



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/088

Judgment No.: UNDT/2009/079

Date: 20 November 2009

Original: English

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**Before:** Judge Memooda Ebrahim-Carstens

**Registry:** New York

**Registrar:** Hafida Lahiouel

ABUBAKR

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON APPLICATION TO FILE  
ADDITIONAL SUBMISSION**

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**Counsel for applicant:**  
Duke Danquah, OSLA

**Counsel for respondent:**  
Susan Maddox, ALU

## **Background**

1. The applicant filed his application before the United Nations Dispute Tribunal on 14 August 2009, after being granted an extension of time. The applicant is contesting the decision of the Secretary-General dated 13 May 2009 to adopt the report of the Joint Appeals Board (JAB) that the applicant's terms of appointment were not violated since he "had recourse for . . . [his] complaint . . . which is still ongoing", and to reject the applicant's request to address his complaints of harassment, discrimination and abuse of power.

2. After being granted an extension of time, the respondent filed its reply on 5 October 2009, submitting that the application be dismissed.

3. On 5 November 2009, the applicant filed a request for an extension of time until 4 December 2009 to file an answer to the respondent's reply.

4. In an email dated 9 November 2009, the Dispute Tribunal wrote to the applicant directing him to make an application in terms of article 19 of the Rules of Procedure for consideration by the judge who "will decide on the request to file the additional submission after giving the respondent an opportunity to object".

5. On 10 November 2009, the applicant filed a more detailed application for an extension of time until 4 December 2009 to file an answer pursuant to article 19 of the Rules of Procedure. In this application he sets out reasons why he should be allowed to file further papers, submitting that:

The Applicant is making this second request for an extension of time to respond to the Respondent's submission following UNDT's letter on the same subject dated 9 November 2009.

...

1. The Applicant is requesting an extension of time in which to file his response to the Respondent's submission of 5th October 2009. Counsel is making this request for purely administrative reasons. The Applicant is in no way responsible for the delay in furnishing the

response. A mass of material has been submitted for the case and they are being currently examined in order for an appropriate response to be prepared for the Applicant.

2. In response to the submission of massive documents and materials that the Respondent submitted, the Applicant has had to respond with responsive documents that cover the issues raised by the Respondent. The Applicant also had to search for specific emails and documents to respond adequately to points made by the Respondent in his submissions regarding the Panel of Discrimination and Other Grievances (PDOG). This body is no longer in existence so the Applicant had to go to some trouble to secure certain documents he needs for his submission.

3. Certain inevitable delays ensue from time to time because the Applicant's Counsel is not a regular staff member and only reports to work on a part-time basis.

4. The Applicant is requesting an extension of time of 30 days to 4 December 2009.

5. The Applicant requests that in the interests of equity and justice the Court accedes to the present request for an extension of time to respond.

6. The respondent clarified on 12 November 2009 that it does not object to the applicant's request.

### **Applicable law**

7. Article 8 of the Statute of the Dispute Tribunal and article 10 the Rules of Procedure refer, respectively, to the filing of applications and replies to applications. Article 8 of the Statute determines the requirements of receivability of applications, including the time limits for filing applications. The time limits for filing applications are reiterated in article 7 of the Rules of Procedure. Article 10 of the Rules of Procedure determines the time limits for filing replies to applications.

8. There is no provision either under the Statute or the Rules of Procedure for the filing of any further pleadings following a respondent's reply to the application. There is therefore no automatic right for an applicant to file an answer to the respondent's reply.

9. However, article 36.1 of the Rules of Procedure empowers a judge to render decisions on matters that are not expressly covered by the Rules of Procedure. Pursuant to article 36.1, “All matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Dispute Tribunal on the particular case”.

10. Further, article 19 of the Rules of Procedure, which is a general provision regarding case management, empowers a judge to issue necessary orders or give necessary directions at any time before and during the trial. It provides that:

The Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

11. It is clear from the articles mentioned above that an applicant who wishes to file an additional pleading or submission not provided for in the Statute and Rules of Procedure, such as an answer to a respondent’s reply, is required to make an application to the Dispute Tribunal to file such a pleading or submission under article 19 of the Rules of Procedure. The judge has a discretion to grant the request if the judge finds it to be “appropriate for the fair and expeditious disposal of the case and to do justice to the parties”.

### **Analysis**

12. As there is no automatic right to file an answer in the first instance, the applicant should have made an application under article 19 of the Rules of Procedure to file further papers.

13. However, since the application of 10 November 2009 sets out in more detail the reasons for the filing of an answer, I am prepared to consider it as an application in terms of article 19 to file further papers. Therefore I proceed on the basis of this application to consider in Chambers whether to allow the applicant to file an answer to the respondent’s reply.

14. In support of his application to file further papers, the applicant asserts, *inter alia*, that the respondent has submitted a large volume of materials which the applicant is currently examining in order to properly address the issues raised in the reply, and that as part of the process the applicant “had to search for specific emails and documents to respond adequately to points made by the Respondent in his submissions regarding the Panel of Discrimination and Other Grievances (PDOG)”, which has now been dissolved.

15. After considering the volume of materials in this case, and in the absence of any discernable prejudice to the respondent and any objection therefrom, I find that in the current circumstances, receiving an additional submission that clarifies issues of fact and law may prevent unnecessary litigation, and assist the court in determining the questions before it in a fair and expeditious manner, and in doing justice to the parties.

**It is ordered therefore that**

16. The applicant shall file and serve an answer to the respondent’s reply by no later than 5:00 pm, Friday, 4 December 2009.

*(Signed)*

Judge Memooda Ebrahim-Carstens

Dated this 20<sup>th</sup> day of November 2009

Entered in the Register on this 20<sup>th</sup> day of November 2009

*(Signed)*

Hafida Lahiouel, Registrar, New York