

Introduction

1. The Applicant filed the current Application on 28 May 2014 on behalf of his

6. In light of the documents submitted by the Parties, the Tribunal did not deem it necessary to receive comments from the Applicant on the Respondent's Motion.

Facts

7. JNK signed a Special Service Agreement¹ with UNDP on 3 July 1998 for the provision of services as a driver to the United Nations World Food Programme (WFP) from 1 July 1998 to 30 September 1998 in Mombasa, Kenya.

8. According to the Applicant, JNK was involved in a traffic accident on 31 July 1998 while driving a United Nations vehicle in Mombasa. As a result of the accident, JNK allegedly sustained a serious neck injury that has left him unable to work for the past fifteen years.

9. The Applicant further submits that on 21 January 1999, JNK applied for compensation in accordance with paragraph 6 of the Special Service Agreement. The Applicant claims he was informed on 29 April 2014 by a WFP Human Resources Officer that a response is still pending from the Advisory Board on Compensation Claims (ABCC).

Issues

10. The only issue before the Tribunal is whether the Application filed by the Applicant on 28 May 2014 on behalf of JNK who was employed on a Special Service Agreement by UNDP is inadmissible.

Considerations

11. Pursuant to article 3.1 of the UNDT Statute, an application under article 2, paragraph 1, of the present statute may be filed by:

- (a) Any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds or programmes;

¹ Special Service Agreement No. WFP/CON/238/98.

- (b) Any former staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;
- (c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes.

12. Accordingly, the Tribunal is only competent to hear complaints filed by staff members, former staff members or persons making claims in the name of an incapacitated or deceased staff member under article 3 of the Statute.

13. The Preamble of the Special Service Agreement signed by JNK on 3 July 1998 included the following clause:

STATUS OF THE SUBSCRIBER

The Subscriber shall be considered as having the legal status of an independent contractor. The Subscriber shall not be considered in any respect as being a staff member of UNDP.

14. Additionally, paragraph 10 of the Special Service Agreement stipulated the following:

Any dispute arising out of or in connexion with this agreement shall be submitted to arbitration in New York by a single arbitrator agreed to by both parties, if attempts at settlement by negotiation will have failed [...].

15. In *Turner* UNDT/2010/170, the Tribunal stated that:

It is clear r 9mitted to arbitration in

16. In *Ndjadi* UNDT/2011/007, the Applicant similarly held a special service agreement. The Tribunal dismissed the application after concluding that:

18. [T]he Tribunal is competent to hear complaints filed by United Nations staff members (international civil servants) under Article 3 of the Statute above. What must be determined, therefore, was whether, contractually speaking, the Applicant had the status of an international civil servant.

19. In his application, the Applicant stated that he had been hired by UNDP on a service contract [...and the] rules in this case ... indicate that persons recruited under this type of contract are not subject to the Staff Rules and do not have international civil servant status. Further, it is clear from the model service contract form that the contract is actually a memorandum of understanding between UNDP and the signatory to the serv

Decision

20. The Tribunal concludes that the Application is manifestly inadmissible and is therefore struck out in its entirety.

(Signed)

Judge Vinod Boolell
Dated this 17th day of June 2014

Entered in the Register on this 17th day of June 2014

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi