



Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

JOCONDO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for applicant:
Victor Rodriguez

Counsel for respondent:
Stephen Margetts, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant is a former employee of the Office for the Coordination of Humanitarian Affairs (“OCHA”) who was assigned to Port-au Prince, Haiti, as the Head of the OCHA Office at the D-1 level.
2. On 24 June 2011, the Applicant requested management evaluation of the decision to grant him a fixed-term appointment as Head of the OCHA Regional Office in Dakar, Senegal, at the P-5 level. Since his fixed-term appointment expired on 24 August 2011, instead of an appointment at an equivalent D-1 level elsewhere. On 15 August 2011, he forwarded an appeal submission to the Management Evaluation Unit (“MEU”) contesting the decision to abolish his post as Head of the Haiti OCHA Office at the D-1 level as well as the decision contained in his 24 June 2011 communication. He did not receive a substantive response to either of his requests from MEU.
3. On 28 December 2011, the Applicant filed a Motion for Extension of Time to file an Application. This Motion was served on the Respondent on 6 January 2012 and he was invited to provide a response by 20 January 2012. On 25 January 2012, the United Nations Dispute Tribunal (“the Tribunal”), by Order No. 15 (NBI/2012), granted the Applicant an extension of time to file his Application.
4. On 11 February 2012, the Applicant filed the current Application with the Tribunal contesting the decisions to: (i) offer him an appointment at the P-5 level instead of at the D-1 level, and the other decisions; (ii) move him from Haiti to Dakar; and (iii) abolish his D-1 post at the end of his last fixed-term contract, 24 August 2011.
5. The Respondent filed his Reply on 19 March 2012.

Preliminary Issue:

6. The Respondent asserts that the Applicant failed to submit the decision to reassign him from Haiti to Dakar for management evaluation and as such, his Application on this particular decision is not receivable. The Respondent also asserts that even if the Applicant's management evaluation requests of June and August 2011 had referred to the reassignment decision, his request would have been out of time in view of the fact that the decision was taken in November 2010.

7. The Applicant submits that he requested management evaluation of the decision to reassign him from Haiti to Dakar on 24 June and 15 August 2011. The Applicant submits that the decision is receivable *in bonae temporis* because it was a "continuing act". He also submits that when the idea of reassigning him to Dakar was first floated in November 2010, he conditioned his acceptance of the reassignment to OCHA upgrading the post in Dakar to the D1 level and that OCHA promised to take the necessary actions to address the matter.

Considerations

8. The first issue to be addressed is whether the Applicant requested management evaluation of the decision to reassign him from Haiti to Dakar. Staff rule 11.2(a) provides that a staff member seeking to formally contest an administrative decision shall, as a first step, request management evaluation of the decision.

9. In June and August 2011, the Applicant submitted requests for management evaluation to the MEU. In both requests he indicated that he was contesting the "decision to grant him a fixed term appointment as Head of the OCHA Regional Office in Dakar, Senegal, at the P-5 level since his fixed term appointment expired on 24 August 2011 [...]". In view of the fact that granting him a fixed-term appointment in Dakar necessarily entailed a change of duty station/reassignment from Haiti, where he was working, to Dakar, the Tribunal concludes that the grant of an appointment to Dakar and the reassignment to Dakar are one and the same issue. Thus, he requested management evaluation of the decision to reassign him from Haiti to Dakar.

10. Is the Applicant's request for management evaluation of his reassignment time-barred? The Tribunal is of the view that it is not.

11. Based on the chronology of this case, it is evident that a decision was not taken in November 2010 to reassign the Applicant from Haiti to Dakar, as asserted by the Respondent. According to the Respondent's Reply, in late November or early December 2010, the Deputy Director of the OCHA Coordination Response Division ("CRD") "proposed" that the Applicant be reassigned to Dakar at the P-5 level for the remaining period of his fixed-term appointment. However, in order to accommodate the Applicant, "it was agreed that OCHA would seek an upgrade of [the Dakar] post to the D-1 level". Was this "proposal" an "administrative decision" within the meaning of Article 2 of the UNDT Statute? Categorically, the answer is no.

12. In Judgment No. 1157, *Androno* (2003), the former United Nations Administrative Tribunal defined an administrative decision as follows:

A unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative act, Gen th

Programme Planning, Budgets and Accounts Controller (“the

