



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2013/117

Judgment No.: UNDT/2013/180

Date: 24 December 2013

Original: English

Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

KALPOKAS TARI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

STRIKING OUT MANIFESTLY
INADMISSIBLE APPLICATION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
UN Women

Introduction

1. The Applicant is contesting the decision taken on 2 December 2013 by the United Nations Entity for Gender Equality and the Empowerment of Women (“UN Women”) to terminate her contract prior to its expiry.

Facts

2. On 28 February 2013, the Applicant was offered a “Service Contract as the National Project Coordinator – Partner Improving Markets (PIM) (Vanuatu) with [UN Women]”.

3. On 13 March 2013, the Applicant and Ms. Elzira Sagynbaeva, UN Women Representative & Regional Programme Director, signed Service Contract No. 2013-0007-001. The contract made it clear that the fact “that UN Women, being part of the United Nations, is not subject to and cannot be obliged to submit to local laws and regulations on labour-related matters” [the contract spells out all conditions of employment of the subscriber as it cannot be supplemented by any other regulation”. The contract was for a fixed period of one year and took effect on 14 March 2013, expiring on 13 March 2014.

4. On 2 December 2013, the Applicant received a letter notifying her that her “contract with UN Women will be terminated with notice from 2 December 2013, and as required under the service contract guidelines, the contract end date will be 31 December 2013”.

5. The termination letter informed the Applicant that her separation was “taken after due consideration of the events that have happened ever since you joined UN Women in March 2013. As you are aware, your issues of conduct, dedication to work, capacity and productivity levels were not good. This statement indicates that the Applicant’s termination was for a reason relating to the alleged conduct,

8. The Statute of the United Nations Dispute Tribunal states:

Article 2

1 The Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute

...

Article 3

1. 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.

...

Article 8

1. An application shall be receivable if:

...

(c) An applicant has previously submitted the contested

Case No. UNDT/NY/2013/117

Judgment No. UNDT/2013/180

13. It is clear from the facts provided by the Applicant that, in the circumstances of this case, the requirements of the Tribunal's Statute and the Rules of Procedure have not been complied with.

14. Further, under art. 19 of its Rules of Procedure, the Tribunal may at any time, either on an application of a party

arbitration must in all cases be preceded by a conciliatory procedure under UNCITRAL rules.

17. For an applicant to have standing to appear before the Tribunal, an applicant is required to 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 in *di Giacomo* 2012-UNAT-249 and *Basenko* 2013-UNAT-316 affirmed the Dispute Tribunal's finding that the Tribunal was not competent to hear cases brought by parties that were not considered staff members as they did not meet a necessary condition for access to the Tribunal.
18. Paragraph 3 of the Applicant's service contract specifically states that under the terms of her employment she is not considered a staff member of UN Women and that she is not covered by the United Nations Staff Rules and Regulations.
19. Further, the Applicant's service contract specifically states that disputes related to her contract that cannot be resolved amicably shall be dealt with via binding arbitration under UNCITRAL rules.
20. The Tribunal has taken into account the clear language of the Applicant's service contract, the terms of which she accepted voluntarily prior to entering into service with UN Women, together with the Appeals Tribunal's rulings. In *Ndjadi* UNDT/2011/007, a case similar to this application, the Dispute Tribunal found that

18. ... the Tribunal is competent to hear complaints filed by United Nations staff members (international civil servants) under Article 3 of the Statute above. What must be determined, therefore, was whether, contractually speaking, the Applicant had the status of an international civil servant.

19. In his application, the Applicant stated that he had been hired by UNDP on a service contract [and the] rules in this case ... indicate that persons recruited under this type of contract are not subject to the Staff Rules and do not have international civil servant status. Further, it is clear from the model service contract form that the contract ... clearly states that the signatory [to the service contract] is not a staff member within the meaning of the United Nations Staff Rules or an "official" within the meaning of the Convention of

13 February 1946 on the Privileges and Immunities of the United Nations.

20. In view of the foregoing, the Tribunal observed that the Applicant had no standing before the Tribunal under Article 3(1) of its Statute.

21. In *Ndjadi* 2012-UNAT-197, the Appeals Tribunal affirmed the Dispute Tribunal's finding that the applicant was not covered by the Staff Rules and Regulations and was therefore not to be considered a staff member. The Appeals Tribunal noted that the service contract required the applicant to pursue any claim flowing from his contract by seeking arbitration. Consequently, the Tribunal did not have any jurisdiction to review his application.

22. This finding effectively disposes of the application. However, the Tribunal finds it appropriate to observe that, even if this case had involved a staff member, it would still not have been receivable as explained below.

Receivability

23. Under art. 8.1 of the Dispute Tribunal Statute, read together with staff rule 11.2(a), an applicant must, as a mandatory

25. Even if the Applicant in this case were a staff member, having not complied with this mandatory requirement, her claim is not receivable.

Conclusion

26. This application is struck out as ~~it~~ inadmissible because the terms of the contract that the Applicant voluntarily ~~entered~~ entered into do not confer standing on her to bring her claim to the Tribunal. In the ~~alternative~~ alternative, even if the Applicant were a staff member, her claim would not be receivable for failure to request management evaluation.

27. The application is manifestly inadmissible.

Order

28. The application is struck out.

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