



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2018-1195

Afeworki

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

ORDER No. 340 (2019)

1. On 26 June 2018, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi issued Judgment No. UNDT/2018/068 in the case of *Afeworki v. Secretary-General of the United Nations*. The UNDT dismissed Ms. Kibra Afeworki's application against the decision not to renew her fixed-term appointment with the Regional Service Center in Entebbe (RSCE). On 27 August 2018, Ms. Afeworki appealed the UNDT Judgment and on 5 November 2018, the Secretary-General filed his answer.
2. On 24 January 2019, Ms. Afeworki filed a motion requesting that the Appeals Tribunal order the Respondent to produce a spreadsheet prepared by the Career Support Unit of the Department of Field Support, said to contain the details of Ms. Afeworki and other RSCE staff members, who were affected by the nationalization process. The spreadsheet was circulated in 2015 to all Chiefs of Human Resources in the missions for possible reassignment of the listed staff members. On 30 January 2019, the Secretary-General filed his response to the motion.
3. In her motion, Ms. Afeworki seeks the assistance of the Appeals Tribunal in obtaining the spreadsheet, which she has no recourse to secure, because she asserts the evidence will help establish the veracity of her claim that she was subject to discrimination and favoritism during the downsizing exercise. Moreover, she asserts it will help ascertain more facts and "conclusively prove 'error of fact'" in the UNDT's ruling.

3. The Secretary-General requests that the Appeals Tribunal deny Ms. Afeworki's motion. In his view, Ms. Afeworki's motion fails to satisfy the requirements of the Statute of the Appeals Tribunal (Statute), as the spreadsheet was discussed before the Dispute Tribunal by both the Respondent in his submission of 30 May 2018 and Ms. Afeworki in her submission of 14 June 2018. While the existence of the spreadsheet was known to Ms. Afeworki, she did not request its production before the Dispute Tribunal. The Secretary-General notes that, in her appeal before the Appeals Tribunal, Ms. Afeworki has also requested such a production.

4. Article 2(5) of the Statute reads, in part: "[i]n exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony, it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings. [...] The evidence under this paragraph shall not include evidence that was known to either party and should have been presented at the level of the Dispute Tribunal."

5. In the present case, although Ms. Afeworki had knowledge of the existence of the spreadsheet before the Dispute Tribunal issued the impugned Judgment, she made no request or application to obtain the spreadsheet during the pendency of her case before the Dispute Tribunal. Applications and/or requests of this nature must be made at the initial hearing before the Dispute Tribunal, and not at the Appeals Tribunal. Further, Ms. Afeworki has not presented evidence of exceptional circumstances upon which the Appeals Tribunal can grant her request in accordance with the provisions of Article 2(5) of the Statute.

IT IS HEREBY ORDERED that Ms. Afeworki's motion seeking an order for production of evidence **IS DENIED**.

Original and Authoritative Version: English

Dated this 4th day of February 2019
in Port of Spain, Trinidad and Tobago.

(Signed)
Judge Deborah Thomas-Felix,
Presiding Judge

Entered in the Register on this 4th day
of February 2019 in New York, United States.

(Signed)
Weicheng Lin, Registrar