member, and the contested decision did not breach the terms of his former appointment with UNOPS.

26. Furthermore, UNOPS and UNGSC are two different entities of the UN system. While the Applicant was a former staff member of UNOPS, he had no employment relationship with UNGSC. He was an external candidate with no standing to challenge the decision not to select him for the contested position with UNGSC.

27. The Applicant acknowledged that “there exists no substantive relationship between UNOPS and the job offer at UNGSC for [the contested position]”. However, contrary to his assertion, there was never a “job offer” that could possibly give rise to an argument of an employment relationship with UNGSC so as to confer jurisdiction over his claim.

28. Under the circumstances and considering that the application is not receivable *ratione personae*, there is no need for the Tribunal to assess any other ground of receivability.

Conclusion

29. In view of the foregoing, the Tribunal DECIDES to dismiss the application.

(Signed)

Judge Margaret Tibulya

Dated this 30th day of August 2023

Entered in the Register on this 30th day of August 2023

(Signed)

René M. Vargas M., Registrar, Geneva