



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

EL ISSAWI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Sarahi Lim Baró, ALS/OHRM, UN Secretariat

Introduction

1. On 19 January 2012, the Applicant, a former staff member of the Special Tribunal for Lebanon (“STL”), filed an application with the Dispute Tribunal against the decision of the Registrar of the STL not to take further action on her complaint of harassment after an investigation panel found such complaint to be unsubstantiated.

Facts

2. The Applicant joined the STL in January 2010 as a Spokesperson. In October 2010, she filed a complaint of harassment against her supervisor and in December 2010, she resigned from the STL.

3. On 10 January 2011, the Applicant filed an appeal with the STL Judge for Staff Appeals against several decisions.

4. In May 2011, as a result of the ruling issued on 12 April 2011 by the STL Judge on Staff Appeals, an investigation panel was established to investigate the Applicant’s complaint of harassment. In June 2011, the panel issued its report, in which it found that the Applicant’s allegations were unsubstantiated.

5. On 1 August 2011, the Registrar of the STL accepted the investigation panel’s findings and decided not to take further action on the Applicant’s complaint of harassment.

6. On 31 August 2011, the Applicant filed an appeal against the above-mentioned decision with the STL Judge for Staff Appeals.

7. On 21 October 2011, the Judge for Staff Appeals ruled that the Applicant’s second appeal was unfounded and dismissed it.

8. On 19 January 2012, the Applicant filed the present application against the STL Registrar’s decision of 1 August 2011.

9. On 25 January, the Respondent filed a motion for leave to have receivability considered as a preliminary issue, stating that the STL is not subject to the jurisdiction to the UN Dispute Tribunal.

10. By Order No. 22 (GVA/2012) of 26 January 2012, the Tribunal accepted the motion on the grounds that it would be appropriate in the interest of justice and judicial economy to have receivability considered as a preliminary issue.

11. The Respondent filed his reply on receivability on 16 February 2012.

12. By Order No. 40 (GVA/2012) of 17 February 2012, the Tribunal gave the Applicant two weeks to file observations, if any, on the Respondent's reply. On the same day, the Applicant filed a request for extension of time of one month "to file [her] reply to the STL Registrar's submission".

13. By Order No. 41 (GVA/2012) of 20 February 2012, the Tribunal rejected the Applicant's request. The Tribunal further informed the parties that it considered that the case could be dealt with on the papers, without a hearing, and gave them one week to file objections, if any. Neither party objected to a judgment being rendered on the papers.

14. On 2 March 2012, the Applicant filed observations on the Respondent's reply.

Parties' submissions

15. As regards receivability, the Applicant's principal contentions are:

a. Even though the STL is not an organization of the United Nations, the Dispute Tribunal has jurisdiction to hear this appeal because the Registrar of the STL, who is the author of the contested decision, is a United Nations employee;

b. There is a "solid connectivity" between the STL and the UN system, as evidenced *inter alia* by the fact that the STL was established by the UN Security Council, the STL is a member of the United Nations Joint

Staff Pension Fund, the STL applies the UN common system of salaries, allowances and benefits, and a number of high officials of the STL are appointed by the Secretary-General of the United Nations;

c. The Registrar is a United Nations staff member and is accountable to the Secretary-General in the performance of his duties. The Dispute Tribunal is the only forum which “can sanction the STL’s Registrar over decisions taken in his official dealings with staff”. Admitting that the Registrar of the STL is “untouchable” “would ... be a betrayal of the UN work ethics and ... denial of justice”;

d. The Applicant has to be covered by the jurisdiction of the Dispute Tribunal given the exceptional nature of this case. Failure by the Dispute Tribunal to assert his inherent jurisdiction “would mean a flagrant rejection of a right enshrined in human rights and international law, that of judicial redress”.

