
UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/NY/2015/063
Order No.: 126 (NY/2019)
Date: 10 September 2019
Original: English

Before: Judge Joelle Adda
Registry: New York
Registrar: Nerea Suero Fontecha

NADEAU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:

Peter A. Gallo, Esq.

Counsel for Respondent:

Alan Gutman, ALD/OHR, UN Secretariat

Introduction

1. By Order No. 109 (NY/2019) dated 18 July 2019, the Tribunal made the following orders:

... By **4:00 p.m. on Tuesday, 3 September 2019**, the parties are to file a jointly signed statement providing, under separate headings, the following information:

- a. A consolidated list of the agreed facts. In chronological order, this list is to make specific reference to each individual event in one paragraph in which the relevant date is stated at the beginning;
- b. A consolidated list of the disputed facts. In chronological order, the list is to make specific reference to each individual event in one paragraph in which the relevant date is stated at the beginning. If any documentary and/or oral evidence is relied upon to support a disputed fact, clear reference is to be made to the appropriate annex in the application or reply, as applicable. At the end of the disputed paragraph in square brackets, the party contesting the disputed fact shall set out the reason(s);
- c. A list of any additional written evidence, which a party requests to produce, or request the opposing party to produce, and stating the relevance thereof;
- d. Whether the parties request a hearing for witnesses to provide testimony to support any disputed facts and, if so:
 - i. Provide a list of the witnesses that each party proposes to call; and
 - ii. Provide a brief statement or summary of the disputed fact(s) to be addressed by each witness;
- e. If the parties would be willing to enter into negotiations on resolving the case amicably either through the assistance of the Office of the Ombudsman and Mediation Services or *inter partes*.

2. On 3 September 2019, Counsel for the Applicant filed a “notice of unavailability” in which he informed the Tribunal that he would “be travelling extensively during the entire month of September ... before returning to New York in early October” and that “[r]eplying to any communications in that period cannot be guaranteed”.

3. On 3 September 2019, the Applicant filed another submission, but on an *ex parte* basis.

4. On the same date (3 September 2019), the Respondent filed a submission in response to Order No. 19 (NY/2019) in which he stated that, “Counsel for the Respondent has engaged Counsel for the Applicant in efforts to file a jointly signed statement. Counsel for the Applicant has not cooperated with those efforts, and the Parties have been unable to agree to a jointly signed statement”.

5. To the Respondent’s 3 September 2019 submission was appended a copy of an email exchange between the two Counsel regarding the preparation of the jointly signed statement which the Tribunal had ordered them to submit by 3 September 2019. From this exchange follows that, on 2 September 2019 at 10:36 p.m., Counsel for the Applicant emailed Counsel for the Respondent his “suggested schedule of facts”, stating that “If you care to delete any you disagree with you are at liberty to do so, but I will not agree to any additions”. By email of 3 September 2019 at 8:56 a.m., Counsel for the Respondent requested Counsel for the Applicant to “send the document in MS Word format. This will allow to work on the draft jointly as required by the Dispute Tribunal”. By email of the same date at 2:17 p.m., Counsel for the Applicant responded as follows:

Oh dear. I have had a quick look at UNDT Practice Direction No. 4 on the subject of filing applications and replies, then another quick look at UNDT Practice Direction No. 5 on the subject of filing motions, and I

2. Legal representatives and litigants in person shall act diligently and efficiently and shall avoid unnecessary delay in the conduct of proceedings.

3. Legal representatives should encourage and facilitate dialogue between the parties with a view to settling disputes in appropriate cases.

4. Legal representatives shall maintain the highest standards of professionalism and shall act in the best interests of the party they represent, subject always to upholding the interests of justice and ethical standards.

9. The attitude of Counsel for the Applicant and his unwillingness to cooperate with Counsel of the Respondent as expressed in his email of 3 September 2019 falls below all these basic standards of conduct. For no other apparent reasons than to complicate the work of Counsel for the Respondent and retaliate for matters not related to the present case, Counsel for the Applicant therefore also impedes the Tribunal from duly undertaking its obligations under its Code of Conduct.

10. The Tribunal warns the parties that any attempt to deliberately delay and obstruct the proceedings may lead the Tribunal to determine that the relevant party has “manifestly abused the proceedings”, which may lead to the imposition of cost against that party in accordance with art. 10.6 of the Statute art. 10.6 of the Sta

case. However, for the integrity of the file, the Tribunal will not strike it from the record and will also maintain its status as *ex parte*.

IT IS ORDERED THAT:

12. The *ex parte* status of the Applicant's submission of 3 September 2019 is granted;

13. By **4:00 p.m. on Friday, 4 October 2019**, the Applicant is to file his closing statement, which is solely to be based on ~~the submission and evidence on record~~. The statement is to be five pages maximum, using