



UNITED NATIONS DISPUTE TRIBUNAL

Cases Nos.: UNDT/GVA/2012/012
UNDT/GVA/2012/013
Order No.: 171 (GVA/2012)
Date: 7 December 2012
Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

CLARK
GILBERT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER
ON CASE MANAGEMENT

Counsel for Applicant:
Miles Hastie, OSLA

Counsel for Respondent:
Kong Leong Toh, UNOPS
Salman Haq, UNOPS

Introduction

1. By applications filed on 30 January 2012 and completed on 30 May 2012, the Applicants, two former staff members of the United Nations Office for Project Services (“UNOPS”), contest the decision to separate them from service as a disciplinary measure with effect from 1 November 2011.

2. On 16 November 2012, by Order No. 162 (GVA/2012), the Tribunal ordered:

a. the parties to indicate what kind of evidence and submissions they intend to present during a forthcoming substantive hearing; and

b. the Respondent to clarify certain issues and produce additional evidence.

3. On 23 November 2012, OSLA Counsel for the Applicants (“OSLA Counsel”), based in Addis Ababa, submitted a filing in response to the afore-mentioned order and a motion requesting the Tribunal to order his presence in person at the hearing to be conducted in Geneva. Moreover, OSLA Counsel indicated that only the Applicants themselves would provide evidence at the hearing and that he would rely on video evidence during it.

4. On 23 November 2012, Counsel for the Respondent, based in Copenhagen, filed his response to Order No. 162 (GVA/2012) and submitted the requested clarifications as well as the additional evidence. Counsel for the Respondent indicated further his intention to rely on the evidence put forward in his previous reply, proposed to call the former UNOPS Chief of Security, based in New York, to give evidence during the forthcoming hearing and advised of Counsel for the Respondent’s physical presence at it.

5. For the purpose of adequately examining the case, the Tribunal considers that an oral hearing is required, as provided for in article 16.2 of the Tribunal’s Rules of Procedure.

Consideration

6. Article 19 of the Tribunal's Rules of Procedure provides that:

Article 19

Case management

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.

7. With regard to the motion requesting the Tribunal to order the physical presence of OSLA Counsel at the hearing in Geneva, the Tribunal acknowledges that both parties intend to rely *inter alia* on video evidence during their oral pleadings. While the parties' and witnesses' participation at the hearing and commenting of video evidence is technically feasible by means of a video link, the Tribunal has been advised by the Information and Communications Technology Services of UNOG that the link with Addis Ababa, as opposed to that with New York or—if needed—with Copenhagen, may prove unreliable and thereby impede a proper conduct of the hearing proceedings.

8. The Tribunal also notes that it was clear and foreseeable from the outset that any hearing would be conducted in Geneva as its jurisdiction over this case was undisputed. In spite of this, as well as of the fact that OSLA has an office in Geneva and, as confirmed by OSLA Counsel, that it does not dispose of any travel budget, OSLA appointed Counsel based outside Geneva.

9. Furthermore, the Tribunal is mindful of the financial constraints faced by the Organization and its concurrent obligation for the efficient use of its resources. Given the circumstances of the instant case, and particularly the fact that OSLA has an office at the duty station where the Tribunal is to hold a hearing, ordering the physical presence of OSLA Counsel based in Addis Ababa is not warranted.

10. In order to do justice to the Applicants, the Tribunal is prepared to postpone scheduling a hearing on the merits to allow time for OSLA to make necessary arrangements to have their case presented at a forthcoming hearing to be held in Geneva.

IT IS ORDERED THAT:

11. The motion requesting the Tribunal to order the physical presence of OSLA Counsel based in Addis Ababa at the hearing to be conducted in Geneva is rejected.

12. OSLA is to make the necessary arrangements for the Applicant's legal representation to ensure that their OSLA Counsel can attend a substantive hearing in Geneva, at a date to be determined subsequently, and to communicate to the Tribunal by no later than **Wednesday, 6 February 2013** the details of the arrangements made.

(Signed)

Judge Thomas Laker

Dated this 7th day of December 2012

Entered in the Register on this 7th day of December 2012

(Signed)

René M. Vargas M., Registrar, Geneva