



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Santiago Villalpando

DI GIACOMO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Susan Maddox, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant, a former intern with the Department of Economic and Social Affairs (“DESA”) of the United Nations Secretariat in New York, contests two decisions: (i) the decision, communicated to him by letter dated 21 December 2006, not to pursue a disciplinary case against him, and (ii) the decision, communicated to him by letter dated 26 December 2007, to require him to be accompanied by a security escort when accessing the United Nations premises in New York. The Applicant describes both decisions as “illegal and unchallengeable disciplinary measure[s] against [him]”.

2. The Applicant seeks an order directing the Respondent to provide him with an effective mode of settling his dispute or, in the alternative, to pay him: the salary and monetary value of benefits, with interest, “that he would have received if employed at grade P-3 from 1 July 2006 to the date of this judgment”; “moral and material damages totaling [USD]500,000 resulting from the defamation, the harassment and the discrimination that has severely impacted on [his] health, professional reputation, social standing and future earning capacity”; “an award of moral and material damages of [USD]50,000 for the delay in settling this dispute”; and USD12,000 as costs.

3. In the course of the present proceedings the Tribunal issued six orders: Order No. 335 (NY/2010) of 29 December 2010; Order No. 44 (NY/2011) of 15 February 2011; Order No. 156 (NY/2011) of 10 June 2011; Order No. 158 (NY/2011) of 17 June 2011; Order No. 166 (NY/2011) of 30 June 2011; and Order No. 180 (NY/2011) of 15 July 2011. As stipulated in Order No. 156 (NY/2011) and Order No. 158 (NY/2011), the Tribunal finds it appropriate to consider, as a preliminary matter, whether it has jurisdiction over this case, there being no objection from the parties to this issue being determined on the papers before the Tribunal.

Facts

4. This summary of facts, including those in dispute, is based on the parties' submissions before the Tribunal. The Tribunal has limited its summary only to those facts that pertain to the subject matter of the present Judgment—i.e., whether it has jurisdiction to consider the merits of the Applicant's claims. The Tribunal will not comment on the merits or the relevance or propriety of some of the material filed by the Applicant in this case.

5. The Applicant is not a staff member and has never been a staff member of the Organization. The initial incident from which this case stems took place on 10 April 2006, when the Applicant was an unpaid intern at DESA in New York. This internship lasted for less than three months—from 10 April to 30 June 2006. The internship agreement did not include any provision for the settlement of disputes.

6. It is common cause that on 10 April 2006—the first day of his internship with DESA—the Applicant went to the offices of the World Health Organization, an entity separate from the United Nations Secretariat. There, he went to the office of Ms. K, a staff member of the World Health Organization. It appears that Ms. K was an acquaintance of Ms. C, who was a staff member of the World Food Programme and whom the Applicant had met sometime in late 2003, when he worked in New York as a Junior Reporting Officer with his country's Permanent Mission to the United Nations. However, by the time of the Applicant's return to New York as a DESA intern in April 2006, he and Ms. C were no longer on speaking terms.

7. The reasons for the Applicant's visit to Ms. K's office and the exact circumstances that led to it remain a matter of dispute between the parties, as well as between Ms. K and the Applicant. It is not necessary to discuss them in detail, suffice it to say that Ms. K allegedly felt harassed and threatened by the Applicant's visit and, on 17 April 2006, filed a complaint of harassment against him, summarising her account of the visit and describing the surrounding circumstances. The Applicant disputes the accuracy of Ms. K's statement. At this juncture, however, the Tribunal is

not called upon to determine who was right and who was wrong; it is enough to say that, by all accounts, the meeting of 10 April 2006 was confrontational and did not

12. By letter dated 20 November 2006, the Applicant submitted a reply to the letter of 3 August 2006 from the Director of the

Case No. UNDT/NY/2010/098

Judgment No.

