



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

PRAKASH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

LPAS, UNOG

Introduction

1. By application filed on 12 July 2021, the Applicant, a former individual contractor with the United Nations Office on Drugs and Crime (“UNODC”), contests the decision to terminate his contract and alleges abuse of authority.

Facts

2. On 13 April 2020, the Applicant signed a service contract with the United Nations Development Programme (“UNDP”) for the period from 13 April 2020 to 31 December 2020. The service contract stipulated that the Applicant would be assigned to New Delhi as a National Programme Officer (HIV AIDS) for UNODC. According to the Applicant, his service contract was further renewed until 30 June 2021.

3. By email dated 10 May 2021, the Applicant was informed of the decision to terminate his service contract effective 31 May 2021, that is prior to its expiry date of 30 June 2021. On 17 May 2021, the Applicant received a letter confirming his separation from UNDP on behalf of UNODC upon termination of contract effective 31 May 2021.

Consideration

4. The only issue at stake in the case at hand is whether the application is receivable, as receivability is a condition *sine qua non* for judicial review by the Tribunal.

5. Indeed, the examination of an application’s receivability is a matter of law, which may be adjudicated without serving the application on the Respondent for a reply and even if not raised by the parties (see *Christensen* 2013-UNAT-335). Accordingly, the Tribunal deems it appropriate, on its own initiative and in accordance with art. 9 of its Rules of Procedure, to decide on the present application by way of summary judgment, which has been accepted as an appropriate means to deal with issues of receivability (see *Chahrour* 2014-UNAT-406; *Gehr*

2013-UNAT-313; *Cherneva* UNDT/2018/081; *Cherneva* UNDT/2020/074 and *Cherneva* UNDT/2021/003).

6. According to art. 2.1 (a) and art. 3 of the Tribunal's Statute, the Tribunal has jurisdiction only over applications filed by a staff member, a former staff member or a person making claims in the name of an incapacitated or deceased staff member, with respect to an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment.

7. The Tribunal notes that sec. 3 of the Applicant's service contract dated 13 April 2020, which according to the Applicant was renewed until 30 June 2021, unambiguously provides that his legal status was that of an individual contractor. It specifically indicates that the Applicant is not "a 'staff member' under the Staff Regulations of the United Nations".

8. It follows that the Applicant was not a staff member and, therefore, the application is not receivable, *ratione personae* (*Ghahremani* 2011-UNAT-171).

9. In addition to the above, the Tribunal recalls that it has jurisdiction to consider applications only against an administrative decision for which an applicant has timely requested management evaluation.

10. With respect to the deadline to request management evaluation, staff rule 11.2(c) provides:

A request for management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

11. The Tribunal also recalls the established jurisprudence of the Appeals Tribunal according to which statutory time limits have to be strictly enforced (*Mezoui* 2010-UNAT-043; *Laeijendecker* 2011-UNAT-158; *Romman* 2013-UNAT-308).

12. Furthermore, pursuant to art. 8.3 of its Statute, and the established jurisprudence of the Appeals Tribunal, the Dispute Tribunal has no discretion to waive the deadline for management evaluation or administrative review (*Costa* 2010-UNAT-036; *Rahman* 2012-UNAT-260; *Roig* 2013-UNAT-368; *Egglesfield* 2014-UNAT-402).

13. The Tribunal notes that the Applicant was informed of the contested decision on 10 May 2021 and that in accordance with staff rule 11.2(c), he had until 9 July 2021 to request management evaluation. The Applicant has indicated in his application filed on 12 July 2021 that he had not requested management evaluation. Therefore, the application is equally not receivable *ratione materiae*.

14. Having said the above, the Tribunal notes that although the Applicant has no access to this Tribunal, as per the terms of sec. 15 of his service contract, he has access to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law (“UNCITRAL”).

Conclusion

15. In view of the foregoing, the Tribunal DECIDES to dismiss the present application.

Judge Teresa Bravo

(Signed)

Dated this 15th day of July 2021

Entered in the Register on this 15th day of July 2021

(Signed)

René M. Vargas M., Registrar, Geneva