16. Concerning receivability, the Respondent’s contentions are:

a. The application is not receivable *ratione personae*. The Applicant is neither a staff member, nor a former staff member of the United Nations. The jurisdiction of the Dispute Tribunal is limited to persons having acquired the status of staff members, or former staff members of the United Nations contesting violations of their previous terms of appointment or contract of employment;

b. The Applicant is a former staff member of the STL, which is not a UN organization. The Registrar of the STL is a staff member of the United Nations and therefore he has standing before the Dispute Tribunal but this does not confer the Applicant any rights. Any rights and recourse she had with respect to her employment with the STL are governed by her terms of appointment or contract with the STL, and not the United Nations.

Consideration

17. Article 2.1 of the Statute of the Dispute Tribunal provides:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute ... [t]o appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance.

18. Article 3.1 of the Statute further stipulates:

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 ...

19. Article 8.1 of the Statute provides:

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 ...

20. The first issue to be determined in this case is whether the Applicant is a staff member or former staff member of the United Nations and thus whether the Dispute Tribunal has jurisdiction to hear her case.

21. In *Buckley* UNDT/2011/028, the applicant also was a staff member of the STL. The Dispute Tribunal found:

18. In the present case, the Respondent submits that the Applicant, who is currently serving at the Special Tribunal for Lebanon, is not a staff member of the United Nations. In this

respect, he makes reference to the website of the Special Tribunal for Lebanon which indicates, on its “Employment” page:

The Special Tribunal for Lebanon (STL) is an international inter-governmental organization with its own independent legal identity and not a UN organization. The STL generally follows the common system of salaries, allowances and the other main conditions of service and is a member of the United Nations Joint Staff Pension Fund.

19. The Tribunal further took note of the Statute of the Special Tribunal for Lebanon and of the Agreement between the United Nations and the Lebanese Republic on the establishment of the Special Tribunal for Lebanon, which is annexed to Security Council resolution 1757 (2007) authorizing the establishment of the STL.

20. According to both documents, the Special Tribunal for Lebanon consists of four organs: the Chambers, the Prosecutor, the Registry and the Defence Office. While article 12 of the STL Statute explicitly provides that the “Registrar shall be a staff member of the United Nations”, there is no such reference for other high-ranking officials such as the Judges or the Prosecutor, nor for any other “Lebanese and international staff” of the STL. From the wording of these documents, the Tribunal draws the negative inference that *only* the Registrar of the Special Tribunal for Lebanon is a staff member of the United Nations, with the exclusion of any other staff.

21. Finally, the Applicant does not contest that as a staff member of the Special Tribunal for Lebanon, he is not a staff member of the United Nations. While he is a *former* staff member of the United Nations, his terms of appointment “in force at the time of the alleged non-compliance” were those of the STL.

22. The application must therefore be rejected on the ground that it is not receivable pursuant to article 3.1 of the Statute of the Dispute Tribunal.

22. In the case at hand, the Applicant does not contest that she is neither a staff member, nor a former staff member of the United Nations. Her terms of employment in force at the time of the alleged non-compliance were those of the STL. Accordingly, the application is not receivable *ratione personae* pursuant to articles 3.1 and 8.1 of the Tribunal’s Statute.

23. The Applicant claims that failure by the Dispute Tribunal to assert his “inherent jurisdiction” over her case “would mean a flagrant rejection of a right enshrined in human rights and international law, that of judicial redress”. The Tribunal notes, however, that the Applicant did have access to judicial redress procedures. Indeed, pursuant to the Staff Regulations and Rules of the STL, she exercised her right to file an appeal against the contested decision with the STL Judge for Staff Appeals and the latter rendered a motivated decision on 21 October 2011, dismissing the appeal. The matter is in fact *res judicata*.

Conclusion

24. In view of the foregoing, the Tribunal DECIDES:

The application is rejected in its entirety.

(Signed)

Judge Thomas Laker

Dated this 26th day of March 2012

Entered in the Register on this 26th day of March 2012

(Signed)

René M. Vargas M., Registrar, Geneva