27. On 25 November 2010, the Applicant filed his application with the Tribunal.

Applicant's submissions

28. In the course of these proceedings, the Applicant filed several submissions, which, with annexes, totaled several hundred pages. Below is a summary of the Applicant's relevant principal contentions:

a. The Administration should have investigated his case further to allow him to clear his name. The reasons for closing the case, expressed in the letter of 21 December 2006, were unlawful. Likewise, the decision to require him to be accompanied by a security escort when accessing the United Nations premises in New York was unlawful and made in violation of his rights;

b. The Under-Secretary-General for Legal Affairs in his letter of 18 June 2008 to the Permanent Representative of the Applicant's country to

Administrative Tribunal Judgments No. 212, *Ayah* (1976) and No. 230, *Teixeira* (1977) and ILOAT Judgment No. 122, *Chadsey* (1968)).

Respondent's submissions

29. The Respondent's principal contentions may be summarised as follows:

a. The Dispute Tribunal does not have jurisdiction to consider the present application. The General Assembly decided in resolution 63/253 (Administration of justice at the United Nations), dated 24 December 2008, which set up the new system of justice, that interns shall not have access to the Tribunal. The Applicant has produced no evidence and has raised no compelling legal argument to indicate that the Tribunal has competence to consider the issues raised in the application,

Consideration

30. As the Applicant is self-represented, the Tribunal will express its considerations and findings in sufficient detail. Before considering the Applicant's substantive claims, the Tribunal must ascertain whether it is competent to hear and pass judgment on the present application (*O'Neill* UNDT/2010/203, *Comerford-Verzuu* UNDT/2011/005, *Kunanayakam* UNDT/2011/006). Should the Tribunal determine that it has jurisdiction over this case, it will be required to examine whether this case is receivable, as other obstacles to the receivability of the present case may exist, such as non-compliance with the relevant time limits. Provided the Tribunal considers that it has jurisdiction over this case and that it is receivable, the Tribunal would then turn to substantive issues, which, in this case, include the following two: (i) whether the Administration acted lawfully when it decided not to pursue a disciplinary case against the Applicant, and (ii) whether the Administration acted lawfully when it took the decision to require him to be accompanied by a security escort when accessing the United Nations premises in New York.

31. Articles 2.1 and 3.1 of the Dispute Tribunal's Statute provide that the Tribunal is competent to hear and pass judgment on an application filed by any current or former staff member of the United Nations, or any person making claims in the name of an incapacitated or deceased staff member.

32. The General Assembly decided in its resolution 63/253, by which it adopted the statutes of the Dispute Tribunal and of the United Nations Appeals Tribunal, that "interns, type II gratis personnel and volunteers (other than United Nations

“Gratis personnel provided by Governments and other entities”). In brief, interns belong to type I gratis personnel, which also include associate experts and technical cooperation experts on non-reimbursable loans. See pp. 6–8 of A/51/688; ST/AI/2000/9 (United Nations internship programme); and A/65/350/Add.1 (Addendum to the Report of the Secretary-General entitled “Composition of the Secretariat: gratis personnel, retirees and consultants”). Also, see sec. 4.1 of ST/AI/2000/9, which provides that in

36. Further, in *Ndjadi* UNDT/2011/007, the Tribunal found that Ms. Ndjadi was recruited under a service contract (i.e., consultancy or individual contractor

conditions. The United Nations Administrative Tribunal found that it was competent to consider Mr. Teixeira's case and allowed him to, *inter alia*, file pleas dealing with the merits of the case. *Teixeira* is distinguishable from the present case. The Administrative Tribunal's finding was mainly based on its findings regarding the nature and duration of Mr. Teixeira's employment with the Organization and, also, on the language of art. 2.2(b) of the Administrative Tribunal's Statute, which permitted it to adjudicate disputes involving, in addition to staff members, "any other person who can show that he or she is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied". In the present case, however, during the relevant time period, which lasted less than three months, the Applicant was an intern and, indeed, it is not argued or even arguable that he acquired the status of a staff member.

39. The Applicant also relies on the United Nations Administrative Tribunal Judgment No. 212, *Ayah* (1976). However, the Administrative Tribunal concluded in *Ayah* that it was not competent to consider Mr. Ayah's claim that he had been promised an internship. The Administrative Tribunal found that Mr. Ayah was neither a staff member nor a person who was "entitled to rights under any contract or terms of appointment ... upon which the staff member could have relied".

