



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2020/025

Order No.: 224 (NBI/2021)

Date: 18 October 2021

Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

LISHCHYNSKI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE RESPONDENT'S
MOTION FOR CORRECTION OF
JUDGMENT**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Jacob B. van de Velden, AAS/ALD/OHR, UN Secretariat

Isavella Maria Vasilogeorgi, AAS/ALD/OHR, UN Secretariat

Background

1. On 11 October 2021, the Tribunal issued Judgment No. UNDT/2021/116 in this case.

2. On 14 October 2021, the Respondent filed a motion requesting the Tribunal to correct the Judgment. The pertinent parts of the Respondent's motion are reproduced below.

4. In view of the duties set out in Article 4 of the Code of conduct for legal representatives and litigants in person, the Respondent wishes to inform the Tribunal that, after reading the Judgment, Mr. Swanson communicated to the Respondent's counsel that he had not properly recalled the details about access to the OIOS case file. He communicated that consistent with his testimony during the hearing on 25 May 2021, he had instructed on 23 May 2019, that access to the case file should be restricted to himself and the then acting Chief of the Operational and Support Section. However, he had not recalled that these instructions were not given immediate effect and OIOS staff members in Nairobi/Vienna accessed the case file in the hours between 23 and 24 May 2019, due to the time difference between New York and Vienna/Nairobi. Mr. Swanson informed Respondent's counsel that the restriction as instructed was put into effect on 24 May 2019. Mr. Swanson also communicated that he did not prepare to testify on this topic as it had been ruled irreceivable by the Tribunal. Since the Respondent objected to the Applicant's questions on this irreceivable issue, the Tribunal instructed the Applicant to only ask Mr. Swanson questions that were relevant to the issues properly before the Tribunal.

5. As such, Mr. Swanson communicated that as he had not properly recalled relevant information when first asked about access to the case file and he had no opportunity to do so as his testimony was cut short on account of the receivability of the issue, the statement in paragraph 33 provides only a partial version of the status of access to the case file. As set out above, access to the case file was indeed restricted on 24 May 2019, following an instruction to this effect on 23 May 2019, when the case file was initially opened.

...

7. [...] the Respondent respectfully requests that the Tribunal corrects the Judgment by striking paragraph 32 and 33, as these paragraphs relate

to a matter that had been ruled irreceivable by the Tribunal's Order, or by amending those paragraphs to reflect that the matter there addressed was already ruled irreceivable.

8. If the Tribunal does not strike these paragraphs of the Judgment, the Respondent requests that the Tribunal adds that it had not been anticipated that Mr. Swanson would testify on this matter as it had been ruled irreceivable and his testimony on this matter was only given in part, since it was interrupted by the Respondent's objection and subsequent instructions of the Tribunal for the witness to be examined only on issues properly before the Tribunal.

Deliberations

3. Article 12.2 of the UNDT Statute and art. 31 of the UNDT Rules of Procedure stipulate that “[c]lerical or arithmetical mistakes, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Dispute Tribunal, either on its own motion or on the application of any of the parties.”

4. When reviewing the Respondent's motion for correction, the Tribunal notes that paragraph 11(c) of the Judgment sets out the only receivable claim in the case to be in relation to the Applicant being subjected to a biased and unfair investigation and separation from service. The statements in paragraphs 32 and 33 of the judgment neither prejudice the decisions on receivability contained in Order No. 100 (NBI/2021) nor the substantive findings in this case. The Respondent is trying to reargue certain aspects of his case on the basis of information that was not before the Tribunal when issuing Judgment No. UNDT/2021/116 and which is not decisive enough to alter the substance of the Judgment.

5. In light of the above,

IT IS ORDERED THAT:

6. The Respondent's motion for correction is rejected.

Case No. UNDT/NBI/2020/025

Order No. 224 (NBI/2021)

(Signed)

Judge Margaret Tibulya

Dated this 18th day of October 2021

Entered in the Register on this 18th day of October 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi