



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2022-1730

Mohammad Tofazzel Hossain

(Respondent/Applicant)

v.

Secretary-General of the United Nations

(Appellant/Respondent)

ORDER No. 478 (2022)

1. On 25 July 2022, the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi issued Judgment No. UNDT/2022/069 in the case of *Hossain v. Secretary-General of the United Nations*, which rescinded a May 2019 decision by the Resident Representative to the United Nations Development Programme (UNDP) in Zimbabwe to abolish the post encumbered by Mr. Hossain and not renew his fixed-term appointment.
2. On 23 September 2022, the Secretary-General filed an appeal against the UNDT Judgment with the United Nations Appeals Tribunal (Appeals Tribunal).
3. On the same day, the Secretary-General also filed a motion for leave to submit additional evidence and pleadings before the Appeals Tribunal. He submits that the UNDT ruled that the Strategy Report shared with the panel of independent experts, which conducted a capacity assessment of the Zimbabwe Resilience Building Fund's Programme Management Unit (the PMU), was prepared "sometime in 2017" and that it served as the basis for an earlier (and later rescinded) March 2018 decision to abolish the post of Mr. Hossain. The Strategy Report shared with the Panel, and submitted into evidence, however, is date stamped for May 2018. The UNDT's determination that the Strategy Report was produced "sometime in 2017", is integrated into the UNDT's narrative of the case, according to which it considered that the May 2019 decision to abolish the post (the contested decision) was a foregone conclusion because that decision to abolish the post had already been taken in March 2018 based on the Strategy Report.

4. According to the Secretary-General, because the UNDT made the date of the production of the Strategy Report an integral part of its ruling, and because the UNDT without warning made a factual determination different from the date stamped on the Strategy Report, it would be in the interest of justice to allow him an opportunity to submit evidence that would remove any doubt as to the date the Strategy Report was prepared.

5. The Secretary-General, therefore, wishes to submit a 3 May 2018 email message from the Zimbabwe Country Director to the Head of the PMU asking for the preparation of the Strategy Report. This email, along with the date stamped at the top of the Strategy Report, is proof that the March 2018 decision to abolish the post could not have been based on the Strategy Report, because the Strategy Report was drafted two months later in May 2018.

6. Mr. Hossain has not filed a reply to the motion of the Secretary-General and thus the motion is unopposed.

7. Article 2(5) of the Appeals Tribunal's Statute and Article 10 of the Appeals Tribunal Rules of Procedure ("the Rules") provide that 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, provided that the Appeals Tribunal shall not receive additional written evidence if it was known to the party seeking to submit the evidence and should have been presented to the Dispute Tribunal. Article 31(1) of the Appeals Tribunal's Rules and Section II.A.3 of the Appeals Tribunal's Practice Direction No. 1 provide that a motion to file an additional pleading may be granted if there are "exceptional circumstances justifying the motion."

8. The date of the Strategy Report was not in issue between the parties in the UNDT proceedings. However, it has become relevant in that the UNDT has made a factual finding that the Strategy Report formed the basis of the contested decision. This is disputed by the Secretary-General who contends that the UNDT erred in this regard as evidenced by the date of the Strategy Report and the correspondence in relation to it. It is accordingly in the interest of justice and the effective and expeditious resolution of the proceedings that the additional evidence be submitted exceptionally to enable the parties to make appropriate submissions on this issue. Therefore, the motion should be granted.

9. **IT IS HEREBY ORDERED** that Secretary-General's motion seeking leave to file additional evidence is **GRANTED**.

Original and Authoritative Version: English

Dated this 12th day of October 2022
in Cape Town, South Africa.

(Signed)
Judge John Raymond Murphy,
Duty Judge

Order published and entered in the Register on this
12th day of October 2022 in New York, United States.

(Signed)
Juliet Johnson,
Registrar