



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2010/08/
UNAT/1581
Order No.: 236 (NBI/2010)
Date: 30 November 2010
Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

MASSAH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

Counsel for applicant:

Clarence E. Clarke

Counsel for respondent:

Steven Dietrich, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant filed an application with the former United Nations Administrative Tribunal contesting the Secretary-General's decision to impose on him the disciplinary measure of separation from service for serious misconduct.

2. By a reply dated 30 August 2008, the Respondent requested that the former Administrative Tribunal dismiss the application in its entirety due to the fact that the Secretary-General reasonably exercised his discretionary authority with regard to disciplinary matters, and that his decision to separate the Applicant for misconduct after a thorough investigation was well-founded.

3. On 1 January 2010, this case was transferred to the Nairobi Registry of the United Nations Dispute Tribunal (UNDT) in accordance with ST/SGB/2009/11 and by Order No. 125 dated 13 July 2010 the parties were ordered to submit concise statements of facts, legal issues and remedies by 30 August 2010.

4. On 9 August 2008, the Applicant's counsel complied with Order No. 125 and also informed the Tribunal that the applicant had passed away and that in keeping with the applicant's wishes, he would continue the case before the Tribunal.

Considerations

5. Article 7.2 of the Rules of Procedure of the United Nations Dispute Tribunal provides that:

Any person making claims on behalf of an incapacitated or deceased staff member of the United Nations, including the Secretariat and separately administered funds and programmes shall have one calendar year to submit an application.

6. Given the manner in which the French version of Article 7.2 has been formulated, a literal interpretation of the words “any person” contained in the English version would not make sense. If the literal interpretation is followed this would mean that counsel would be entitled to make a claim on behalf of the deceased Applicant. This interpretation cannot be adopted for the simple reason that in law it is only the heirs or estate of a deceased person who have an interest in pending proceedings of a civil nature.

7. That is, in the view of the Tribunal, the intention of the framers of Article 7.2. Support for this interpretation can be found in the French version of the article, which reads:

Les ayants droit des fonctionnaires des Nations Unies incapables ou décédés, notamment du Secrétariat de l'Organisation et des Fonds et Programmes des Nations Unies dotés d'une administration distincte, disposent d'une année calendaire pour introduire une requête.

8. A translation of the French words *Ayant droits* is beneficiaries, eligible person, and assignee. The Tribunal considers it perfectly permissible to refer to the French version when there is doubt on the meaning to be given to the English version of an article and vice versa as both English and French are the working languages of the Tribunal.

9. In light of the foregoing, if counsel wishes to continue the proceedings he must submit conclusive proof to the Tribunal that he is a beneficiary of the estate of the deceased Applicant or that he is an eligible person or an assignee duly authorized to continue the proceedings. In the absence of such proof counsel is not entitled to continue the proceedings. The Tribunal reminds counsel that the estate of the deceased has one year from the date of the death to submit an application.

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(Signed)

Judge Vinod Boolell

Dated this 30th day of November 2010

Entered in the Register on this 30th day of November 2010

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi