Judgment No. 2014-UNAT-445

Counsel for Appellant: Self-represented

Counsel for Secretary-General: Paul Oertly

JUDGE INÉS WEINBERG DE ROCA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Julien Terragnolo against Judgment No. UNDT/2013/092, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 28 June 2013 in the case of *Terragnolo v. Secretary-General of the United Nations*. Mr. Terragnolo appealed on 12 August 2013 and the Secretary-General of the United Nations answered on 13 September 2013.

Facts and Procedure

2. On 29 June 2009, Mr. Terragnolo commenced service with the Department for General Assembly and Conference Management (DGACM) at the G-3 level. In June 2010, he was promoted to the G-4 level. In May 2011, Mr. Terragnolo was elected as a staff representative and has been carrying out this role since that time.

3. On 26 April 2012, Mr. Terragnolo submitted his application for the 2012 Competitive Exam for French Associate Editor at the P-2 level. The job opening required the submission of a mandatory one-page essay in French as part of the application, without which applications would not be considered. The special notice further provided that "[i]n instances where a large number of applications are received, the Board of Examiners reserves the right to admit to the examination only the most qualified applications based on a review of the applications over and above the minimum criteria".

4. On 1 June 2012, the Board of Examiners decided not to admit Mr. Terragnolo to the examination and, on 11 June 2012, Mr. Terragnolo requested reconsideration of that decision. On 12 June 2012, the Chief of the Examinations and Tests Section of the Office of Human Resources Management (OHRM) advised that the Board of Examiners had denied Mr. Terragnolo's candidature on the ground that he was not one of the "most qualified candidates". On 20 June 2012, the Assistant Secretary-General of DGACM confirmed the decision not to admit Mr. Terragnolo to the examination.

5. On 24 July 2012, Mr. Terragnolo filed a request for management evaluation of the decision not to admit him to the examination. On 23 August 2012, the Management Evaluation Unit upheld the contested decision. On 22 October 2012, Mr. Terragnolo challenged the decision before the UNDT.

6. On 28 June 2013, the UNDT issued its Judgment, rejecting Mr. Terragnolo's application on the ground that he had not submitted the mandatory French essay as part of his application. The UNDT stated that the "several lines" in French provided in the cover letter space in Mr. Terragnolo's Personal History Profile itself did not satisfy the mandatory requirement to submit a one-page French essay. The UNDT further held that Mr. Terragnolo had failed to meet the burden of proving that the contested decision was motivated by

manifestly unreasonable decision. The UNDT's finding that Mr. Terragnolo's essay was inadequate was on its own sufficient basis upon which to reject the application.

13. The Secretary-General further submits that the UNDT did not err in law in holding that Mr. Terragnolo had failed to demonstrate improper motivation behind the decision not to convoke him to the examination. Mr. Terragnolo merely restates the same arguments presented at trial without arguing how the UNDT erred.

14. The Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

Motion to submit amicus curiae brief

15. The former chairperson of the 44th Staff Council of the United Nations Staff Union applied on 28 February 2014 to file a friend-of-the-court brief. On 27 March 2014, the Secretary-General objected on the ground that the applicant has no legal or other expertise that would assist the Appeals Tribunal in its deliberations.

16. Article 17 of the Rules of Procedure of the Appeals Tribunal establishes that "[t]he President or the panel hearing the case may grant the application if it considers that the filing of the brief would assist the Appeals Tribunal in its deliberations. The decision will be communicated to the applicant and the parties by the Registrar."

17. The applicant does not explain his legal or other expertise that would assist the Appeals Tribunal and its bearing on the case. For this reason, the filing of the friend-of-the court brief is denied.

Merits

18. The Dispute Tribunal found that there was no satisfactory evidence that the impugned decision was motivated by retaliation.

19. "The Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and is thus not an opportunity for a party to re argue his or her case. A party cannot merely repeat on appeal arguments that did not succeed before the UNDT. Rather, he or she must

demonstrate that the UNDT committed an error of fact or law, warranting the intervention by the Appeals Tribunal."[1]

20. The UNDT may, as in the instant case, reject an application challenging an unfavourable decision without further consideration where one mandatory requirement for a favourable decision is not met.[2]

21. Mr. Terragnolo's candidature was not considered on the ground that he was not one of the "most qualified candidates". The Board of Examiners found Mr. Terragnolo to be one of 68 applicants who, although meeting the minimum requirements, were not deemed the most qualified and therefore not convoked to the examination. The Board decided to convoke the remaining 89.

22. "The Secretary-General has broad discretion in selection matters and it is not the function of the UNDT or indeed this Tribunal, in the absence of evidence of bias, discriminatory practices or *mala fides*, to substitute its judgment for that of the Secretary-General."[3]

23. The appeal does not identify any errors in the reasoning of the UNDT, and we can find no basis for disagreeing with the UNDT.

Judgment

24. The appeal is dismissed.

[1] *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035, para. 30. See also *Larkin v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-263, para. 20.

[2] *Servas v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-[illegible], para. 21 and cases cited therein.

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