



Case No.: UNDT/GVA/2010/078

Judgment No.: UNDT/2011/179

Date: 18 October 2011

Introduction

1. In this case, which has been remanded by the Appeals Tribunal to the Dispute Tribunal for further consideration, the Applicant contests the decision by

implemented can have an impact on the staff member's terms of appointment and therefore can fall within the jurisdiction of the UNDT ...". It further held that there was no indication of whether or not the Management Evaluation Unit, which has the power to waive its own time limits, would have waived the time limits in the circumstances of this case. Accordingly, the Appeals Tribunal reversed Judgment No. UNDT/2011/028 and remanded the case to the Dispute Tribunal for a trial on the merits.

6. On 9 September 2011, the Applicant expressed his wish to make an updated written submission to the Dispute Tribunal.

7. By letter dated 12 September 2011, the Tribunal advised the parties that an oral hearing was not considered necessary, while giving them the opportunity to take position thereon. The parties agreed that no oral hearing be held.

Parties' submissions

8. The Applicant's principal contentions are:

- a. Legal counsel have a duty to disclose conflicts of interest. The Chief of OSLA decided not to do so. The Applicant has no recollection of

about which he only found out in late November 2009. This is worse than the non-disclosure of the prior employment of the Chief of OSLA.

9. The Respondent's principal contentions are:
 - a. The factual allegations in the application are denied. The Applicant was fully informed of the status of the Chief of OSLA;
 - b. There is no conflict of interest arising as a consequence of the prior status of the Chief of OSLA, nor should there be perception of such a conflict. The Chief of OSLA is mandated to maintain independence from the Administration. "The very nature of the Organization requires that the individuals act within discrete departments and working groups and fulfil the mandates of those departments or working groups".

Consideration

10. The Tribunal relies on the extensive submissions made by the parties at earlier stages of the proceedings and deems itself sufficiently informed, thus not requiring any further material.
11. Section 7.1 of the Secretary-General's bulletin ST/SGB/2010/3

any such question emerge, counsel must advise the client or future client of all relevant facts.

12. Taking into account this legal framework and after examination of the circumstances surrounding the present case, the Tribunal concludes that the alleged conflict of interest could not reasonably be seen to exist. In this connection, it is not disputed that the OSLA counsel then assigned to the Applicant did not have any particular relation with UNHCR; the alleged conflict of interest concerns exclusively her supervisor, the Chief of OSLA, who used to work for UNHCR before taking up his current position. Furthermore, it is not contended that the Chief of OSLA had been in any manner involved, while with UNHCR, in the managerial decisions that the Applicant sought to challenge.

13. Hence, the alleged conflict of interest would arise purely from the fact that the Chief of OSLA had served at the same body within the United Nations whose management made the decisions contested in the Applicant's cases.

14. However, this mere employment relationship, when tested against the standards commonly applied within and outside the Organization, falls short of supporting the conclusion that OSLA was—even potentially—prevented from correctly discharging its mandate.

15. As already pointed out in *Larkin* UNDT/2011/028, it is not unusual for a lawyer to fulfil different roles in the course of his or her professional career and it is widely admitted that this does not disqualify him or her from discharging his or her duties. In the context of the Organization, mobility of staff members to different positions is not only envisaged, but encouraged; a significant number of UN employees change jobs and entities during their career and it is hardly conceivable that they may be systematically regarded as inapt to discharge their

Applicant's cases and, consequently, there was no obligation to disclose on the part of OSLA.

Conclusion

17. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 18th day of October 2011

Entered in the Register on this 18th day of October 2011

(Signed)

Anne Coutin, Officer-in-Charge, Geneva Registry