



Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

NIELSEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON MOTION FOR RECUSAL**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Federica Midiri, UNFPA

Introduction

1. By an application filed on 26 May 2014 with the Geneva Registry of the Tribunal, registered under Case No. UNDT/GVA/2014/028, the Applicant, a former Procurement Assistant (G-5) in the United Nations Population Fund (“UNFPA”), Africa team, Procurement Services Branch (“PSB”), contests the following decisions:

- a. Not to select [her] for the position of Quality Assurance Assistant, G-6 (one of two positions);
- b. Not to select [her] for the position of Procurement Assistant, G-5 (one of five positions);
- c. Continuation of blocking [her] personal emails even after the end of [her] [temporary appointment (“TA”)] contract with UNFPA PSB;
- d. Continuation of UNFPA PSB ordering the UN City Security (in UN City Copenhagen) to inform any [person]/UN agency in UN City Copenhagen [inviting her] that [she was] not allowed to enter UNFPA Copenhagen premises (2 PSB’s wings inside the UN City) even after the end of [her] TA contract with UNFPA PSB;
- e. UNFPA not conducting [her] [Performance Appraisal and Development (“PAD”)] Rebuttal process in principle or not following the due process and not communicating with [her]; and
- f. The UNFPA Policy on PAD Rebuttal ... saying that [her] rebutted PAD is final.

2. On 13 June 2014, Judge Laker rendered Judgment *Nielsen* UNDT/2014/061, partially dismissing the application. Indeed, the Tribunal concluded that it was irreceivable with respect to the decisions listed under lit. 1.c to 1.f above, and decided that the proceedings continue only with respect to the Applicant’s non-selection for the two posts listed under lit. 1.a and 1.b above.

3. On 25 June 2014, the Applicant filed an appeal against said judgment before the United Nations Appeals Tribunal, where it was registered under Case No. UNAT/2014/623.

4. On 18 July 2014, the Applicant filed a motion under Case No. UNDT/GVA/2014/028 to, *inter alia*, request the Tribunal “to decide when and how to transfer [her] cases [UNDT/GVA/2014/009 and UNDT/GVA/2014/028] to UNDT Nairobi Office”. This motion was rejected by Order No. 125 (GVA/2014) of 18 August 2014, on the basis that the Applicant did not raise any valid ground for a transfer of her case to another Registry.

5. On 21 August 2014, Judge Laker ordered that the proceedings in the present case be stayed pending the publication of a final decision from the Appeals Tribunal on Case No. UNAT/2014/623.

6. On 30 June 2015, the Applicant filed a “motion for transfer of her cases” in four other cases currently pending before the UNDT (“Applicant’s motions of 30 June 2015”) and assigned to Judge Laker, namely Cases Nos. UNDT/GVA/2014/75, UNDT/GVA/2014/76, UNDT/GVA/2014/79 and UNDT/GVA/2014/80, concerning the Applicant’s complaints of harassment against a number of former colleagues at UNFPA.

7. On 2 July 2015, the Appeals Tribunal rendered Judgement *Nielsen* No. 2015-UNAT-542, granting the appeal in part and vacating Judgment UNDT/2014/061, on the finding that the application was irreceivable with respect to the decisions listed under lit. 1.c and 1.d above.

8. By Order No. 137 (GVA/2015) of 3 July 2015, Judge Laker referred the Applicant’s motions of 30 June 2015 to the UNDT President for their determination. Judge Laker considered that the motions, in fact, constituted motions for his recusal, in accordance with art. 28 of the Tribunal’s Rules of Procedure, as the Applicant sought to have another judge adjudicating her cases, on the ground of a perceived bias by Judge Laker.

9. By Order No. 199 (GVA/2015) issued on 15 October 2015, Judge Laker informed the parties that based on the fact that the Applicant's motions of 30 June 2015, although filed in different cases, appear to also encompass the present case, he was also considering the possibility of referring the matter raised in said motions to the UNDT President for his consideration and initiation of the recusal procedure under art. 28 of the Rules of Procedure, if appropriate, in the present case. The Tribunal gave the parties the opportunity to submit their observations on the matter.

10. On 21 October 2015, the Applicant filed her observations, reiterating her fears of bias on the part of Judge Laker, including in the present case, and explicitly asking his recusal from the present application as well as the referral of the matter to the UNDT President for his determination.

11. On 22 October 2015, the Respondent filed his observations.

12. By Order No. 224 (GVA/2015) of 6 November 2015, the Tribunal ordered that the Applicant's motion for recusal, as expressed in her observations of 21 October 2015 and motions of 30 June 2015, be referred to the UNDT President for determination, and suspended the proceedings in the meantime.

13. By letter of 18 November 2015, the then UNDT President, Judge Boolell, requested that Judge Laker provide his written comments on the Applicant's motions for recusal in the pending cases before the Tribunal pursuant to sec. 28.2 of the Tribunal's Rules of Procedure.

14. By letter of 27 November 2015, Judge Laker provided his written comments on the motions for his recusal in the Applicant's five cases pending at the time before the United Nations Dispute Tribunal, which he identified as Cases Nos. UNDT/GVA/2014/028, UNDT/GVA/2014/075, UNDT/GVA/2014/076, UNDT/GVA/2014/079 and UNDT/GVA/2014/080.

15. By Order No. 15 (NBI/2016), the then UNDT President rejected the Applicant's motion for recusal in Cases Nos. UNDT/GVA/2014/075, UNDT/GVA/2014/076, UNDT/GVA/2014/079 and UNDT/GVA/2014/080. However, the motion for recusal in the present case was not addressed.

16. On 30 June 2016, both the UNDT President and Judge Laker completed their 7-year terms at the Dispute Tribunal. The Undersigned Judge succeeded to Judge Boolell as UNDT President, and the present case was reassigned to Judge Teresa Bravo, who was appointed to the Geneva Registry of the Dispute Tribunal from 1 July 2016.

Consideration

17. Following the departure of Judge Laker from the UNDT, and the consequent reassignment of the present case to Judge Bravo, the Applicant's request for recusal is moot.

IT IS ORDERED THAT:

18. The Applicant's motion for recusal is rejected.

(Signed)

Judge Rowan Downing

Dated this 31st day of October 2016

Entered in the Register on this 31st day of October 2016

(Signed)

René M. Vargas M., Registrar, Geneva