40. ILOAT Judgment No. 122, *Chadsey* (1968) concerned the decision of the World Postal Union not to offer Mr. Chadsey a permanent position and to terminate his temporary employment. Mr. Chadsey was a staff member of the World Postal Union, not an intern, and was on a temporary contract. One of the issues in that case was whether Mr. Chadsey was entitled to the protections of the staff regulations under the terms of his employment. The ILOAT made a general pronouncement that employees of international organizations are "entitled in the event of a dispute with [their] employer to the safeguard of some appeals procedure". Although the Dispute Tribunal agrees with this general pronouncement, it is of no assistance to the Applicant. Unlike Mr. Chadsey, who was a staff member of an international organization and therefore had access to the ILOAT, the Applicant in the present case

their services to the Organization, and, in exchange, the Organization provides them with experience, training, and knowledge. Internship contracts—although different from the Organization’s contracts with its staff members—are contracts nevertheless, and they impose certain obligations on both parties and give them certain rights, albeit they differ from the rights and obligations of staff members (one of the many differences being lack of access by interns to the Dispute and Appeals Tribunals). Interns are required to comply with certain standards of conduct imposed on them by the Organization (see ST/AI/2000/9), and they have, *inter alia*, the right to be protected and to file complaints against discrimination, harassment, and abuse of authority. (See sec. 2 of ST/SGB/2005/21 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigation) and sec. 2.4 of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).)

45. It is quite natural that disputes may arise in the course of an internship, which is expressly acknowledged by para. 7 of General Assembly resolution 63/253, which states that interns “shall have the possibility of requesting an appropriate management evaluation”. But management evaluation is only the Administration’s own mechanism for internal review and correction of contested administrative decisions (*Omondi* UNDT/2011/020, *Obdeijn* UNDT/2011/032) and, by definition, is not a formal mechanism for the settlement of disputes. Not all matters can be resolved through management evaluation. It is unclear to the Tribunal whether, at the present time, there is an established and effective mechanism for addressing formal disputes brought forward by interns, particularly those claims that cannot be settled, for one reason or another, through management evaluation.

46. Where rights and obligations attach, there must be an effective mechanism for resolution of disputes and for reparation of breached rights through appropriate remedies (see *Gabalton* 2011-UNAT-120 and *Bertucci* 2011-UNAT-121, referring to “the right to an effective remedy”). The Tribunal notes, in this regard, the Universal Declaration of Human Rights, which refers to “the right to an effective

remedy” and states that “[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial Tribunal, in the determination of his rights and obligations ...” (see arts. 8 and 10), as well as the International Covenant on Civil and Political Rights (1966), which refers to access to “an effective remedy” (art. 2.3(a)), encourages the development of “the possibilities of judicial remedy” (art. 2.3(b)), and provides that “[i]n the determination ... of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law” (art. 14.1).

47. The General Assembly, in para. 9 of resolution 64/233 (Administration of justice at the United Nations), dated 22 December 2009, requested the Secretary-General, with respect to remedies available to different categories of non-staff personnel, to analyse and compare the advantages and disadvantages of several options, including granting non-staff personnel access to the Dispute Tribunal and the Appeals Tribunal. On 16 September 2010, the Secretary-General provided a report to the General Assembly on the Administration of justice at the United Nations, discussing recourse mechanisms for non-staff personnel (see A/65/373, Report of the Secretary-General entitled “Administration of justice at the United Nations”, paras. 165–191).

48. The Tribunal notes, however, that A/65/373 focuses, in large part, on consultants and individual contractors, and not interns. Although Annex IV to A/65/373, entitled “Contracts and rules governing relationships between the United Nations and the various categories of non-staff personnel”, contains examples of contractual clauses regulating settlement of disputes, the examples provided are for consultancy and individual contractor agreements, and not internship agreements. The standard conditions regulating internships, set out in the Annex to ST/AI/2000/9, do not include any dispute resolution provisions, and it is unclear to the Tribunal whether the current legal framework in the Organization contains an effective dispute resolution mechanism for interns. No doubt, proper attention should be given to this issue.

Conclusion

49. The Dispute Tribunal does not have jurisdiction to consider the present application, which is therefore dismissed without consideration of its merits.

(Signed