



Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

MASSI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON CASE MANAGEMENT AND
ON MOTION TO FILE A REJOINDER**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Laure Campas, HRLU

Jérôme Blanchard, HRLU

Introduction

1. By an application filed by postal mail on 13 July 2015 with the New York Registry of the Tribunal, rerouted to the Tribunal's Geneva Registry, and an amended application filed with the Geneva Registry by email on 17 August 2015, the Applicant, a former staff member of the United Nations Office at Geneva, challenges several decisions in respect of the final settlement of the compensation due to him until 30 April 2012 for loss of earning capacity under art. 11.2 (d) of Appendix D to the Staff Rules on the "Rules Governing Compensation in the event of Death, Injury or Illness Attributable to the Performance of Official Duties on Behalf of the United Nations", and the continuation of payment of such compensation after 1 May 2012.

Background

2. Through emails sent between 17 August and 11 September 2015, the Geneva Registry advised the Applicant to obtain credentials to access the Tribunal's eFiling portal, also known as the Tribunal's Court Case Management System ("CCMS"), with a view to filing and receiving documents through this eFiling system. The Geneva Registry explained in detail to the Applicant the applicable credentials request procedure, and extended its assistance to him should any technical difficulty arise.

3. Given the Applicant's asserted inability to file through the Tribunal's eFiling portal, the Geneva Registry exceptionally created an electronic case file for the application and registered it under Case No. UNDT/GVA/2015/150. Additionally, the Registry proceeded to upload the Applicant's 13 July 2015 paper submission, and his 17 August 2015 email submission to the respective electronic case file in CCMS.

4. The application was served on the Respondent on 11 September 2015. The Respondent submitted his reply on 13 October 2015, with Annex 12 filed *ex parte* as, according to him, it contains confidential information.

5. By Order No. 206 (GVA/2015) of 21 October 2015, the Tribunal decided to make Annex 12 to the Respondent's reply available to the Applicant, on an under seal basis.

6. By email of 23 October 2015, the Applicant informed the Geneva Registry that he had not received the Respondent's reply nor its Annex 12, and sought leave from the Tribunal to submit a rejoinder once the documents were made available to him.

7. On the same day, the Geneva Registry advised the Applicant that the Respondent's reply and its annexes were accessible through the Tribunal's eFiling portal. Additionally, the Geneva Registry requested the Applicant to file his request for authorisation to submit a rejoinder through said portal. Finally, the Geneva Registry recalled the procedure for the Applicant to access the eFiling portal.

8. Later that day, the Applicant responded, *inter alia*, that it was "impossible for [him] to have access to the [Tribunal's eFiling portal]", and requested that the Respondent's reply and its Annex 12 be sent to him "under a sealed registered mail envelope".

9. By Order No. 213 (GVA/2015) of 27 October 2015, the Tribunal recalled that its eFiling portal must be used to file and receive all documents unless a party has no access to it and informed the Applicant that it was considering directing him to file and access documents in the present case through this portal. The Tribunal gave the Applicant the opportunity to present his views on the matter by 30 October 2015.

10. By email of 27 October 2015 addressed to the Geneva Registrar, the Applicant responded that he experienced difficulties in accessing the eFiling portal due to the system's incompatibility with his internet browsers. Later that day, the Applicant contacted the Geneva Registrar by phone and left the following message on his voicemail, which has been drawn to the attention of the Tribunal:

Monsieur Vargas, vous avez toujours le répondeur ; vous avez peur de parler aux gens ? C'est Massi à l'appareil ; je vous ai dit que je n'ai pas d'accès, vous m'avez pas donné un mot de passe pour rentrer dans votre site, je n'ai pas d'accès, je n'ai pas de possibilité. Donc, à partir de maintenant c'est la dernière fois que je vous le dis, autrement je viens le prendre chez vous ! Ok ? Ça suffit d'emmerder ! Faites les choses correctement, vous m'envoyez une lettre recommandé comme tout le monde. Allez vous faire foutre, vous et le net . . . et les ordinateurs !

11. Upon instructions from the Tribunal, the Geneva Registrar exceptionally created an account for the Applicant in CCMS and, on 16 November 2015, sent him his credentials to access the system.

12. On 17 November 2015, the Applicant submitted, by postal mail, a “Motion to Obtain a Deadline to File a Rejoinder”, wherein he stated that due to technical difficulties in accessing CCMS, he could only access the Respondent’s reply on 16 November 2015. As a result, he sought leave to file a rejoinder within 30 days. The Applicant further asked authorisation to submit his rejoinder via email or registered post if he continued to experience difficulties in accessing the Tribunal’s eFiling portal.

13. The motion, which was received on 18 November 2015, was exceptionally uploaded by the Geneva Registry to the Applicant’s electronic case file, and served on the Respondent the same day.

Consideration

14. The Tribunal notes that the Respondent, in his reply, raises arguments regarding, *inter alia*, the receivability of the application. The Tribunal finds it helpful to receive additional submissions that would assist it in clarifying some of the issues to be addressed. It is therefore appropriate for the fair and expeditious disposal of the case, and to do justice to the parties, to give the Applicant an opportunity to comment on the Respondent’s reply.

15. As to the mode of filing, the Tribunal notes that the Applicant now has access to the eFiling portal, and that he was able to receive the Respondent's reply through this system. It further notes that the Applicant experiences some difficulties in accessing the said portal and notably in filing documents, which are not uncommon and have until now been resolved with the assistance of the eFiling portal support team (CCMS support service).

16. The Tribunal appreciates the efforts made by the Applicant and invites him to contact CCMS support service should he encounter any difficulty in accessing the system, filing documents or receiving them. In accordance with art. 9 of the Practice Direction on Filing of Motions and Responses, the Applicant is allowed to file his rejoinder by email or postal mail if he is unable to file it through the Tribunal's eFiling portal.

17. Finally, the Tribunal notes that the Applicant displayed, in his voice mail message of 27 October 2015, a threatening and aggressive behaviour towards an officer of the Tribunal. The Tribunal stresses that such behaviour is not only entirely unacceptable but may also constitute contempt of court and lead to a sanction being imposed. The Tribunal warns the Applicant that should this type of incident reoccur in the future, it may call upon him to show good cause as to why contempt proceedings should not be initiated.

Conclusion

18. In view of the foregoing, IT IS ORDERED THAT:

- a. The Applicant's motion is granted;
- b. The Applicant shall file his rejoinder by **Wednesday, 23 December 2015** through the Tribunal's eFiling portal or, if it is not possible due to technical difficulties, by email or postal mail; and

c. The Applicant is warned that any further inappropriate behaviour towards officers of the Tribunal may result in contempt of court proceedings and appropriate sanction.

(Signed)

Judge Rowan Downing

Dated this 23rd day of November 2015

Entered in the Register on this 23rd day of November 2015

(Signed)

René M. Vargas M., Registrar, Geneva