



Before: Judge Jean-François Cousin
Registry: Geneva
Registrar: Anne Coutin, Officer-in-Charge

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON MOTION TO FILE A
FRIEND-OF-THE-COURT BRIEF**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Stéphanie Cochard, ITC

Introduction

1. On 27 October 2011, the Applicant, a former staff member of the International Trade Centre (“ITC”), filed an application to enforce the implementation of a settlement agreement reached through mediation, pursuant to articles 2.1(c) and 8.2 of the Tribunal’s Statute.

2. Article 2.1(c) provides:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual ... [t]o enforce the implementation of an agreement reached through mediation pursuant to article 8, paragraph 2, of the present statute.

3. Article 8.2 provides:

An application shall not be receivable if the dispute arising from the contested administrative decision had been resolved by an agreement reached through mediation. However, an applicant may file an application to enforce the implementation of an agreement reached through mediation, which shall be receivable if the agreement has not been implemented and the application is filed within 90 calendar days after the last day for the implementation as specified in the mediation agreement or, when the mediation agreement is silent on the matter, after the thirtieth day from the date of the signing of the agreement.

4. The settlement agreement reached through mediation in the case at hand is dated 29 June 2011 and stipulates, in its paragraph 1:

a. The parties understand that all claims, demands, proceedings and/or appeals, except investigations, that the parties have against each other together form the subject matter of this mediation.

b. The International Trade Centre shall retroactively separate and reappoint [the Applicant] to the P-2 level, step I as from June 1st 2010 until the expiration of [the Applicant’s] current appointment on July 18th 2011. If necessary to guarantee the maintenance of the level of her take home pay and pension fund contributions during this period, [the Applicant] shall be granted a “personal transitional allowance” in respect of either or both, as applicable.

c. Upon expiration of [the Applicant's] appointment on 18th July 2011, the International Trade Centre shall have no further obligations, financial or otherwise to [the Applicant] except as indicated in this Settlement Agreement ...

5. On 28 October 2011, the application was served on the Respondent, who filed his reply on 28 November. The Respondent asserts that he fulfilled his obligations under the settlement agreement.

6. On the same day, the 20th ITC Staff Council filed a motion to file a friend-of-the-court brief. The ITC Staff Council avers that it “would be in a unique position to provide relevant testimony and evidence in support of [the Applicant's] contention of a pattern of institutional retaliation against her ... and the unreasonable and confused application of Recruitment and Selection policy related specifically to temporary appointments”. In addition, the ITC Staff Council submits that “a decision in this case will have implications on all staff who contemplate formal mediation as a viable means to resolve grievances ...”.

7. On 29 November, the motion was transmitted to the parties, who were granted until 2 December to file objections if any. In a submission filed on 1 December, the Respondent opposed the ITC Staff Council's motion.

Consideration

8. Article 2.3 of the Tribunal's Statute provides:

The Dispute Tribunal shall be competent to permit or deny leave to an application to file a friend-of-the-court brief by a staff association.

9. Article 24 of the Tribunal's Rules of Procedure, which gives effect to the above-mentioned article, stipulates:

1. A staff association may submit a signed application to file a friend-of-the-court brief on a form to be prescribed by the Registrar, which may be transmitted electronically. The Registrar shall forward a copy of the application to the parties, who shall have three days to file any objections, which shall be submitted on a prescribed form.

2. The President or the judge hearing the case may grant the application if it considers that the filing of the brief would assist the Dispute Tribunal in its deliberations. The decision will be communicated to the applicant and the parties by the Registrar.

10. When an application is filed with the Tribunal pursuant to article 2.1(c) of its Statute, the only issue to be decided by the Tribunal is whether the agreement reached through mediation has been duly implemented or not.

11. Under no circumstances can the Tribunal deal with the merits of the dispute which was resolved through the settlement agreement, as is requested by the ITC Staff Council. Accordingly, all the evidence which the Staff Council proposes to submit to the Tribunal and which concerns the dispute settled through mediation is irrelevant for the consideration of the application filed by the Applicant.

12. In addition, as indicated above, the Tribunal's decision in this case will only address the issue of whether the agreement signed by the parties was duly implemented and the Tribunal will not carry out any substantive assessment of the circumstances which led to the agreement.

13. Accordingly, the Tribunal considers that the filing of a friend-of-the-court brief by the ITC Staff Council would not assist it in its deliberations.

IT IS ORDERED THAT:

14. The ICT Staff Council's motion to file a friend-of-the-court brief is rejected.

(Signed)

Judge Jean-François Cousin

Dated this 19th day of January 2012

Entered in the Register on this 19th day of January 2012

(Signed)

Anne Coutin, Officer-in-Charge, Geneva Registry