



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

REID

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Stephen Margetts, ALS/OHRM

Alister Cumming, ALS/OHRM

Introduction

1. In an Application filed on 20 April 2015, the Applicant contests his exclusion from the interview round of selection for the generic D1 Security Sector Reform Officer (SSR) Roster ROL-FMADFS-32204-P-Field Locations (M), Principal Security Sector Reform Officer “even though the evaluation criteria read like a summary of his career and abilities”.

2. The Application was served on the Respondent on 28 April 2015. The Respondent was directed to limit his Reply to the issue of recevability.

3. The Respondent filed the Reply on 29 May 2015. He argued that the Application is not receivable *rationae personae* as the Applicant is not a staff member of the Organization.

4. The Tribunal, in accordance with art. 19 of the Tribunal’s Rules of Procedure, has determined that an oral hearing is not required in determining the preliminary issue of receivability and will rely on the Parties’ pleadings and written submissions.

Facts

5. The Applicant joined UNSMIL on 19 February 2012 on a temporary appointment as a Principal SSR which expired on 24 August 2013.

6. He applied for the generic D1 SSR Roster ROL-FMADFS-32204-P-Field Locations (M), Principal Security Sector Reform Officer job opening on 12 January 2014.

7. On 6 November 2014, the Applicant was informed that the recruitment process for the above generic job opening had been concluded and the successful/unsuccessful candidates had been sent the appropriate notifications.

8. He requested management evaluation of the decision not to include him on the list of candidates to be considered for the generic D1 SSR roster on 2 January 2015.

Respondent's submissions on receivability

9. The Applicant is a former staff member of the Organization. He last served with the Organization on a temporary appointment with the United Nations Support Mission in Libya (UNSMIL). The appointment began on 19 February 2012 and expired on 24 August 2013. The Applicant separated from the Organization on the same date. Since then, there has been no contractual relationship between the Applicant and the Organization.

10. The Applicant applied for the generic job opening close to six months after he had separated from the Organization, on 12 January 2014. He was notified of the contested decision on 6 November 2014.

11. Pursuant to arts. 2.1 and 3.1(a) of the Dispute Tribunal's Statute, a former staff member of the Organization has access to the Dispute Tribunal only in respect of an administrative decision impacting the terms of his or her former appointment. A former staff member may challenge a decision to terminate his or her appointment, or not to renew their appointment as such decisions relate to the terms of the staff member's former appointment. A former staff member may not challenge a non-selection decision made subsequent to his or her separation from the Organization as such a decision cannot be a violation of the staff member's former terms of appointment.

12. The Applicant has not made any averment, or presented any evidence, that the contested decision had any bearing his status as a former staff member or otherwise breached the terms of his former appointment. Accordingly, the Applicant does not have standing before the Dispute Tribunal.

Applicant's submissions on receivability

13. The Applicant submits that nowhere in staff regulation 11.2 does it say that a former staff member cannot contest an administrative decision. The

Applicant cites the case of *Masyllkanova*¹ in support of his contention that former staff members can contest administrative decisions.

14. Articles 2 and 3 of the Statute of the Dispute Tribunal explicitly give him, as a former staff member, the right to appeal administrative decisions.

15. The Applicant submits that this situation originated while he was in the employment of the United Nations. He served as a D1 SSR from August 2012 to August 2013. He was informed that he had already been shortlisted for a specific SSR position while in UNSMIL. Though the subsequent vacancy announcement was slightly reworded, the responsibilities and competencies are essentially the same. The Applicant was considered a qualified candidate to get the UNSMIL job before the “illegal intervention of the Chief of Staff”.

16. The Applicant submits that his non-inclusion on the list of candidates to be considered for the generic roster is further retaliation for daring to take on the Chief of Staff.

Considerations

17. Article 2.1 of the Tribunal’s Statute stipulates:

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, against the Secretary-General as the Chief Administrative Officer of the United Nations: (a) To 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 Tribunal’s Statute 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

¹ UNDT/2013/033.

Secretariat or separately administered United Nations funds and programmes; (c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes. (Emphasis added).

19. In *Gharemani*² and *Sims*³, the United Nations Appeals Tribunal held that the applications were not receivable *ratione personae* as the applicants were former staff members who were no longer subject, on the dates of filing their applications, to the Staff Regulations and Rules of the Organization and that a contested decision must have a bearing on an applicant's status as a former staff member.

20. It is the Applicant's case that the events giving rise to the contested decision arose while he was in the employment of the Organization. He alleges illegal intervention by the Chief of Staff. By the Applicant's own admission, he had "already been shortlisted for a specific SSR position while in UNSMIL". Not, however, the current contested positions.

21. The Tribunal finds that the contested decision has no bearing on the Applicant's status as a former staff member.

JUDGMENT

22. In view of the foregoing, the Tribunal rejects this Application as not receivable *ratione personae*.

(Signed)

Judge Nkemdilim Izuako

Dated this 16th day of June 2015

² 2011-UNAT-171 at paras. 24 and 27-29.

³ 2011-UNAT-154 at para. 14.

Entered in the Register on this 16th day of June 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi