



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

LEE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON MOTION FOR LEAVE TO HAVE
RECEIVABILITY CONSIDERED AS A
PRELIMINARY ISSUE**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat
Elizabeth Gall, ALS/OHRM, UN Secretariat

Facts and contentions

1. By application filed on 10 February 2014, the Applicant, a G-5 Programme Management Assistant in the Department of Management in New York, contests the decision to abolish her post with the Management Support Service (“MSS”), the decisions to separate her from the Organization as of 31 December 2013 and not to renew her fixed-term appointment, as well as the “decision not to assist in the exceptional placement against a post, decision on the conditions of [her] release on temporary assignment to [Office of Information and Communication Technology], and the decision to withhold information regarding accountability for MSS posts and resources”.
2. On 12 February 2014, the application was served on the Respondent, who was requested to submit his reply by 14 March 2014.
3. On 21 February 2014, the Respondent submitted a “motion for leave to file a reply limited to receivability”, to have the Tribunal determine the issue of receivability of the application as a preliminary matter, stating that the Applicant did not contest any administrative decisions under art. 2.1(a) of the Tribunal’s Statute. In particular, he submitted that “neither the Secretary-General’s recommendation to the General Assembly to abolish the post formerly encumbered by the Applicant (the Post), nor the General Assembly’s decision to abolish the post are administrative decisions”, that the decision not to renew the Applicant’s appointment was moot, and that all other alleged “decisions” challenged by the Applicant did not constitute administrative decisions.
4. On 24 February 2014, the Applicant filed, without leave from the Tribunal, a response to the Respondent’s submission, asking the Tribunal to reject the request to file a reply limited to receivability, stating that some of the decisions she challenged were never addressed in full in the replies she had received to her management evaluation requests, and that all administrative acts she was contesting were indeed administrative decisions.

Consideration

5. At the outset, the Tribunal recalls that, in accordance with art. 19 of its Rules of Procedure, “[a]lthough no right to partially respond is granted by the Statute or the Rules of Procedure of the Dispute Tribunal, the Tribunal may decide in certain cases to permit the Respondent to file a reply addressing only the issue of receivability, provided that the Tribunal is satisfied that it would be appropriate for the fair and expeditious disposal of the case and to do justice to the parties” (*Balakrishnan* Order No. 97 (GVA/2011), quoting *Di Giacomo* Order No. 335 (NY/2010)).

6. Having reviewed the parties’ submissions, the Tribunal notes that the question whether or not the application is receivable in all aspects is not a clear-cut issue (*Balakrishnan* Order No. 97 (GVA/2011)). The Tribunal is of the view that motions for leave to have receivability considered as a preliminary matter should be granted only when the receivability issue is limited to straightforward questions, such as the receivability *ratione temporis* or the jurisdiction of the Tribunal, which is not the case here.

7. The present Order is without prejudice to the Tribunal’s later determination on the issue of receivability.

IT IS ORDERED THAT:

8. The Respondent’s motion for leave to file a reply limited to receivability be rejected.

9. The Respondent file his full reply to the application by **Friday, 14 March 2014**, as initially directed.

(Signed)

Judge Thomas Laker

Dated this 26th day of February 2014

Entered in the Register on this 26th day of February 2014

(Signed)

René M. Vargas M., Registrar, Geneva