



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2017/067
Order No.: 162 (NBI/ 2018)
Date: 15 October 2018
Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: Nairobi

Registrar: Abena Kwakye-Berko

NJENGA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

REFERRAL TO MEDIATION

Counsel for the Applicant:

Brandon Gardner, OSLA

Counsel for the Respondent:

Isabel Martinez, UNEP

Camila Fuomene A. Nkwenti, UNEP

Introduction

1. The Applicant served as a Programme Assistant at the United Nations Environment Programme (UNEP) on a permanent appointment at the G6 level. She was retired from the Organisation on 31 August 2016.

Procedural History

2. On 11 August 2017, the Applicant filed an application with the United Nations Dispute Tribunal in Nairobi to challenge the Respondent's decision to not compensate her for "mistakenly forcing her to retire at 60" rather than at 62 years of age. The Applicant contends that this mistake – which the Respondent has admitted to making in an email to the Applicant - has affected the calculation of her pension entitlements.

3. The Respondent filed his Reply to the application on 13 September 2017, arguing that the application should be dismissed both on receivability and substantive grounds.

4. On 3 September 2018, the Tribunal sought the Applicant's submissions in response to the Respondent's arguments on receivability. The Applicant filed these submissions on 5 September 2018.

5. On 25 September 2018, the Tribunal issued Order No. 149 (NBI/2018) advising the parties that it is "of the firm view that this matter can be peaceably and equitably resolved" *inter partes*. The parties were directed to jointly inform the Tribunal if settlement discussions can be undertaken by themselves or if an order formally referring this matter to mediation was preferred.

6. On 12 October 2018, the parties jointly requested a formal referral to mediation.

DIRECTIONS

7. The Tribunal strongly believes that the Parties should engage in meaningful consultations towards having this matter resolved. In the interest of efficient use of the Tribunal's resources and the expeditious conduct of proceedings, the Tribunal, pursuant to arts. 10.3 of the UNDT Statute and 15.1 of the Rules of Procedure, firmly urges the Parties in this matter to consult and deliberate in good faith, with the assistance of the Ombudsman, towards having this matter informally resolved.

8. The Tribunal therefore makes the following **ORDERS**:

- i. The Registry is **DIRECTED** to serve a copy of this Order on the Office of the Ombudsman and Mediation Services (OMS);
- ii. The Parties and/or OMS should advise the Tribunal on the status of mediation by **15 November 2018**;
- iii. The proceedings in the matter of *Njenga v Secretary General of the United Nations* (UNDT/NBI/2017/067) are hereby suspended pending mediation.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 15th day of October 2018

Entered in the Register on this 15th day of October 2018

(Signed)

Abena Kwakye-Berko, Registrar, UNDT