



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2013-516

Terragnolo

(Applicant)

v.

Secretary-General of the United Nations

(Respondent)

ORDER No. 168 (2014)

1. On 10 July 2013, the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in New York issued Judgment No. UNDT/2013/098 in the case of *Terragnolo v. Secretary-General of the United Nations*. On 15 August 2013, Mr. Julien Terragnolo appealed the Judgment to the United Nations Appeals Tribunal (Appeals Tribunal) and on 21 October 2013, the Secretary-General filed his answer.

Motion to File Response to Answer

2. On 1 November 2013, Mr. Terragnolo filed a “Motion for leave to articulate arguments and evidence in the record on errors of fact and law reiterated in the Respondent’s answer ... that were not part of the Dispute Tribunal’s Judgment” (hereafter “motion” or “motion for leave to file response to answer”). Attached to the motion are numerous annexes, which are part of the record before the Dispute Tribunal. On 14 November 2013, the Secretary-General filed his comments upon, or opposition to, Mr. Terragnolo’s motion.

3. The Rules of Procedure of the Appeals Tribunal (“Rules”) provide for the parties to file appeals, answers, cross-appeals and answers to cross-appeals. They do not provide for the appellant to file a response to an answer. Nevertheless, other pleadings may be allowed under Article 31(1) of the Rules, as well as Practice Direction No. 1, which pertains to the filing of documents. Under Section II.A.3 of Practice Direction No. 1, an

appellant may make “[a] motion requesting the permission of the Appeals Tribunal to file a pleading after the answer to the appeal ...” and the Appeals Tribunal may grant the motion “if there are exceptional circumstances justifying the motion”.

4. This Tribunal finds that there are no “exceptional circumstances” justifying the granting of Mr. Terragnolo’s motion for leave to file response to answer. Initially, Mr. Terragnolo seeks to respond to the factual contentions and legal arguments raised in the answer that are not the subject of any factual findings or legal determinations made by the Dispute Tribunal in the Judgment. And if the Appeals Tribunal subsequently determines that it must address these matters, and it determines additional briefing from Mr. Terragnolo is necessary, nothing precludes the Appeals Tribunal from requiring additional briefing at that time. Moreover, the annexes are available to the Appeals Tribunal as part of Mr. Terragnolo’s UNDT case file. Thus, Mr. Terragnolo’s motion for leave to file response to answer should be denied.

Motion for Oral Hearing

5. Mr. Terragnolo did not request an oral hearing on his appeal form. However, on 16 November 2013, he filed a “Motion on Case Management,” in which he requests that, in the event his motion for leave to file response to answer is not granted, the Appeals Tribunal should hold an oral hearing so that the parties can “articulate their arguments and evidence on those contentious facts” raised in that motion. On 27 November 2013, the Secretary-General filed his comments on, or opposition to, Mr. Terragnolo’s motion for oral hearing.

6. Despite requesting an oral hearing, Mr. Terragnolo frankly states that he is “of the opinion that the written record before the Appeals Tribunal ... is sufficient to determine all questions of facts and law raised by both sides, and that the Parties would most likely repeat their written arguments at a hearing”. He also acknowledges that there “is therefore no reason to remand the case to the Dispute Tribunal for additional fact finding ...”

7. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute and Article 18(1) of the Rules. Under Article 18(1) of the Rules, a request for an oral hearing should be granted when it would “assist in the expeditious and fair disposal of the case”.

This Tribunal does not find that an oral hearing would assist it “in the expeditious and fair disposal of the case” since, as noted above, the matters Mr. Terragnolo would like to address in an oral hearing are not the subject of any factual findings or legal determinations made by the Dispute Tribunal in the Judgment. And, as Mr. Terragnolo admits, all matters are addressed in the written record before the Appeals Tribunal.

8. For all these reasons, the motion for case management or oral hearing should be denied.

IT IS HEREBY ORDERED that Mr. Terragnolo’s motion for leave to file response to answer IS DENIED.

IT IS FURTHER ORDERED that Mr. Terragnolo’s motion for case management or oral hearing IS DENIED.

Original and Authoritative Version: English

Dated 17th day of January 2014 in Los Angeles,
United States.

(Signed)
Judge Rosalyn Chapman
Duty Judge

Entered in the Register on this 17th day of
January 2014 in New York, United States.

(Signed)
Weicheng Lin, Registrar