



Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko, Acting Registrar

AKUNAMAMBO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:
Mathieu Komanda Liyeye

Counsel for Respondent:
Josianne Muc, UNDP

Introduction

1. The Applicant holds a fixed-term appointment at the G-2, step 10 level, as a driver with the United Nations Department for Safety and Security (UNDSS) in the Democratic Republic of Congo (DRC). His contract is administered by the United Nations Development Programme (UNDP).

2. On 27 February 2013, he filed an Application before the United Nations Dispute Tribunal (UNDT) contesting the decision, dated 31 October 2012, not to grant him a permanent appointment pursuant to staff rule 13.4(b) and in accordance with the criteria set out in the “UNDP Policy on consideration for conversion to a permanent appointment of UNDP Staff Members eligible to be considered as at 30 June 2009” of 9 December 2010.

Facts

3. In accordance with staff rule 13.4(b) regarding the granting of permanent appointment, UNDP issued, on 9 December 2010, the UNDP One-Time Review (OTR) Policy.

4. In accordance with this Policy, the UNDSS Field Local Staff OTR Advisory Panel conducted a review on 6 September 2012 of the Applicant’s case in order to determine if he should be granted a permanent appointment. The Panel recommended that the Applicant not be offered a permanent appointment on the basis that he had not met the eligibility requirements.

5. On 31 October 2012, the Applicant was notified by Mr. Moustapha Soumare, Resident Coordinator and Resident Representative, UNDP Country office in DRC that “the basis of the decision is the fact that administrative measures have been imposed on [him]”.

6. The Applicant annexed to his Application a letter dated 23 November 2012 allegedly sent to the Secretary-General contesting the decision of 31 October 2012.

7. Furthermore, in his Application, the Applicant avers that: (a) his contract was breached when he was asked to join the “chauffeur d’intervention” team on 16 March 2007 whereas he was recruited as a “chauffeur d’administration”; (b) he is entitled to the payment of a night differential; (c) he is entitled to a safe driving bonus; and (d) he is entitled to 4500 hours of overtime. Lastly, he claims he is entitled to be granted a permanent position and compensation.

8. The Respondent submits that the Application is not receivable as the Applicant did not request for management evaluation as required by staff rule 11.2(a) and article 8.1(c) of the UNDT Statute. Furthermore, the Respondent asserts that, without prejudice to his assertion of receivability, the Applicant’s appeal is not substantiated, for he was given reasonable consideration for the grant of a permanent appointment as required by staff rule 13.4(b).

9. The Tribunal issued Order No. 237 (NBI/2013) dated 30 October 2013, directing the Applicant to submit his comments on the receivability of his claims no later than 14 November.

10. The Tribunal notes that the Applicant failed to comply with Order No. 237 and he never contacted the Tribunal to explain or to justify this lapse on his part.

11. In view of the circumstances, the Tribunal takes the view that the matter should be determined on what is contained in the file.

Considerations

12. The issue that the Tribunal has to consider in the present judgment is whether the Application is receivable.

13. The UNDP Administrator acts on behalf of the Secretary-General in the administration of the Staff Regulations and Rules in respect of UNDP’s staff members as stated in the Personnel Directive PD/2/65/Add.1 of 14 February 1966:

The Administrator of UNDP acts on behalf of the Secretary-General in the administration of staff regulations and rules in respect of the staff of the Programme.

14. Further, in Resolution No. 2688 (XXV) of the General Assembly dated 11 December 1970 (The capacity of the United Nations development system), annex paragraph 61 states:

The Administrator should continue to have the authority to appoint and administer the staff of the Programme. For this purpose, he should have authority, in consultation with the Secretary-General, to frame such staff rules, consistent with the relevant principles laid down by the General Assembly, as he considers necessary to meet the special problems which arise in the service of the Programme.

15. As such, the Administrator's delegated authority includes that of deciding on requests for management evaluation under staff rule 11.2.

16. Pursuant to article 8.1(c) of the UNDT Statute, the jurisdiction of the Dispute Tribunal can only be invoked in this matter if the contested administrative decision had previously been submitted for management evaluation. Staff rule 11.2(a) provides in relevant part that a staff member wishing to formally contest an administrative decision is required to submit a written request for management evaluation to the Secretary-General. Such a request is a mandatory first step for an Applicant prior to the submission of an Application to the Dispute Tribunal and it is not open to the Tribunal to waive this requirement or make any exception to it.

17. The purpose of the request for management evaluation is to give the Administration an opportunity to set right what would appear to be a wrong decision and to provide an acceptable solution where necessary. This procedure is conducive to good administration and prevents the Tribunal from being clogged with cases unnecessarily.

18. According to the Applicant, the letter dated 23 November 2012 allegedly sent to the Secretary-General contesting the decision of 31 October 2012, was meant to

request a management evaluation of the administrative decision and was allegedly sent to several entities and/or individuals.

19. The Tribunal notes that, apart from the Secretary-General, none of these entities or individuals mentioned in the letter are staff or representatives of the office mandated or authorized to receive management evaluation requests from an aggrieved staff member. In addition, there is no indication that the Applicant actually submitted a request to any of these entities or individuals, including the Secretary-General, as he has not provided any address, physical or electronic, of these entities or individuals. Nor has the Applicant provided any acknowledgment of receipt of any request for management evaluation by the Administration.

20. In a number of cases, the United Nations Appeals Tribunal (UNAT) has stated that, pursuant to art. 8.1 of the UNDT Statute, read together with staff rule 11.2(a), an Applicant must, as a mandatory first step, request management evaluation of the contested decision before filing an Application with the UNDT (see *Planas* 2010-UNAT-049; *Ajdini et al.* 2011-UNAT-108).

21. More recently UNAT held in *Servas* 2013-UNAT-349 that:

A staff member must be familiar with the Staff Rules and understand her obligation to act in conformance with those rules. This means that a request for management evaluation must be submitted *prior to* bringing an application before the Dispute Tribunal. As we have noted many times, the requirement of management evaluation assures that there is an opportunity to quickly resolve a staff member's complaint or dispute without the need for judicial intervention.

22. Where the Applicant has failed to request management evaluation, the UNDT has no jurisdiction to consider the Application (see *Masykanova* UNDT/2013/033; *Giuliano* Order No. 204 (NBI/2013)).

23. In the present matter, the Applicant failed to provide evidence that he indeed submitted a request for management evaluation of the contested administrative

decision to either the Secretary-General or the Administrator of UNDP as required by article 8.1(c) of the UNDT Statute and staff rule 11.2(a).

Decision

1. In view of the foregoing, the Application is dismissed in its entirety.

(Signed)

Judge Vinod Boolell

Dated this 14th day of January 2014

Entered in the Register on this 14th day of January 2014

(Signed)

Abena Kwakye-Berko, Acting Registrar, Nairobi