



Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

STOYKOV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON APPLICANT'S MOTION FOR
APPROPRIATE MEASURES TO BE
TAKEN TO ENSURE A FAIR TRIAL**

Counsel for applicant:

Miles Hastie, OSLA

Counsel for respondent:

Melissa Bullen, ALS/OHRM, UN Secretariat

Introduction

1. This is a disciplinary case in which the Applicant, then Chief of the Building Management and Commercial Services of the Economic Commission for Africa (ECA) in Addis Ababa (Ethiopia), was summarily dismissed by letter dated 5 February 2010 on the ground of misconduct.
2. On 21 December 2010, the Applicant filed a motion requesting the Tribunal to conduct the trial of this matter in Addis Ababa (Ethiopia). The Applicant submits that the personal attendance of the Applicant and his counsel before the Tribunal is essential to the fair disposal of this case.
3. In favour of a hearing in Addis Ababa, the Applicant submits the following arguments:
 - Both the Applicant and his counsel reside in Addis Ababa;
 - The Applicant intends to call about ten witnesses on his behalf and they all are located in Addis Ababa. He avers that it would be more appropriate to hear the witnesses locally *viva voce* because the case involves allegations of improper relationships between the Applicant and outside contractors and companies.
 - It would be important that the Tribunal sees and hears the witnesses in person as this would help to a great length in the assessment of their evidence.
 - The Applicant is a former staff member of the ECA in Addis Ababa, and all the events surrounding his alleged misconduct took place in Addis Ababa. It can be expected that most (or all) of the Respondent's

witnesses reside in Addis Ababa, to the extent that the Respondent will also call witnesses on his behalf;

- The case involves allegations of particular gravity (resulting in summary dismissal);
- The case involves extensive documentation, that may need to be put to the witnesses, in direct examination or cross-examination;
- Finally, lengthy video-conferencing sessions between Addis Ababa and Nairobi are beyond the means of the Applicant and the office of his counsel (being more expensive than travel to Nairobi)¹.

4. Alternatively, should the Tribunal decide to conduct the hearing in Nairobi, the Applicant respectfully requests the Tribunal to order the physical presence of the Applicant and his counsel, and possibly one further witness for the Applicant, in Nairobi.

5. In a reply on behalf of the Respondent dated 21 December 2010, the Respondent objects to the Applicant's motion, arguing that the Applicant has failed to demonstrate any compelling reason justifying the physical presence of his counsel at the hearing, in Addis Ababa or in Nairobi, at the Organization's expenses or why the hearing cannot properly be conducted through the use of appropriate technological means. Referring to the *Ogé* UNDT/2010/209, the Respondent submits that the Applicant has not demonstrated how a hearing, whereby he will be able to participate fully through appropriate technological means, would fail to adhere to the requirements of due process, fairness and the rule of law. For the above

¹ According to the Applicant, the standard costing for Addis Ababa-Nairobi videoconferencing is \$10800 for a full four-day hearing (\$600/hr 9-10AM each day and \$300/hr for the balance of each day, or \$2700 per court day). Standard costing for travel to Nairobi for one counsel for a five-day mission for a four-day hearing would cost \$2032 (DSA: 5x\$281=\$1405; airfare \$475; terminal \$152).

reasons, the Respondent respectfully requests the Tribunal to dismiss the Applicant's motion in its entirety.

Considerations

6. The Tribunal appreciates the Applicant's concern that the case be heard in Addis Ababa and the Respondent's objection to it. Notwithstanding the above, the Tribunal must emphasize that the decision to hear a matter in a duty station other than Nairobi vests solely within the discretion of the judge, in accordance with Article 5 of the Tribunal's Statute.

7. Article 6 of the Statute also provides that

“The Secretary-General of the United Nations shall make the administrative arrangements necessary for the functioning of the Dispute Tribunal, including provisions for the travel and related costs of staff whose physical presence before the Dispute Tribunal is deemed necessary by the Dispute Tribunal”.

Case Management

8. The Tribunal would need additional information before determining whether the case should be heard physically in Addis Ababa. Accordingly, the Tribunal hereby **ORDERS** that:

- The hearing initially scheduled on 25 January 2011, in Nairobi, is adjourned.

9. Pursuant to Article 19 of the Tribunal's Rules of procedure, the parties are directed to provide the following information:

- i. **The name of their witnesses**
- ii. **The exact geographical location of these witnesses**
- iii. **The approximate time of examination**
- iv. **A summary of the anticipated testimonies and the relevance of each testimony to the issues at stake.**

10. Counsels are requested to submit this information **by 21 January 2011.**

(Signed)

Judge Vinod Boolell

Dated this 12th day of January 2011

Entered in the Register on this 12th day of January 2011

(Signed)

Jean-Pelé Fomété, Registrar, Nairobi