



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

TEO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Michael Brazao, OSLA

Counsel for Respondent:
Jérôme Blanchard, HRLU/UNOG

Introduction

1. On 15 March 2017, the Applicant, a Human Rights Officer at the P-3 level, step 8, with the Office of the United Nations High Commissioner for Human Rights (“OHCHR”), filed an application in which she makes the following appeal:

As the present Application will make clear, the contested decision consists of two inextricably intertwined components.

Component “A”: The Applicant’s assignment by her employer, OHCHR, to a General Temporary Assistance (“GTA”) post contrary to the express terms of a post-matching exercise whereby she was informed in writing that she would be laterally transferred from her former post in the Asia-Pacific Section (“APS”) at the Geneva duty station of OHCHR to a regular-budgeted post in the Sustainable Development Goals (“SDG”) Section (formerly known as the Millennium Development Goals or “MDG” Section) at the New York duty station of OHCHR.

Component “B”: Failure of the Applicant’s employer to assign her appropriate functions commensurate with the SDG position she accepted in good faith pursuant to the above-referenced post-matching exercise.

2. On 17 March 2017, the Registry acknowledged receipt of the application on 15 March 2017 and, pursuant to art. 8.4 of the Rules of Procedure, transmitted it to the Respondent, instructing him to file a reply by 17 April 2017 in accordance with art. 10 of the Rules of Procedure.

3. On 17 April 2017, the Respondent filed his reply in which he submitted that, in its entirety, the application was not receivable *ratione materiae* as none of the contested decisions constituted administrative decisions within the meaning of staff rule 11.2(a) of the Dispute Tribunal’s Statute and jurisprudence. Notwithstanding the submissions on receivability, the Respondent also contended that the application was without merit submitting, in essence, that both contested actions were taken by the Respondent in an effort to implement and ensure compliance with Order No. 189

(GVA/2016) and Order No. 070 (GVA/2017) issued by the Dispute Tribunal and that the Respondent acted in good faith to find an interim solution to accommodate the Applicant.

4. The present case was reassigned to Judge Alexander W. Hunter, Jr. on 8 January 2018.

5. By Order No. 10 (NY/2018) issued on 19 January 2018, the Tribunal instructed the Applicant to file a response to the Respondent's reply including on the submissions on non-receivability by 2 February 2018.

6. On 29 January 2018, the Applicant filed a motion for extension of time to file a response to the Respondent's reply.

7. By Order No. 22 (NY/2018) issued on 31 January 2018, the Tribunal granted the Applicant's request for an extension of time and instructed the Applicant to file a response to the Respondent's reply, including on the submissions on non-receivability, by 9 February 2018.

8. On 8 February 2018, the Applicant filed a response to the Respondent's reply.

9. On 12 February 2017 by Order No. 35 (NY/2018), the Tribunal instructed the parties to participate in a Case Management Discussion ("CMD") on 22 February 2018.

10. At the 22 February 2018 CMD, the Tribunal noted, *inter alia*, that the instant case appears to raise a preliminary issue of receivability *ratione materiae*. Both parties agreed that receivability can be dealt with on the papers as a preliminary issue.

11. By Order No. 45 dated 26 February 2018, the Tribunal provided the parties with the following orders (emphasis omitted):

... The Respondent shall file a reply to the Applicant's submissions on the receivability of the application by 5:00 p.m. on Monday, 5 March 2018. In particular, the Respondent is to provide a detailed explanation in support of his contention that the "[t]he funding source of a staff members post is purely operational and does not impact the Applicant's terms of appointment", together with supporting documentation (including copies of the Applicant's terms of appointment before and after the contested decision).

... The Applicant can file additional particulars and supporting evidence, if any, in relation to her claim that the contested decision has caused her "economic prejudice" by 5:00 p.m. on Monday, 5 March 2018.

... Closing submissions, if any, on the issue of receivability are due by 5:00 p.m. on Wednesday, 14 March 2018.

12. Pursuant to Order No. 45 (NY/2018), on 2 March 2018, the Applicant filed a submission on her "economic prejudice suffered due to [the] administrative decision" and appended a signed "Solemn affirmation" from the Applicant thereon.

13. On 5 March 2018, the Respondent filed his reply to the Applicant's submissions on receivability as per Order No. 45 (NY/2018).

14. On 13 and 14 March 2018, the Applicant and the Respondent, respectively, filed their closing submissions on receivability.

15. On 23 March 2018, the undersigned Judge issued Judgment No. UNDT/2018/044 by which the application was found to be receivable.

16. By Order No. 167 (NY/2018) dated 5 September 2018, the Tribunal stated that:

... Perusing the parties' submissions, the Tribunal finds that the substantive dispute in the present case is of a legal nature and that the

parties do not disagree on the facts as set out in the application. Accordingly, it would therefore be appropriate for the Tribunal to decide the outstanding matters on the papers already on record. Furthermore, it would appear to the Tribunal that the remaining issues on the merits of the case can be identified as follows:

- a. Was it appropriate for OHCHR to place the Applicant on a general temporary assistance funded post, also considering Orders No. 189 (GVA/2016) and 70 (GVA/2017) issued by the Dispute Tribunal in Geneva, or should they have done differently (for instance, by placing her on a post with a regular budget)?
- b. Did the Respondent meet its obligation to provide the Applicant with functions commensurate to her skills and professional experience?

17. Accordingly, the Tribunal ordered that, “In light of Judgment No. UNDT/2018/044 and based on the papers already before the Tribunal, the parties are to file their closing statements on the merits of the present case by 4:00 p.m. on Tuesday, 18 September 2018” (emphasis omitted).

18. On 10 September 2018, Counsel for the Applicant filed a “motion for extension of time to file closing statement” by which he requests the Tribunal to grant a one-week extension to the 18 September 2018 deadline of Order No. 167 (NY/2018) submitting, *inter alia*, that, “Since his return to work, Counsel has made numerous attempts to contact the Applicant to apprise her of the Tribunal’s Order and to seek instructions and discuss strategy. At the time of the filing of the present submission, [C]ounsel for the Applicant has not yet been successful in contacting his client”.

19. Pursuant to art. 19 of the Dispute Tribunal’s Rules of Procedure, for the fair disposal of the case and to do justice to the parties,

IT IS ORDERED THAT:

20. The Applicant's request for a one-week extension to the deadline of Order No. 167 (NY/2018) is granted;

21. In light of Judgment No. UNDT/2018/044 and based on the papers already before the Tribunal, the parties are to file their closing statements on the merits of the present case by **4:00 p.m. on Tuesday, 25 September 2018;**

22. If Counsel for the Applicant still cannot make contact with his client, he should consider withdrawing this application or this Tribunal might *sua sponte* be constrained to dismiss this application for failure to prosecute.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 12th day of September 2018