



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-174



Before: Judge Sophia Adinyira, Presiding
Judge Inés Weinberg de Roca
Judge Jean Courtial

Judgment No.: 2011-UNAT-173

Date: 21 October 2011

Registrar: Weicheng Lin

Counsel for Appellant: Winston Sims

Counsel for Respondent: Amy Wood

JUDGE SOPHIA ADINYIRA, Presiding.

Synopsis

1. Mr. Mohamed Elasoud, a security officer of the United Nations Safety and Security Service (UNSSS), requested administrative review of the departmental recommendations concerning his application for three separate vacant posts. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) upheld the Secretary-General's decision that the contested recommendations did not constitute administrative decisions. We find no reason to overturn this decision. The appeal is dismissed.

Facts and Procedure

2. Mr. Elasoud joined the UNSSS in November 1985 as a Security Officer at the G-3 level on a short-term appointment. In February 1992, Mr. Elasoud was granted a permanent appointment. From October 2000 to September 2001, Mr. Elasoud was assigned to the Security Control Centre of the UNSSS.

3. In 2000, Mr. Elasoud unsuccessfully applied for three vacant positions.

4. Mr. Elasoud was separated from the Organization for health reasons in February 2004, after having been granted disability benefits by the United Nations Joint Staff Pension Fund.

5. In 2005, Mr. Elasoud requested administrative review of the recommendations made by the Chief, UNSSS, concerning his applications for the three posts he had applied for in 2000 (Departmental Recommendations). The Secretary-General did not reply to Mr. Elasoud's request.

6. In June 2005, the Joint Appeals Board (JAB) received Mr. Elasoud's appeal against the Departmental Recommendations. The JAB found in its report of November 2006 that the appeal was not receivable. In April 2007, the Under-Secretary-General, Department of Management, transmitted the JAB report to Mr. Elasoud and advised him of the Secretary-General's decision to reject the appeal.

7. In July 2007, Mr. Elasoud filed an application with the former Administrative Tribunal. Pursuant to General Assembly resolution 63/253, the application was transferred to the UNDT in Geneva on 1 January 2010.

8. The UNDT disposed of the application in Judgment No. UNDT/2010/111, issued on 24 June 2010. It found as follows:

[T]he contested recommendations are opinions that the staff member who will supervise the vacant posts expresses in accordance with the criteria set forth in administrative instruction ST/AI/1999/8 concerning the placement and promotion system when a staff member applies for a post. While staff members are entitled to request the quashing of decisions not to appoint them to a post for which they have applied and, at that time, to criticise the future supervisor's recommendation, that recommendation is only a preliminary to the administrative decision not to appoint them and therefore has no direct legal consequence for their terms of appointment. The Secretary-General was therefore justified in considering that the contested recommendations were not appealable administrative decisions and, accordingly, in rejecting the appeal.

9. Mr. Elasoud appeals the UNDT Judgment.

Submissions

Mr. Elasoud's Appeal

10. Mr. Elasoud submits that the UNDT erred in finding that the contested Departmental Recommendations did not constitute administrative decisions and therefore erred in rejecting the application as not receivable.

11. Mr. Elasoud submits that the UNDT erred in fact by "present[ing] an abridged and highly selective set of facts". He submits that the UNDT failed to consider issues relating to his performance appraisals for 2000 and 2001, and the question of whether his applications were given "full and fair" consideration. Mr. Elasoud contends that the performance appraisals support his general claim that he was subjected to a pattern of harassment and discrimination, which he alleges to have caused "medical issues".

12. Mr. Elasoud requests the production of the Departmental Recommendations, as well as other departmental recommendations, related to the posts for which he applied. He also requests that the United Nations Appeals Tribunal (Appeals Tribunal) hold an oral hearing during which he wishes to call witnesses.

Secretary-General's Answer

13. The Secretary-General submits that the UNDT correctly concluded that Mr. Elasoud's application was not receivable *ratione materiae*, because the Departmental Recommendations do not constitute administrative decisions.

14. The Secretary-General submits that the UNDT committed no error that would warrant a reversal of its determination that the application was non-receivable. In particular, the Secretary-General submits that the fact that the UNDT did not directly address specific evidence presented by Mr. Elasoud does not mean that the UNDT did not consider it or erred in relation to it.

15. The Secretary-General submits that Mr. Elasoud merely presents his own opinion that the UNDT came to the "wrong conclusion" with respect to the issue of receivability without demonstrating any error in the contested Judgment.

Considerations

16. Mr. Elasoud's application for an oral hearing and the production of documents is rejected as they would not add anything to this appeal.

17. On the merits, the Appeals Tribunal observes that Mr. Elasoud is not contesting the administrative decisions not to appoint him to any of the three vacant posts he had applied for in 2000. Mr. Elasoud is rather contesting the Departmental Recommendations concerning his applications. The UNDT correctly held that the Departmental Recommendations did not constitute administrative decisions, subject to appeal.

18. Mr. Elasoud has not demonstrated any error in the decision by the UNDT that his application is irreceivable. We find no reason to overturn this decision.

Judgment

19. The appeal is dismissed. The Judgment of the UNDT is affirmed.

Original and authoritative version: English

Dated this 21st day of October 2011 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Courtial

Entered in the Register on this 2nd day of December 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar