

Case No.: UNDT/NBI/2021/016

Order No.: 050 (NBI/2021)

Date: 19 February 2021





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 noncompliance.

7. Article 3.1 of the Statute further provides that:

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.

8. For an applicant to have standing to appear before the Tribunal, he or she must be a staff member, former staff member, or someone making claims on behalf of an incapacitated or deceased staff member. The United Nations Appeals Tribunal has previously affirmed the Dispute Tribunal’s findings that it was not competent to hear cases brought by parties who were not staff members of the Organization.<sup>1</sup>

9. As a Military Observer, the Applicant is categorized as a United Nations Military Expert on Mission (“UNMEM”)<sup>2</sup>. Paragraph 12 of the DPKO/DFS UNMEM Manual states that “Military personnel contributed by the Member States to UNPKOs remain members of their national defence forces” but that “the operational authority (including the operational control) over such forces and personnel is transferred to the

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<sup>1</sup> See *Basenko* 2011-UNAT-139; *Di Giacomo* 2012-UNAT-249.

<sup>2</sup> See DPKO/DFS UNMEM Manual dated 23 April 2010, para. 1.

UN, and vested in the Secretary-General, under the authority of the Security Council.” Clearly, the Applicant, as a Military Observer, is not covered by art. 3 of the UNDT Statute since he is not a staff member, former staff member or a person making a claim in the name of an incapacitated or deceased staff member of the United Nations. Therefore, his request for suspension of action does not fall within the jurisdiction of the Tribunal. Accordingly, the Tribunal lacks jurisdiction to consider the contentions made by the Applicant.

**Order**

10. The application is refused.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 19<sup>th</sup> day of February 2021

Entered in the Register on this 19<sup>th</sup> day of February 2021

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi