



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2013/002

Judgment No.: UNDT/2013/177

Date: 23 December 2013

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-7 TD-.001 Tc(RegiD-rko, A-7 TDc(Regiting 01 T3J/T01 TciJ14.1s)() 1 r1 .0057 T8

Introduction

1. The Applicant, a retired staff member of the United Nations Economic and Social Commission for Western Asia (“ESCWA”), filed an Application on 7

demands, proceedings and/or appeals that he may have against the United Nations.

6. At paragraph 17 of the agreement, the Applicant acknowledged that he had entered into the agreement on his own free will and without duress.

7. On 27 April 2010, the Applicant informed the Geneva Registry that his case had been satisfactorily resolved through mediation conducted by the United Nations Office of the Ombudsman and Mediation Division and requested that it be closed. On 3 May 2010, a judgment was issued closing the case.

8. On 7 January 2013, the Applicant filed this Application challenging the validity of the agreement. The Application was served on the Respondent on 16 January 2013 and the Respondent filed a Reply on 5 April 2013 having been granted an extension of time to do so by the Tribunal.

Applicant's case

9. The Applicant's case is summarized as follows.

10. The ESCWA Administration harassed him to the point where he was forced to sign the agreement.

11. The agreement is unreasonable because it was imposed upon him under duress and threat.

12. Under the agreement, the ESCWA Administration decided not to issue him with a reference letter commensurate with recorded performance appraisals ("ePASes") thereby jeopardizing his future employment prospects. The Applicant submits that he finds it impossible to justify to future employers that the Organization he served for nearly 17 years would issue him with a recommendation letter not commensurate with his e-PAS evaluation.

13. The Administration kept adverse material about him in his official status file that will jeopardize his career prospects.

Consideration

Is this case receivable in view of the settlement agreement reached between the Applicant and the Executive Secretary of UNESCWA on 24 April 2010?

23. Article 8.2 of the Statute of the Dispute Tribunal stipulates;

An application shall not be receivable if the dispute arising from the contested administrative decision had been resolved by an agreement reached through mediation. However, an applicant may file an application to enforce the implementation of an agreement reached through mediation, which shall be receivable if the agreement has not been implemented and the application is filed within 90 calendar days after the last day for the implementation as specified in the mediation agreement or, when the mediation agreement is silent on the matter, after the thirtieth day from the date of the signing of the agreement.

24. The Applicant case is that ESCWA forced him to sign an agreement that is both harsh and prejudicial and that the agreement is unreasonable because it was imposed upon him under duress and threat.

25. The Respondent submits that under paragraph 17 of the agreement, the Applicant acknowledged that he signed the agreement of his own free will and without any duress. The Applicant subsequently communicated to the Dispute Tribunal and the Ethics Office and stated that his case had been satisfactorily resolved through mediation.

26. The Respondent also submits that the agreement has been implemented in full and that the Organization has complied with its obligations under the agreement. The Applicant has proffered no evidence to show that the

(Signed)

Judge Nkemdilim Izuako

Dated this 23rd day of December 2013

Entered in the Register on this 23rd day of December 2013

(Signed)

Eric Muli, Officer-in-Charge, UNDT Nairobi