



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2013/085

Order No.: 229 (NBI/2015)

Date: 02 July 2015

Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

AWE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON PRODUCTION OF
EVIDENCE**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Stephen Margetts, ALS/OHRM

Sarahi Lim Baró, ALS/OHRM

Introduction

1. The Applicant is a staff member of the United Nations Assistance Mission for Iraq (UNAMI). He filed the current Application on 20 November 2013 challenging: (a) the decision to change his duty station from Baghdad to Kuwait; and (b) the implied decision to unilaterally and arbitrarily breach the terms of his appointment as contained in his letter of offer of 7 October 2012.

2. The Respondent submitted a Reply on 20 December 2013 in which he asserted, *inter alia*, that the Application is not receivable *ratione temporis* because the Applicant failed to submit his request for management evaluation within the 60-day statutory deadline provided under staff rule 11.2(c). Accordingly, the Respondent asserts that the Application is time-barred and should be dismissed.

3. Pursuant to Order Nos. 011 (NBI/2014) and 015 (NBI/2014), the Applicant filed his comments on the receivability issue on 19 February 2014.

4. On 11 March 2014, the Applicant filed a Motion for Protective Measures and on 19 March, the Respondent filed a response to this Motion. On 24 March, the Applicant sought leave of the Tribunal to respond to the Respondent's 19 March response.

5. On 5 May 2014 and 15 May 2015, the Applicant filed Motions for the production of evidence. The Motions were consolidated and granted in part in Order No. 215 (NBI/2015). Accordingly, the Respondent was ordered to submit the evidence set out at paragraphs 3, 4, 5, 7, 8 and 9 of the Applicant's Motion of 15 May 2015 by 30 June 2015.

6. On 1 July 2015, the Respondent submitted the evidence detailed in Order No. 215 on an *ex parte* basis.

Considerations

7. This Tribunal endorses the observation of Izuako J. in *Wondimu* Order No. 218 (NBI/2015) that:

Article 18.4 makes it clear that if a party wishes to preserve the confidentiality of evidence, they must first request the Tribunal to do so. In the present case, the Tribunal notes with concern that Counsel for the Respondent purports to redact Attachment B without seeking leave of the Tribunal notwithstanding the Tribunal's express order that the document be disclosed to the Applicant in full.

8. The Tribunal also wishes to recall the sage words of the United Nations Appeals Tribunal (UNAT) in *Utkina* 2015 UNAT-524:

The notion of transparency of, and access to, information, is very important in any Organization. It allows for openness, accountability and good governance, which indeed are the overarching principles of this Organization. It is therefore important that requests for the redaction of evidence be carefully examined within this context and only be permitted where it is necessary having considered the facts of each case. A request for redaction can only be permissible and/or permitted where it is necessary to protect information of a confidential and sensitive nature.

9. Additionally, in *Lee* 2014-UNAT-481 UNAT set out the general principle that:

Thus, it is clear that one of the purposes or goals of the new internal justice system is to assure that the Appeals Tribunal judgments are public documents that are published and widely made available to the Organization's staff and the general public. Other purposes or goals of the new internal justice system are to promote transparency and accountability in the operations of the Organization, as well as the new internal justice system.

10. In the present matter, the Tribunal issued Order No. 215 (NBI/2015), which did not instruct the Respondent to submit the required documents on an *ex parte* basis. The Respondent, however, submitted the documents on an *ex parte* basis

without either requesting permission to do so or providing any reasons as to why the documents should be deemed confidential.

11. Since the Respondent has provided no request or reasons for confidentiality, the Tribunal sees no reason as to why the documents should not be disclosed to the Applicant fully. Additionally, the Tribunal has reviewed the documents and considers that for the fair and expeditious disposal of this case, the documents should be made available to the Applicant.

Orders

12. The Registry is hereby directed to serve all the documents filed by the Respondent on 1 July 2015 on the Applicant.

(Signed)

Judge Vinod Boolell

Dated this 2nd day of July 2015

Entered in the Register on this 2nd day of July 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi