



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/105

Order No.: 323 (NBI/2015)

Date: 16 October 2015

Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ELHABIL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Steven Dietrich, ALS/OHRM
Nicole Wynn, ALS/OHRM

Introduction

1. The Applicant is a staff member of the United Nations Relief and Works Agency (UNRWA).
2. On 7 October 2015, he filed an Application for suspension of action with the United Nations Dispute Tribunal (UNDT) in Nairobi challenging the decision of the Office of Human Resources Management (OHRM), United Nations Secretariat, to disqualify his application for the position of Acting Director, Meetings and Publishing Division, D2 in the Department for General Assembly and Conference Management.
3. The Respondent filed his Reply on 8 October 2015.
4. On 13 October 2015, the Tribunal issued Order No. 319 (NBI/2015) in which it rejected the Application for suspension of action and informed the Parties that a reasoned decision would be issued in due course.

Applicant's submissions

Prima facie unlawfulness

5. The Applicant submits that his application for the position of Acting Director, Meetings and Publishing Division, D2 in the Department for General Assembly and Conference Management was not fairly evaluated against all requirements for the job opening and “the recruitment process was not undertaken in full compliance with ST/AI/2010/4/Rev.1, Staff selection system (Staff Selection AI)”.
6. The Applicant further submitted that “[t]he department/office must assess the candidates' applications in order to determine whether they are eligible, and whether they meet the minimum requirements, I full (sic) meet the minimum requirements”.

Urgency

7. The Applicant considers the Application to be urgent because the selection process has adversely affected him by denying him full and fair consideration.

Irreparable harm

8. The Applicant submits that despite his superior performance, the actions and decisions in the selection processes adversely impacted him by denying him full and fair consideration for many posts and disqualified his candidacy. The decisions were influenced by prejudice as he has been subjected to a “more-than-two-year history of prejudice, which has, inter-alia, deny my opportunity for advancement and this prejudicial treatment was imported into this selection process by management”.

Respondent’s submissions

Receivability

9. The Application is not receivable because the UNDT is not competent to hear and pass judgment on applications brought by UNRWA staff members. In the case of *Achkar* 2012-UNAT-267, the Appeals Tribunal upheld the Dispute Tribunal’s judgment dismissing the appeal of an UNRWA staff member because UNRWA does not fall under the jurisdiction of the UNDT.

10. As an UNRWA staff member, the Applicant does not challenge an administrative decision as defined in art. 2.1(a) of the Statute.

11. The contested decision in this case had no direct legal consequences to the legal order or on the Applicant’s terms of appointment. There is no legal obligation that exists between the Secretary-General and the Applicant. The Applicant has no more rights to access the UNDT than an external applicant for a position with the

United Nations Secretariat. An external applicant cannot contest decisions of the Secretary-General before the Dispute Tribunal. Neither can the Applicant.

12. The Applicant has no contract governed by the United Nations Staff Rules and Regulations. The Staff Rules and Regulations expressly state that they apply to the administration of staff of the Secretariat and the separately administered funds and programmes. Similarly, art. 3.1 of its Statute grants the UNDT jurisdiction to review applications brought by staff of the United Nations Secretariat and the separately administered funds and programmes.

13. The Applicant is not a staff member of the Secretariat or the separately administered funds and programmes and the Staff Rules and Regulations are not incorporated into his terms of appointment. The Commissioner General of UNRWA appointed the Applicant in accordance with UNRWA's staff rules.

14. On 7 October 2015, the Management Evaluation Unit (MEU) informed the Applicant that his request was not receivable because as an UNRWA staff member, he lacked standing to request management evaluation under staff rule 11.2.

15. The UNDT cannot order the suspension of action of an impugned decision beyond the pendency of management evaluation. In this case, the management evaluation is no longer pending and the UNDT is not competent to suspend implementation of the decision.

16. Since the management evaluation has been completed, there is no basis for the Applicant's request for suspension of the implementation of the contested decision pending management evaluation. The UNDT does not have jurisdiction to hear the Application under art. 2.2 of its Statute.

Deliberations and Order

Locus standi

17. On the question of the Applicant's *locus standi* or, in other words, the right of the Applicant to be heard on an application filed before the Dispute Tribunal the Tribunal recalls art. 3 of the UNDT Statute which provides that:

1. An application under article 2, paragraph 1, of the present statute may be filed by:

(a) Any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

(b) Any former staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

(c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes.

18. The issue is whether the Applicant, though he is challenging a decision of the Secretariat, is a staff member within the meaning of art. 3 of the Statute of the Dispute Tribunal.

19. Article 101, paragraph 1, of the Charter of the United Nations reads:

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

20. Under the above provisions the power of appointment of staff members rests with the Secretary-General subject to regulations made by the General Assembly. And the legal act by which the Organization legally undertakes to employ a person as a staff member is by a letter of appointment signed by the Secretary-General or an official acting on his behalf¹. The terms and conditions of the employment contract of a staff member are set forth in the letter of appointment and its express incorporation

¹ *Gabaldon* 2011-UNAT-120.

by reference of the Organization's Regulations and Rules and all pertinent administrative issuances².

21. The jurisdiction of the UNDT is limited to persons having acquired the status of staff members of the United Nations or former staff members, as set out in art. 3.1 of the UNDT Statute³. The UNDT has no jurisdiction to hear applications from UNRWA staff members⁴. The *locus standi* of an individual before the UNDT does not depend only on the subject matter or nature of the litigation, which must be an administrative decision, but also on the status of the individual, that is, whether the individual is a staff member within the meaning of art. 101 of the Charter of the Organization.

22. From the Applicant's pleadings, it is clear that at the time of the contested decision he was a staff member of UNRWA. This entity does not fall under the jurisdiction of the UNDT nor does the Applicant fulfil the requirements of arts. 2.1(a) and 3 of the Statute of the UNDT. He therefore has no *locus standi* to challenge a decision of the Respondent before this Tribunal.

Conclusion

23. The Application for suspension of action is accordingly rejected as being not receivable.

(Signed)

Judge Vinod Boolell

Dated this 16th day of October 2015

² *Slade* 2014-UNAT-463.

³ *Iskandar* 2011-UNAT-116.

⁴ *Achkar* 2012-UNAT-267.

Entered in the Register on this 16th day of October 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi