



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2013/061
Judgment No.: UNDT/2013/179
Date: 24 December 2013
Original: English

Before: Judge Coral Shaw
Registry: Nairobi
Registrar: Abena Kwakye-Berko, Acting Registrar

STAEDTLER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Self-

Introduction

1. The Applicant has two applications before the United Nations Dispute Tribunal in Nairobi (UNDT). In Case

6. Before his contract with UN-Habitat ended, the Applicant had applied for two posts.

7. On 26 May 2012, he applied for the post of Senior Human Settlements Officer in the Regional Office in Cairo (Cairo post). He underwent a competency-based interview in July. On 13 October 2012, he was notified that he had not been selected for the post.

8. On 18 October 2012, he applied for the post of the Senior Human Settlements Officer in the Regional Office in Fukuoka (Fukuoka post). He underwent a competency-based interview in February 2013 and was notified on 6 June 2013 that he had not been selected for the post.

9. Following his non-selection for the Cairo post, the Applicant invoked the assistance of the Ombudsman, who was already involved in the issues in Case No. UNDT/NBI/2013/021, to obtain information on the rostering process.

10. On 16 January 2013, the Applicant requested the UN-Habitat personnel officer to supply information about the Cairo job opening and how he could be included in the roster. This request was repeated eight times between January and March 2013.

11. In May, the Ombudsman wrote on behalf of the Applicant to the Human Resources Officer/Officer-in-Charge (HR Officer) of the Recruitment and Planning Section, of the Human Resources Management Service of the United Nations Office at Nairobi (HRMS/UNON) asking for a response to the Applicant's questions about the roster following his competency based interview for the Cairo job opening. That

letters 99.36 150.9r150(t)-2-19(f)12((o)-2F1 12 e)-e Humad-70(Hu16

Respondent's Submissions

Ratione temporis

19. The non-inclusion of the Applicant in the professional roster as a result of the recruitment to the Cairo position is not receivable *ratione temporis*.

20. The Applicant was notified of his non-selection for this position on 13 October 2012. If it were not immediately evident that he had not been included in the roster following that recruitment process, the Applicant would have become aware of it on accessing the Inspira website to complete his application on 18 October 2012 for the Fukuoka position.

21. Under section 9.4 of ST/AI/2010/3 (Staff selection system), candidates endorsed by the CRB and placed on the roster are notified within 14 days of the selection decision. At the latest, the Applicant would have been aware that he had not been placed on the roster on 27 October 2012, that 2

Case No. UNDT/NBI/2013/061

Judgment No.: UNDT/2013/179

29. It was the responsibility of the Hiring Managers for the Cairo and Fukuoka posts to inform the Applicant that he was not placed on the roster.

30. The Administrative decision to include or not to include a staff member in a roster directly affects his/her opportunity to be considered as a roster candidate and therefore has direct legal consequences in relation to career development as affects loss of chance.

31. The Applicant has the right to be put in a position to challenge an administrative decision that, by extension, constitutes a right to be provided with the information necessary to challenge the administrative decision.

32. The Applicant contends that his request for documentation relating to the selection process is properly made and that the Respondent's submissions with regard to policy and confidentiality are incorrect.

Considerations

33. If the Applicant has a receivable substantive claim relating to either of the posts for which he applied then his rights to documentation relating to that claim becomes a relevant issue. However if there is no such claim before the Tribunal, the Applicant has no rights to disclosure of documents as they would be irrelevant and lack probative value (Article 18.5 of the Tribunal's Rules of Procedure).

34. In this case, the substantive challenge made by the Applicant is to the administrative decisions not to include him in the professional rosters after being interviewed for the Cairo and Fukuoka posts.

35. Section 10.1 of ST/AI/2010/3 provides that:

Candidates endorsed by the central review body and placed on a roster shall be informed of such placement within 14 days after the decision is made by the hiring manager or occupational group

40. However, in the unlikely event that such information was not on INSPIRA, meaning that at that stage the Applicant had no knowledge that he had not been placed on the roster after the Cairo selection process, his 16 January 2013 letter to the UN-Habitat personnel officer asking how he could be included in the roster demonstrates that by then he had the relevant knowledge. The Applicant's request for management evaluation was not made until 14 July 2013, which was outside the 60-day time limit for such requests.

41. The Application in respect of the Cairo post is not receivable by the Tribunal, as the Applicant did not submit his request for management evaluation in time.

Fukuoka Post

42. On 13 July 2013, the Applicant requested management evaluation of the decisions notified to him on 16 June 2013. This was well within the time limit of 60 days.

43. The issue is whether the Applicant's claims in respect of the Fukuoka decisions relate to administrative decisions that are within the jurisdiction of the Tribunal. Article 2.1(a) of the UNDT Statute provides that an applicant may bring a claim to the Tribunal concerning an administrative decision that is alleged to BT /F1 -2() Tf 0 1hk17

(Signed)

Judge Coral Shaw

Dated this 24th day of December 2013

Entered in the Register on this 24th day of December 2013

(Signed)

Eric Muli, Officer-in-Charge, UNDT Nairobi