



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2020-1402

Respondent
(Respondent/Applicant)

v.

Secretary-General of the United Nations
(Appellant/Respondent)

ORDER No. 405 (2021)

1. Respondent is a former Programme Analyst at the National Officer B-Grade level with the United Nations Development Programme in the United Arab Emirates (UAE). On 11 July 2018, Respondent filed an application with the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) contesting the administrative decision not to renew his fixed-term appointment (FTA) beyond 28 February 2018.
2. On 7 April 2020, the Dispute Tribunal in New York issued Judgment No. 2020/051, granting Respondent's application in part and rescinding the Administration's decision not to renew Respondent's FTA. As an alternative to rescission, the UNDT ordered the Organization to pay Respondent compensation equal to two months of his net-base salary at the time of his separation.
3. On 8 June 2020, the Secretary-General filed an Appeal against the judgment of the UNDT. On 10 August 2020, Respondent filed his Answer and a Cross-Appeal seeking additional compensation and moral damages.
4. On 6 January 2021, Respondent filed a motion for confidentiality in connection to the Appeal and Cross-Appeal of UNDT Judgment No. UNDT/2020/051 in addition to a request to submit additional evidence. On 15 February 2021, the Secretary-General filed his comments on the motions.

5. Respondent claims he is a member of a racial minority in the UAE and that publication of his name on UNDT and UNAT judgments and orders will possibly expose him to discrimination and personal risk.

6. It is the common practice of the UNDT, as well as of legal systems generally, to make public the identities of litigants absent compelling countervailing considerations. The principles of transparency and accountability, which are enshrined in the system of administration of justice at the United Nations, require that names should be redacted in only the most sensitive of cases and when a staff member has demonstrated exceptional circumstances justifying anonymity.

7. Respondent has raised sensitive issues that may expose him to risk. Moreover, the Secretary-General does not oppose this motion. Accordingly, I accept that the Respondent has shown good cause to redact his name and to refer to him as the “Respondent” in the judgment and orders of this Tribunal. Respondent ought to consider making a similar request to the Dispute Tribunal, should he find such a measure necessary.

8. The additional evidence which the Respondent wishes to submit consists of a Word document into which an e-mail correspondence has been copied. The “original” correspondence is in Arabic, and the Respondent has provided an “unofficial” translation of the contents of the e-mail correspondence into English. This is insufficient.

9. Moreover, the Respondent has already moved the Tribunal *ex parte* to adduce this exact evidence to support his claims in the Answer to the Appeal and the Cross-Appeal. That motion was denied on the grounds that “the admission of evidence without disclosing it to the Secretary-General will render it of little or no weight or value.” In the instant motion, the Respondent claims that he wishes to adduce this same evidence but not in support of his claims in the Answer to the Appeal and the Cross-Appeal, but rather in support of his request for anonymity. The fact that the Respondent attempted to submit the exact same evidence in the past to support the substantive claims in the Answer to the Appeal and the Cross-Appeal raises the concern that the Respondent is attempting to adduce evidence to the record, even though the Tribunal had already denied his request, by using his request for anonymity as a

novel basis for doing so. The evidence also appears to be irrelevant to the request for anonymity.

10. Article 2(5) of the UNAT Statute provides that in exceptional circumstances, and where the UNAT determines that the facts are likely to be established with documentary evidence, it may receive such additional evidence if it is in the interest of justice and the efficient and expeditious resolution of the proceedings. Article 10 of the UNAT Rules of Procedure provides that the UNAT may receive such documentary evidence in exceptional circumstances and where the UNAT determines that the facts are likely to be established with such additional documentary evidence.

11. Accordingly, the UNAT has repeatedly held that parties seeking to adduce additional evidence must show that exceptional circumstances exist for the admission of additional evidence or that it is in the interest of justice and efficient expeditious resolution of the proceeding for additional evidence to be received by the Tribunal.

12. The Respondent does not address the “exceptional circumstances” or “the interest of justice and an expeditious resolution of the dispute” principles in his motion, which is necessary to justify the submission of additional evidence.

13. Finally, the new evidence appears, on its face, to contain e-mail correspondence copied into a Microsoft Word document. At this late stage, before the Tribunal, the Secretary-General is not able to summon witnesses to ascertain the authenticity of the document or to question the authors of the e-mails as to their content. Hence, the Secretary-General would be denied the opportunity to meaningfully contest the assertions contained in those e-mails.

IT IS HEREBY ORDERED that Respondent’s Motion for confidentiality is **GRANTED** and the motion to adduce additional evidence is **DENIED**.

Original and Authoritative Version: English

Dated this 15th day of March 2021
in Cape Town, South Africa.

(Signed)
Judge John Raymond Murphy,
Presiding

Entered in the Register on this 16th day
of March 2021 in New York, United States.

(Signed)
Weicheng Lin, Registrar