



Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

NEGUSSIE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE RESPONDENT'S
MOTION REGARDING WITNESSES
WHO REQUIRE AN INTERPRETER**

Counsel for the Applicant:
Daniel Trup, OSLA

Counsel for the Respondent:
Simone Parchment, WFP
Angela Arroyo, WFP

Introduction

1. The Applicant is a former staff member of the World Food Programme's Gode Office in Ethiopia. On 22 December 2014, he filed an Application contesting a decision to terminate his appointment as a disciplinary sanction.

2. The Respondent filed a Reply to the Application on 3 February 2015 having been granted an extension of time do so by the Tribunal.

Background and facts

3. On 3 September 2015, in Order No. 265 (NBI/2015), the Tribunal informed the Parties that the oral hearing in this matter would take place from 13 to 15 October 2015 and requested that the Parties file their list of witnesses and witness statements by 30 September 2015.

4. On 30 September 2015, in its Response to Order No. 265, the Respondent provided its list of witnesses and requested that a Somali language interpreter be made available for two of the witnesses.

5. On 7 October 2015, the Respondent sent an email to the Nairobi Registry requesting that the interpreter also be available for a third witness.

6. By an email dated 12 October 2015, the Registry informed the Respondent that it had been unable to source an interpreter for the hearing.

7. During the oral hearing on 14 October 2015, the Tribunal requested that the Respondent review how it might procure a neutral interpreter for the oral hearing and inform the Tribunal later that day by email of the outcome of its review.

8. By email dated 14 October 2015, the Respondent informed the Tribunal that it had not been able to identify a neutral and qualified interpreter that could be available during the scheduled oral hearing. The Respondent also noted that it would be willing to rely on the sworn statements of the three witnesses which

were submitted to the Tribunal on 30 September 2015 in the Respondent's Response to Order No. 265, in lieu of their live testimony.

9. On 29 October 2015, the Respondent filed the present Motion. The Respondent submits that he has used his best efforts to identify and engage a neutral interpreter with the necessary qualifications, but has not yet been able to do so and does not currently have any concrete leads on identifying a qualified neutral interpreter.

10. The Respondent further submits that in consideration of the expeditious conclusion of this case, in the interests of all Parties, and in view of the difficulty of locating a neutral qualified interpreter, that the Tribunal should rely on the sworn statements submitted to the Tribunal in the Respondent's Response to Order No. 265 as Annexes 16, 17 and 19, in lieu of the live testimony of those witnesses.

Considerations

11. The Tribunal has taken note of the Respondent's submission and the difficulties that he has encountered in retaining the services of a Somali interpreter but is unable to accede to the Motion.

12. The Tribunal recalls what the General Assembly stated in para. 4 of A/RES/61/261 (Administration of Justice at the United Nations)¹:

Decides to establish a new, independent, transparent, professionalized, **adequately resourced** and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike (emphasis added).

13. The above was reiterated in the preamble to A/RES/62/228, (Administration of Justice at the United Nations)² and reaffirmed in para. 8 of A/RES/66/237 (Administration of Justice at the United Nations)³.

¹ Adopted on 4 April 2007.

² Adopted on 22 December 2007.

14. In addition art. 6.1 of the Statute of the Tribunal provides:

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 and for judges to travel as necessary to hold sessions at other duty stations.

15. The reference to travel and the physical presence of witnesses in art. 6.1 cannot be interpreted in a vacuum. The key words are “administrative arrangements” and should be read in conjunction with the words “adequately resourced” that appear in resolutions 61/261, 66/228 and 66/237.

16. It is a universal principle that the facilities and resources of a court of law also encompass interpretation and translation facilities in addition to all other logistics that permit a court to function.

17. The Organization has 193 members and has six official languages. Judicial notice may be taken that as a rule, staff members should be proficient in one or more of the official languages though, depending on the specific context, specific working languages may be applicable to a particular duty station or peacekeeping mission. However, it should not be overlooked that the United Nations also regularly employs contractors who are not staff members and who are not proficient in any of the official languages of the Organization. The witnesses the Respondent seeks to call in the present case bear testimony to that fact.

18. Therefore, to accede to the Respondent’s request would amount to a denial of justice since it is the duty of the Secretary-General to ensure that adequate resources are available and that appropriate administrative arrangements are made for interpretation and translation facilities for the proper functioning of the Tribunal. Once the adequate resources are made available and proper administrative arrangements are made, then the responsibility devolves on the Tribunal to ensure that each party appearing before it is given a proper opportunity to present his/her case in person or through witnesses as well as by

³ Adopted on 9 February 2012.

presenting documents, subject to the rules of relevance and admissibility of evidence.

19. The witnesses that the Respondent is seeking to call are crucial for a proper determination of his case. The only impediment in the way of the Respondent is that the witnesses, who are not staff members, do not speak any of the official languages of the Organization and interpretation is provided only in these official languages. It is interesting to note that the following appears on the website⁴ of the Organization under the caption “Official Languages”:

Interpretation and Translation

A delegate may speak in any official UN language. The speech is interpreted simultaneously into the other official languages of the UN. At times, a delegate may choose to make a statement using a non-official language. In such cases, the delegation must provide either an interpretation or a written text of the statement in one of the official languages. Most UN documents are issued in all six official languages, requiring translation from the original document.

20. In *Koda* 2011-UNAT-130, the United Nations Appeals Tribunal (UNAT) made the following observations on the absence of transcript of proceedings that was the result of a lack of resources for that purpose:

The appellate review of facts, with which we are charged, requires a record. Article 2(1)(e) of our Statute requires that we decide, in some cases, whether the UNDT “[e]rrred on a question of fact, resulting in a manifestly unreasonable decision”. Further, Article 2(7) provides that “[f]or the purposes of the present article, ‘written record’ means anything that has been entered in the formal record of the Dispute Tribunal, including submissions, evidence, testimony, motions, objections, rulings and the judgement, and any evidence received in accordance with paragraph 5 of the present article”. Does that section not require oral testimony to be preserved in reviewable form?

Obviously, in a case with oral evidence, we cannot review the UNDT’s findings unless we have a transcript of that testimony. In a case that turns on disputed facts, we would have no choice, in the absence of a written transcript, but to remand to the trial court for a new, and recorded, hearing. The cost in time, money, and duplicated effort associated with a remand surely outweighs the cost of a transcript. If the budget does not exist it must be created,

⁴ <http://www.un.org/en/sections/about-un/official-languages/>

or the Organization's system of internal justice will fail. The lack of budget has already brought us close to that situation.

21. The same reasoning should be made applicable to facilities for interpretation and translation. Lack of resources, human or financial, cannot be used as a gateway to annihilate due process in a trial.

22. It is the considered view of the Tribunal that a party should not be unduly deprived of putting his/her case properly before the Tribunal on account of logistical difficulties in securing the services of an interpreter. The Secretary-General has the responsibility for ensuring that all facilities are made available for the Tribunal to properly allow parties to present their case and evidence. This is consonant with due process that is the hallmark of fair proceedings before courts of law. There must indeed be strongly compelling reasons that may deprive a party of the substance of fair trial and the protection of the law.

23. In the present case, the Respondent must have an opportunity to present evidence irrespective of the language of the witnesses. It is the Secretary-General's responsibility to make available to the Tribunal an individual who can provide the translation from Somali to English and vice versa.

24. The Tribunal will respectfully request the Respondent/Secretary-General to make available to the Tribunal a Somali interpreter to ensure that he is not prejudiced in properly presenting his case.

(Signed)

Judge Vinod Boolell

Dated this 5th day of November 2015

Entered in the Register on this 5th day of November 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi