



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2021-1509

Marius Mihail Russo-Got

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

ORDER No. 416 (2021)

1. On 17 November 2020, the United Nations Dispute Tribunal (UNDT) in New York issued Judgment No. UNDT/2020/194 in the case of *Russo-Got v. Secretary-General of the United Nations*, in which the UNDT dismissed an application by Mr. Marius Mihail Russo-Got contesting the decisions not to select him for several positions with the United Nations Office of Project Services (UNOPS).
2. On 13 January 2021, Mr. Russo-Got filed an appeal against the UNDT Judgment with the United Nations Appeals Tribunal (Appeals Tribunal). On 22 March 2021, the Secretary-General filed his answer.
3. On 27 April 2021, Mr. Russo-Got submitted a motion for leave to file additional pleadings and the evidence of a report dated 18 January 2021 issued by UNOPS' Internal Audit and Investigations Group (the IAIG Report).
4. On 24 May 2021, the Secretary-General filed his response to the motion. He requests that the Appeals Tribunal reject the motion, because the additional pleadings and the evidence that Mr. Russo-Got seeks to adduce relate to an investigation into a complaint that Mr. Russo-Got had forged an e-mail exchange that he had had with the Ombudsman of the United Nations Funds and Programmes, and they do not relate to the contested decisions to not select him for several positions with UNOPS. The Secretary-General also requests that the Appeals Tribunal award costs against Mr. Russo-Got if it finds him to

have manifestly abused the appeals process, and grant the Secretary-General an opportunity to file a written submission in response to the additional evidence that Mr. Russo-Got is seeking to adduce if it should grant the motion.

5. Article 2(5) of the Statute of the Appeals Tribunal reads: “In 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.”

6. The report Mr. Russo-Got seeks to submit as additional evidence was issued after the filing of his appeal and seems to relate to an investigation into allegations of forgery concerning an e-mail exchange which had been mentioned in the present case. Paragraph 15 of the IAIG Report precisely indicates Case No. UNDT/NY/2019/087 in footnote 14 as being the case in relation to which the email had been filed. Furthermore, while this same paragraph of the IAIG Report states that “[t]he email communication was related to the end of the mediation process and included several emails allegedly exchanged between Mr. Russo and Mr. de Palo between 1 and 5 August 2019”, the e-mail dated 5 August 2019 from the Office of the Ombudsman was mentioned in paragraphs 12, 13 and 16 of the UNDT Judgment, leading to its finding that the said e-mail “clearly states that as far as the Office of the Ombudsman is concerned, the settlement discussions concerning the above-referred two selection processes failed on 5 August 2019”. This shows that it was taken into account by the UNDT at least during the receivability assessment of the application.

7. New evidence on any possible implications of forgery into an element that was taken into consideration by the UNDT Judgment currently under challenge could possibly have an impact on the determination of the appeal in the present case. Therefore, though the Respondent claims that the new evidence relates to another case initiated to investigate allegations that the Appellant had forged the content of the e-mail, prudence requires that this should be examined by the proper authority to determine the appeal and any possible abuse of process committed by the Appellant. This authority is the Panel, pursuant to Article 10(1) of the Appeals Tribunal Statute.

8. Under these circumstances and out of an abundance of caution, the motion should be granted.

IT IS HEREBY ORDERED that Mr. Russo-Got's motion seeking leave to file additional pleadings and evidence **IS GRANTED**. The Secretary-General is directed to provide his comments, if any, on the evidence adduced into the record no later than 12 July 2021.

Original and Authoritative Version: English

Dated this 1st day of July 2021
in Juiz de Fora, Brazil.

(Signed)
Judge Martha Halfeld,
President

Entered in the Register on this 1st day
of July 2021 in New York, United States.

(Signed)
Weicheng Lin, Registrar