



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/080

Order No.: 248 (NBI/2015)

Date: 6 August 2015

Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ELHABIL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON DIRECTIONS FOR
SERVICE**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
ALS/OHRM

The Application

1. On 23 July 2015, the Applicant, a staff member in the Gaza Field Office for the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), filed an Application with the United Nations Dispute Tribunal (UNDT). At the beginning of his Application, the Applicant avers that he is contesting the disqualification of his candidacy from posts in the United Nations and, in particular, unfair treatment by management by denying him full and fair consideration for many posts.

2. The Applicant then goes on to submit that he was denied full and fair consideration during the selection process for the position of Principal Electoral Affairs Officer, D-1 426150 because the process lacked transparency and the Recruitment Unit of the Field Personnel Division, Department of Field Support (DFS), did not send any notification to him as required by section 10.1 of ST/AI/2006/3 (Staff selection system)¹ (and section 10 of ST/AI/2010/3 (Staff selection system)).

3. The Applicant also submits that he is contesting the rejection of his online application for a position advertised on the United Nations recruitment website (Inspira) because, *inter alia*, “Palestine is not on the list” and because he had reached the maximum number of allowable applications as per his Inspira account.

Background and facts

4. On 10 July 2015, the Applicant filed the present Application with the UNDT’s New York Registry.

5. Judge Ebrahim–Carstens ordered the transfer of the Application to the Nairobi Registry pursuant to art. 6 of the Dispute Tribunal’s Rules of Procedure² after discussing with the President of the Tribunal.

¹ Abolished and replaced by ST/AI/2006/3/Rev.1 of 11 January 2010) which was subsequently abolished and replaced by ST/AI/2010/3 of 11 January 2010.

² Vide Order No. 154 (NY/2015),

6. On 28 July 2015, the Nairobi Registry served the Application on the Administrative Law Section, Office of Human Resources Management (ALS/OHRM) as the Section that represents the United Nations Secretariat in cases before the Dispute Tribunal.

7. On the same date, Ms. Christine Graham, Chief, Appeals Unit, ALS/OHRM, informed the Tribunal that ALS/OHRM does not act as respondent's counsel in cases brought by UNRWA staff member and that UNRWA has its own Dispute Tribunal and legal office representing the UNRWA administration before the UNRWA Dispute Tribunal.

8. On 29 July 2015, the Registrar of UNDT Nairobi responded to Ms. Graham informing her that the Application was served on ALS/OHRM because the Applicant was contesting a decision made by DFS. Ms. Graham responded on the same day stating, *inter alia*, that, "the distribution of work between offices representing the SG before the UNDT is determined on the basis of the office of the staff member, not the office of the decision-maker."

Considerations

9. Article 101 of the Charter of the United Nations reads,

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

10. What the Applicant is challenging is not a decision of the Commissioner-General of UNRWA. He is challenging the fact that: (i) he was denied an opportunity to apply for a position that falls under the responsibility of the United Nations Secretariat on the ground that Palestine, his country does not appear on a

list of countries in Inspira; (ii) that he was not fairly considered for the position of Principal Electoral Affairs Officer, D-1 426150 because the process lacked transparency and (iii) DFS did not send any notification to him.

11. Vacancies advertised in Inspira are not under the responsibility or authority of the Commissioner-General of UNRWA but under the authority and responsibility of the Secretary-General.

12. The position for which the Applicant was applying was one in DFS, which provides administrative and logistical support services to the Department of Peacekeeping Operations and Political Affairs through the delivery of dedicated support to the Organization's peacekeeping operations, special political missions and other field presences³.

13. By virtue of ST/AI/2010/3 a head of department is defined as,

Head of department/office: official appointed by the Secretary-General to lead a department, office, regional commission or other major organizational unit of the Secretariat who is directly accountable to the Secretary-General in the exercise of the functions set out in section 5 of ST/SGB/1997/5 (as amended by ST/SGB/2002/11).

The Head of DFS is appointed by the Secretary-General.

14. As regards the filling of positions Section 2.3 of ST/AI/2010/3 provides

Selection decisions for positions up to and including the D-1 level are made by the head of department/office/mission, under delegated authority, when the central review body is satisfied that the evaluation criteria have been properly applied and that the applicable procedures were followed. If a list of qualified candidates has been endorsed by the central review body, the head of department/office/mission may select any one of those candidates for the advertised job opening, subject to the provisions contained in sections 9.2 and 9...

15. The Tribunal can understand that ALS, on seeing an application from a staff member of UNRWA reached the conclusion that the Application should be served on UNRWA. The other side of the coin is that if the application had been

³ ST/SGB/2010/2 (Organization of the Department of Field Support).

served on UNRWA, then the Commissioner-General for UNRWA would have declined the service on the ground that UNRWA has nothing to do with a recruitment process involving DFS.

16. It is not for the Tribunal to interfere with the manner in which work is distributed in ALS. But the Tribunal is not bound by any internal practice or policy of a Department of the Organization unless that practice or direction has the force of law. The issue whether the Tribunal has jurisdiction to determine a case is governed by arts. 2.1 and 3.1 of its Statute and not by internal arrangements that managers may feel appropriate to make in regard to the discharge of their duties.

17. Though the Applicant is a staff member in the Gaza Field Office for UNRWA, he is challenging a recruitment process that falls within the United Nations Secretariat. The cause of action grounding the Application is related to DFS and has nothing to do with UNRWA.

18. It was therefore not quite correct for ALS to refuse service as that decision is tantamount to stating that a national of, say, the United Kingdom who is challenging a recruitment mechanism of the United Nations should pursue his/her claim before a British Court instead of the internal justice system of the United Nations if that person meets all the legal requirements to do so.

19. The Tribunal directs that the Application be served on ALS/OHRM as the office that represents the United Nations Secretariat in litigation.

(Signed)

Judge Vinod Boolell

Dated this 6th day of August 2015

Entered in the Register on this 6th day of August 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi