



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2009/60

Judgment No.: UNDT/2009/026

Date: 2 October 2009

English

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

MEZOUÏ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Susan Maddox, ALU/OHRM, UN Secretariat

Notice: The format of this judgment has been modified for publication purposes in accordance with article 26 of the Rules of Procedure of the United Nations Dispute Tribunal.

Application

1. On 14 July 2009, the applicant requested the United Nations Dispute Tribunal to rescind the Secretary-General's final decision of 4 February 2009 to accept the recommendation of the Joint Appeals Board that the applicant should be paid compensation equivalent to three months' salary for not having received the full and fair consideration to which she was entitled during the staff selection process for the post of Director (D-2), Office for Economic and Social Council Support and Coordination.
2. The applicant also requested the Tribunal to:
 - a. Order the production of some documents from the staff selection file;
 - b. Approve the payment to her of the equivalent of three years' salary as compensation for prejudice incurred as a result of her non-selection;
 - c. Order that the financial responsibility of the staff members involved in the selection process be invoked, pursuant to staff rule 112.3.
3. The applicant's principal contention is that the selection decision for the above-mentioned post was taken following an irregular procedure.

Facts

4. In July 2005, the applicant, who held a post as D-1, applied for the post of Director (D-2), Office for Economic and Social Council Support and Coordination. The selection process ran from March to May 2006, ending with the selection of another candidate.
5. On 31 October 2006, the applicant submitted a request to the Secretary-General for a review of the administrative decision to select another candidate for the post in question. On 28 December 2006, as the Secretary-General had not replied within the prescribed deadlines, the

applicant filed an appeal with the Joint Appeals Board of the United Nations Secretariat in New York.

6. On 10 November 2008, the Joint Appeals Board adopted its report, in which it concluded that a key fact had been omitted when assessing the applicant's qualifications, leading the competent organs involved in the selection process to conclude that the applicant did not meet all the "university education" requirements for the post. As a result, the Joint Appeals Board found that the candidate had not been given full and fair consideration for the post in question, and recommended that the Secretary-General pay her compensation equivalent to three months' net base salary in the light of the omission mentioned above.

7. By letter dated 4 February 2009, received by the applicant the same day, the Secretary-General forwarded a copy of the Joint Appeals Board's report to the applicant and notified her of his final decision to accept the Joint Appeals Board's recommendation. In that same letter, the Secretary-General also drew the applicant's attention to article 7 of the statute of the United Nations Administrative Tribunal concerning the deadlines for filing an application.

8. By letter dated 17 April 2009, the applicant requested the Executive Secretary of the Administrative Tribunal to extend the deadline for filing her application instituting proceedings until the end of July 2009. The Administrative Tribunal received the applicant's letter on 24 April 2009.

9. By letter dated 28 April 2009, the Executive Secretary of the Administrative Tribunal notified the applicant of the decision of the President of the Administrative Tribunal to extend the deadline for filing her application until 30 June 2009. The Executive Secretary also informed the applicant that the Administrative Tribunal would not be accepting new cases after 30 June 2009, and that beyond that date any new application would have to be filed with the United Nations Dispute Tribunal.

10. By letter dated 16 June 2009, the applicant once again sent a copy of her letter dated 17 April 2009 to the Executive Secretary of the

Administrative Tribunal, seeking a ruling on her request for an extension of the deadline until July 2009.

11. The Administrative Tribunal received the above-mentioned letter on 8 July 2009. On that same date, the Administrative Assistant of the Administrative Tribunal replied by e-mail to the applicant, forwarding to her a copy of the letter of 28 April 2009.

12. By letter dated 14 July 2009, the applicant filed an application with the registry of the United Nations Dispute Tribunal in New York contesting the Secretary-General's decision of 4 February 2009.

13. By order concerning change of venue dated 28 August 2009 and communicated to the parties on that same date, the United Nations Dispute Tribunal ordered the applicant's case to be transferred from the New York registry to the Geneva registry.

Judgment

14. Pursuant to article 8, paragraph 1, of the statute of the United Nations Dispute Tribunal, an application shall be receivable if:

“(a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute;

(b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; and

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; [...]

15. In addition, Secretary-General's bulletin entitled “Transitional Measures Related to the Introduction of the New System of Administration of Justice” (ST/SGB/2009/11), issued pursuant to paragraph 35 of United Nations General Assembly resolution 63/253, provides that:

“1.4 As of 1 July 2009, the United Nations Dispute Tribunal will be established as the first tier of the formal system of justice. For the purpose of determining the receivability of an application filed with the United Nations Dispute Tribunal, a staff member who has submitted a request for an administrative review of a contested administrative decision prior to 1 July 2009 shall be considered to have satisfied the requirement to submit a request for a management evaluation, as provided in article 8, paragraph 1 (c), of the statute of the United Nations Dispute Tribunal.

...

4.2 The United Nations Administrative Tribunal will continue to accept cases until 30 June 2009. Cases not decided by the United Nations Administrative Tribunal by 31 December 2009 will be transferred to the United Nations Dispute Tribunal as of 1 January 2010.

4.3 The United Nations Dispute Tribunal shall be operational as of 1 July 2009. Decisions made by the Secretary-General between 2 April 2009 and 30 June 2009 on appeals [...] may be challenged before the Tribunal.”

16. According to the facts of the case, the applicant, who received the Secretary-General’s contested decision on 4 February 2009, did not file her application with this Tribunal until 14 July 2009, which was beyond the 90 calendar-day deadline set forth in article 8 of the statute of the United Nations Dispute Tribunal quoted above.

17. However, before the Tribunal can reject an application, it must determine whether failure to meet the deadline could have resulted from erroneous information provided by the Administration. In the present case, the applicant was not given any information by the United Nations Administrative Tribunal that could have misled her, because, as she herself writes, it was not until after 1 July 2009 that she received the reply from the Executive Secretary of the Administrative Tribunal to her request for an extension of the deadline. By that time, her application could no longer be deemed receivable by the Administrative Tribunal and was filed before this Tribunal beyond the prescribed time limit.

18. It follows from the foregoing that the application is irreceivable before the United Nations Dispute Tribunal because it was filed late.

19. For these reasons, the Tribunal DECIDES:

The application is rejected.

(signed)

Judge Jean-François Cousin

Dated this 2nd day of October 2009

Entered in the Register on this 2nd day of October 2009

(signed)

Víctor Rodríguez, Registrar, UNDT, Geneva