



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2023-1852

Rumana Quazi Naquib

(Respondent/Appellant on Cross-Appeal)

v.

Secretary-General of the United Nations

(Appellant/Respondent on Cross-Appeal)

ORDER No. 567 (2024)

1. On 7 July 2023, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) issued Judgment No. UNDT/2023/069, in which it granted in part Ms. Rumana Quazi Naquib's application. The UNDT ordered the Administration to pay Ms. Naquib an *ex gratia* payment from November 2015 to January 2020, plus monetary interest at a rate equal to the rate of inflation for the same period in the country of service. The UNDT dismissed the claim for payment of Special Post Allowance (SPA) for the period from February 2020 to April 2021.
2. On 5 September 2023, the Secretary-General filed an appeal with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal), and on 6 November 2023, Ms. Naquib filed a cross-appeal.
3. On 5 June 2024, the Appeals Tribunal issued Order No. 563 (2024), directing the Secretary-General, in the interest of justice and the efficient and expeditious resolution of the proceedings, to submit specific additional documentation within six calendar days. Ms. Naquib was allowed to make comments on the Secretary-General's submissions within six calendar days from their receipt.
4. On 11 June 2024, the Secretary-General submitted several documents in response to Order No. 563 (2024) and requested that the Appeals Tribunal afford additional time to retrieve and search for documentation responsive to the Order, should these outstanding documents still be needed.

5. On 18 June 2024, Ms. Naquib submitted her observations on the documentation adduced by the Secretary-General. She also appended two new documents as additional evidence, requesting the Appeals Tribunal for leave to accept them.

6. On 21 June 2024, the Secretary-General submitted a motion, in response to the request for leave of Ms. Naquib, opposing the submission of this additional documentation (Secretary-General's Motion).

7. I first grant the Secretary-General's Motion. I recall that the Appeals Tribunal is not a trial court. The parties are supposed to have presented all their evidence, documentary or otherwise, before the tribunal of first instance. Nonetheless, in respect of documentary evidence, Articles 2(5) and 8(1) of the Appeals Tribunal Statute (Statute), and Article 10(1) of the Appeals Tribunal Rules of Procedure (Rules), allow the Appeals Tribunal, in exceptional circumstances, to receive or order the production of such documents on either party "in the interest of justice and the efficient and expeditious resolution of the proceedings". This does not include the "evidence that was known to either party and should have been presented at the level of the Dispute Tribunal". It follows that the order of the Appeals Tribunal to produce documents, with its limited grounds and scope, does not constitute a starting point for a fresh trial, nor it is an additional opportunity for a party to submit the relevant documents that were known to him/her, and that should have been submitted at the level of the Dispute Tribunal. The Appeals Tribunal uses such power strictly, judiciously, in the interest of justice, and in fairness.

8. In the present case, the Appeals Tribunal, after having reviewed the case record, issued an order for the Secretary-General, initially the respondent, to produce specific additional documents necessary for a fair and objective review of the case, with the view that these documents are normally held by the Administration. Due to the limited time afforded, the Secretary-General could not produce all the documents ordered. However, as the Appeals Tribunal had already allowed her to file comments on the Secretary-General's submissions, Ms. Naquib not only filed observations, but also adduced two new documents and sought leave of the Tribunal to accept them. These documents were not a counter response to the Secretary-General's submissions. Ms. Naquib, initially the applicant, went too far as to submit autonomous new evidence for the first time on appeal. Unless these documents were unknown thus far to her, which is not proven or even alleged, Ms. Naquib should have only

responded to the documentation submitted by the Secretary-General on the Order of this Tribunal. Ms. Naquib's request for leave must, therefore, be denied.

9. I turn now to the Secretary-General's submissions in response to the Order of 5 June 2024. Having reviewed the parties' pleadings, the trial record, the additional documentation submitted by the Secretary-General on 11 June 2024, and his request to be afforded additional time to submit the ordered documents, and considering the circumstances of the present case and the scope of evidence and clarifications needed, the Appeals Tribunal finds it in the interest of justice and the efficient and expeditious resolution of the case to order the production of the following documents, pursuant to Article 10(1) of the Rules. The Appeals Tribunal further finds it appropriate for the fair and expeditious management of the case and to do justice to the parties, pursuant to Article 18bis of the Rules, to receive the following additional pleadings. The scope of the documents, the production of which is ordered, and the eventual pleadings allowed are limited to Ms. Naquib's request for SPA for the period from February 2020 to April 2021.

It is **HEREBY ORDERED** that:

The Secretary-General's Motion is **GRANTED**, and the additional evidence proffered by Ms. Naquib is struck from the record.

The Secretary-General is **DIRECTED** to provide the following, within 20 calendar days of this Order:

- a) Documentation, accompanied by an explanatory note not exceeding five pages, if necessary:
 - i. Documentation, such as detailed comparative organograms, official correspondence or decisions, advising on the number of posts of Programme Management Officer (PMO) in the UN-Habitat Regional Office for Africa (ROAF), their respective classifications, job titles, and incumbents, for the period from 1 February 2020 to 1 May 2021.
 - ii. The job description of the post of PMO, ROAF that Ms. SM was assigned to on a temporary basis on 1 May 2021, referred to in the letter of the Director (a.i),

Management, Advisory, and Compliance Service of 30 April 2021 (Annex No. 2 to the Secretary-General's appeal).

- iii. Ms. Naquib's Performance Document for the performance cycle 2020-2021, referred to in the Secretary-General's reply before the UNDT, dated 17 August 2022, paragraph 22.

b) Information:

- i. If reclassified to the P-4 level, what was the effective date of reclassification of the post of PMO, ROAF, assigned temporarily to Ms. SM on 1 May 2021? Was that post budgeted at that level from the date of reclassification to the date of Ms. SM's assignment?
- ii. If the aforementioned post of PMO (ROAF) was not reclassified and remained at the P-3 level at all times, how did the Administration temporarily assign/*laterally* transfer P-4 staff members to occupy that post from 2021 onwards?

Ms. Naquib may provide comments, not exceeding five pages, within 20 calendar days from receipt of the documentation and additional pleadings provided by the Secretary-General. In fairness, Ms. Naquib may also adduce documents that are strictly in response to the documentation to be submitted by the Secretary-General, in compliance with the present Order.

The present Order supersedes the previous Order No. 563 (2024) of 5 June 2024.

Original and Authoritative Version: English

Decision dated this 4th day of July 2024
in Cairo, Egypt.

(Signed)
Judge Abdelmohsen Sheha,
Presiding Judge

Order published and entered in the Register on this
8th day of July 2024 in New York, United States.

(Signed)
Juliet E. Johnson,
Registrar