



UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/GVA/2016/007
UNDT/GVA/2016/017
UNDT/GVA/2016/094
Order No.: 184 (GVA/2017)
Date: 25 September 2017
Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: Geneva

Registrar: René M. Vargas M.

REHMAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON RESPONDENT'S MOTION FOR
EXTENSION OF TIME**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Miles Hastie, UNICEF

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Introduction

1. The Applicant has three cases pending before the Tribunal. In each of the cases, the Applicant is challenging the following administrative decisions:

- (a) the non-renewal of her fixed-term appointment as Programme Assistant GS-6, Education Section, United Nations International Children's Emergency Fund ("UNICEF"), Islamabad, Pakistan, registered under Case No. UNDT/GVA/2016/007;
- (b) the decision not to select her for the post of Programme Assistant, GS-5, FT Polio Section, Peshawar, Pakistan, registered under Case No. UNDT/GVA/2016/017;
- (c) the decision of the Office of Internal Audit and Investigation ("OIAI") to close the investigations into the Applicant's complaint of harassment, discrimination and abuse of authority lodged by the Applicant against other staff members, registered under Case No. UNDT/GVA/2016/094.

2. All three cases were initially assigned to Judge Rowan Downing. However, they have now been reassigned to the undersigned Judge.

3. The Tribunal issued Order No. 173 (GVA/2017) on 11 September 2017, calling the parties to a Case Management Discussion (CMD) to be held on 18 September 2017. In the same order, the Tribunal noted that the Respondent had not filed any evidence to prove the alleged financial constraints that UNICEF Pakistan office was facing in 2015 and that led to the decision not to renew the Applicant's contract.

4. Consequently, Respondent's Counsel, was ordered to file by Friday, 22 September 2017

all relevant documents, minutes of meetings, and/or budget documents indicating how these documents are proof of the financial

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situation at the UNICEF Pakistan Office, Education Section in 2016 that led to the Applicant's non-renewal of her contract.

5. On 18 September 2017, at the CMD, among other matters discussed were witnesses and the production of the above referenced documents. Once again, Respondent's Counsel was informed and reminded that the Tribunal was waiting to receive the ordered documents. Additionally, the Applicant was waiting to receive the documents in preparation of her witness list and the hearing scheduled for 4 to 6 October 2017.

6. Respondent's Counsel confirmed to the Tribunal at the CMD that he would be filing the ordered documents by Friday, 22 September 2017.

7. On Friday, 22 September 2017 at 10:31 p.m. (Geneva time), a notification was sent by the Tribunal's electronic case management system to the Registry informing it of the Respondent's Counsel's filing. This notification was only seen by the Registry on Monday, 25 September 2017. The Respondent's Counsel filed several documents and with it a motion for additional time.

8. In his motion, Respondent's Counsel indicates that "[l]ogistical and staffing issues have posed challenges in exhaustively gathering and cogently presenting the information ordered." Thus, he requested leave to have Order No. 173 (GVA/2017) varied to allow him time to file all the documents by Wednesday, 27 September 2017.

Consideration

9. Pursuant to arts. 19 and 35 of the Tribunal's Rules of Procedure, the Tribunal is cognisant of the fact that it can make an order that it deems appropriate and fair and in the interests of justice. The question for the Tribunal is whether it is in the interests of justice to allow the Respondent's Counsel's application for extension of time.

10. At the CMD held on 18 September 2017, the parties were informed of the time factor in having the witnesses determined, documents filed and the case heard

expeditiously since it was filed in 2015. Respondent's Counsel did not mention anything to the Tribunal regarding challenges and or difficulties thereof to obtain the ordered documents.

11. Despite all this, the Respondent's Counsel has sought to behave in a way to defeat the course of justice by making a filing late in the night, while asking for a "variation" of a court order that was due to lapse in less than two hours.

12. Additionally, the Respondent's Counsel filed 10 Annexes without explanation on how the annexes relate to the Applicant's case, especially on how the funding or lack thereof specifically led to the non-renewal of the Applicant's contract in 2015. Making reference to generic paragraphs of the Reply does not absolve the Respondent's Counsel of his duty to specifically file relevant evidence in support of his defence and explain how the evidence supports the non-renewal decision that was made.

13. The Tribunal also notes that the Respondent's Counsel did not comply with Order No. 173 (GVA/2017) to indicate his witnesses and their availability for the cases, or the fact that he was not calling any witnesses so that the scheduling of the hearing can be finalised.

14. The Tribunal notes that the decision not to renew the Applicant's contract was made late 2015, the Respondent's reply to the Application was filed on 5 May 2016. In his reply, the Respondent's Counsel makes reference to documents that he chose not to file in support of his reply. However, when the Tribunal orders the provision of the same documents, Respondent's Counsel claims that he is facing "logistical and staffing issues."

15. The Tribunal frowns upon Respondent's Counsel's actions and omissions and considers it a serious affront to its authority. By making a filing seeking an extension of time past official working hours of the Registry, Counsel has thereby made the Tribunal's consideration of the motion futile because of Counsel's lack of compliance with the Tribunal's instruction in a timely manner and his failure to respectfully request additional time to respond in a prompt and timely manner.

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16. This Tribunal finds that “logistical and staffing issues” is not sufficient a reason to grant the request for extension of time or vary Order No. 173 (GVA/2017) for that matter. Besides, for there to be an extension of an already expired deadline, the circumstances explaining the default in compliance with the ordered time limit would have to be demonstrated to have been entirely beyond the control of counsel, which was not the case in this matter.¹

17. Considering that it is less than a week to the scheduled hearing of the case, it will not be in the interests of justice to grant the Respondent’s motion.

18. Respondent’s Counsel’s actions and failure to comply with the Tribunal Orders lead it to draw the negative inference, although not required to, that if these documents were duly produced, they would be unfavourable to the Respondent.

IT IS ORDERED THAT:

19. The Respondent’s motion for extension of time is rejected.

20. Nevertheless, all missing information, documents, submissions on how the recently filed annexes and references support UNICEF’s decision not to renew the Applicant’s contract and witness information shall be filed by **Tuesday, 26 September 2017 at 5.30 p.m. (Geneva time)**.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 25th day of September 2017

Entered in the Register on this 25th day of September 2017

(Signed)

René M. Vargas M., Registrar, Geneva

¹ *McIlwraith et al.* Order No. 179 (GVA/2017).