



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2011/011
Judgment No.: UNDT/2012/113
Date: 24 July 2012
Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

EL MOCTAR

v.

SECRETARY-GENERAL OF THE
UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Self-Represented

Counsel for Respondent:

Steven Dietrich, Nairobi Appeals Unit, ALS/OHRM

7.

different categories of non-staff personnel performing personal services for the Organization, including experts on mission. Specifically, in resolution 62/228, at paragraph 66, the General Assembly asked for further information on:

- (a) The different categories of non-staff personnel performing personal services for rson1 315.89 39 T/Pagi 315.gnization, inc43-7(lud)8(in9 3d)-89(e)-315

21. The Tribunal considered the definition of a staff member in Turner UNDT/2010/170, stating:

It is clear that the Charter requires that staff members be ³ DSSRLQWHG´ E \GWHKH (or those to whom this power has been delegated). The hallmark of staff relationship is ³ DSSRLQWPHQW´ DQG WKLVLV GRQH WKURXJK D pursuant to staff regulation 4.1. The Staff Regulations apply to all staff members of the Secretariat, within the meaning of Article 97 of the Charter, whose employment relationship and contractual link with the Organization are through a letter of appointment issued pursuant to regulations promulgated by the General Assembly. Such letter is signed either by the Secretary-General or by an official in the name of the Secretary-General.⁴

22. In Gabaldon 2011-UNAT-120, the Appeals Tribunal endorsed this view, stating WKDW ³WKH OHJDO DFW E\ ZKLFK WKH 2UJDQLJDWL a person as a staff member is a letter of appointment signed by the Secretary-General or an official acting on KLV EHKDO. However, the Appeals Tribunal went on to state:

Access to the new system of administration of justice for persons who formally are not staff members must be limited to persons who are legitimately entitled to similar rights to those of staff member. This may be the case where a person has begun to exercise his or her functions based on acceptance of the offer of employment. Having expressly treated this person as a staff member, the Organization must be regarded as having extended to him or her, the protection of its administration of justice system.

Status of UNPOL officers

23. The Respondent avers that UNPOL officers such as the Applicant are ³ H[SHUWV RQ PLVVLRQ´ DQG DV VXFK DUH QRW VWDII the Dispute Tribunal.

24. ³ ([SHUWV RQ PLVVLRQ´ LV D WHUP DSSDUHQWO\ G 22 of the Convention on the Privileges and Immunities of the United Nations,⁵ and thus specifically excluded from the class of persons who could be described

⁴ Turner, UNDT/2010/170, paragraph 28.

⁵ 13 February 1946.

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