



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/084

Judgment
No.: UNDT/2010/145

Date: 13 August 2010

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: Victor Rodríguez

BASENKO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Self-represented

Counsel for respondent:
Linda Starodub, UNOV

Introduction

1. The applicant contests the withdrawal of the offer for an internship with the International Trade Law Division (ITLD) at the United Nations Office at Vienna (UNOV). She seeks among other things compensation for useless travel and housing expenses and for being unemployed consequently.
2. The pre-eminent issue is whether she has access to the Tribunal.

Facts

3. On 2 February 2009, the applicant began an unpaid internship with the United Nations Office on Drugs and Crime (UNODC), which was expected to last for six months. On 13 May 2009, the internship was interrupted by mutual consent due to a conflict with her supervisor.
4. On 14 May 2009, the applicant was offered by the Division of Management of UNOV to complete her internship with ITLD from 1 October to 27 November 2009.
5. On 9 September 2009, the UNODC internship coordinator gave notice to the applicant of the withdrawal of the offer made on 14 May 2009. It was alleged that the applicant had not returned her ground pass upon interruption of the previous internship and had even misused it to attend a language course.
6. After a number of attempts to solve the matter informally with UNOV officials and subsequently with the Mediation Division, the applicant submitted a formal appeal to the International Labour Organization Administrative Tribunal (ILOAT). The ILOAT registrar redirected the claim to the United Nations Dispute Tribunal (UNDT) which, in turn, indicated that the applicant should submit a request for management evaluation.
7. The request for management evaluation was received on 14 January 2010. The answer, dated 26 February 2010 and sent to the applicant on 2 March 2010, upheld the withdrawal of the internship offer.
8. The applicant filed an appeal to the UNDT on 27 May 2010.

Parties' contentions

9. The applicant's principal contentions are:
- a. The application should be considered as receivable. According to Article 103 of the Charter of the United Nations, "[i]n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail". Therefore, paragraphs 6 and 7 of General Assembly resolution 63/253 cannot prevail over the Charter;
 - b. "According to the Article 76 of the Charter of the United Nations, para. c: 'to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex language, or religion, and to encourage recognition of the interdependence of peoples of the world'; paragraph d. ensures: 'equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals and also equal treatment for the latter in the administration of justice without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.' According to Article 55 of the Charter of the United Nations, paragraph c.: 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.' – a right to access to justice is a fundamental right of everyone." (Punctuation as in original; emphasis omitted);
 - c. Interns are gratis personnel, who contribute to the work of the United Nations without remuneration. They cannot be "undefendable instrument in the hands of the Administration". They have the right to "defend themselves" like staff members have;
 - d. With respect to the merits, the applicant states that the withdrawal was too late after the offer was made and too short before the beginning of the internship, which caused her financial damage;

- e. The respondent failed to warn her in time to return the ground pass. Furthermore, the respondent failed to give her an opportunity to defend herself before withdrawing the offer. This is a breach of her human rights.

10. The respondent's principal contention is that pursuant to paragraph 7 of General Assembly resolution 63/253, interns have the possibility of requesting an appropriate management evaluation; the General Assembly, however, decided that interns should not have access to the UNDT. The application is therefore not receivable *ratione personae*.

Considerations

11. 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...

12. Article 3.1 of the statute of the Dispute Tribunal further provides:

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;
- (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.

13. Pursuant to these rules, the status of staff member is a necessary condition for access to the Tribunal. In the present case, there is no dispute that the applicant never acquired the status of a staff member.

14. The application must therefore be rejected on the grounds that it is not receivable pursuant to article 3.1 of the statute of the Dispute Tribunal.

15. In Judgments UNDT/2010/098, *Gabalton*, and UNDT/2010/142, *Roberts*, the Tribunal held that the limitation of its jurisdiction to persons having acquired the status of staff member was the clear wish of the General Assembly. Indeed, the General Assembly, which had considered proposals to open the Tribunal to non-staff personnel, such as Interns and Type II gratis personnel (e.g., A/62/748, referred to in A/RES/63/253), opted to reject such proposals and to limit the scope of the Tribunal's statute as reflected in article 3.1. Hence, this limitation does not constitute an unintended lacuna and there is no room for a larger interpretation of the actual wording of the statute. The limitation of the scope of the Tribunal's jurisdiction has been confirmed by the United Nations Appeals Tribunal in its Judgment 2010-UNAT-008, *Onana*.

16. The foregoing notwithstanding, the limitations of access to the Tribunal for different categories of non-staff personnel are still the subject of discussions. The General Assembly, in its resolution 64/233 dated 22 December 2009, requested the Secretary-General, with respect to remedies available to different categories of non-staff personnel, to analyse and compare the advantages and disadvantages of several options listed there, including granting access to the Dispute Tribunal and the Appeals Tribunal to non-staff personnel. For the time being, there is however no legal basis to grant access to the Tribunal to applicants other than individuals having acquired the status of a staff member.

17. The applicant's references to provisions of the Charter of the United Nations are without merit.

18. Article 55 of the Charter of the United Nations is rather a definition of the United Nations' goals and competences in the area of promoting peaceful relations of states than a commitment of the United Nations Organization itself towards individuals.

19. Article 76 of the Charter of the United Nations applies explicitly to the trusteeship system and not to the relations between the United Nations and its staff or interns.

20. The applicant claims that, by virtue of Article 103 of the Charter, her human right of access to justice—which according to her is guaranteed by the Charter—takes precedence over article 3 of the statute of the Dispute Tribunal

limiting its jurisdiction to staff members. Indeed, Article 103 of the Charter addresses conflicts between diverging obligations of United Nations member states deriving from the Charter on the one hand and from other treaties signed by those states on the other hand. It does not address the obligations of the Organization.

Conclusion

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

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 13th day of August 2010

Entered in the Register on this 13th day of August 2010

(Signed)

Víctor Rodríguez, Registrar, UNDT, Geneva