



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/039/  
JAB/2008/080 &  
UNDT/NY/2009/117  
Order No.: 43 (NY/2010)  
Date: 8 March 2010  
Original: English

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**Before:** Judge Adams  
**Registry:** New York  
**Registrar:** Hafida Lahiouel

BERTUCCI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**RULING**

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**Counsel for applicant:**  
Francois Lorient

**Counsel for respondent:**  
Susan Maddox, ALU  
Adele Grant, ALU

## **Introduction**

1. In Order No. 42 (NY/2010) of 8 March 2010, I ordered that, in light of its disobedience with my Order No. 40 (NY/2010), the respondent was not entitled to appear before me in this matter and that the applicant was entitled to proceed, on the basis that none of the respondent's material would be considered.

2. The respondent's counsel later in the hearing sought leave to comment on evidence concerning case UNDT/NY/2009/117, which I had previously confirmed would be heard at the same time as case UNDT/NY/2009/039/JAB/2008/080. I note that both cases were referred to and the subject of my Order No. 40 (NY/2010), which was not complied with.

3. Counsel for the respondent argued that the cases were separate and that the respondent's failure to produce documents which were relevant to one case (that is, UNDT/NY/2009/039/JAB/2008/080) should not preclude the respondent's representation in another case.

4. I made the *ex tempore* ruling which follows.

## **Ruling**

5. As I have already explained in my order earlier today, the respondent was in willful disobedience of an order of the Tribunal to produce certain relevant documents to it. As a consequence of that disobedience, I ordered that the respondent was not entitled to be heard in respect of the case in which the documents were required.

6. I had previously directed that the applicant's other application in relation to withholding of funds on retirement was to be heard at the same time as his case concerning his non-selection as Assistant Secretary-General. The applicant is currently giving evidence before me. The first part of his evidence concerned the

non-selection case and he is now moving, still in chief, to the accountability case. Counsel for the respondent was in court when the applicant commenced his evidence in the latter matter. After the evidence had gone some way, she asked whether the respondent could be heard in relation to that second matter. When I gave my earlier judgment, I indicated I would reserve the question regarding whether the respondent was entitled to be heard in any other case until its contempt was purged.

7. In all candour, I should say I had overlooked the direction I had given in connection with the accountability case, namely that it would be heard at the same time as his non-appointment case. During the hearing, in respect of which I made the earlier ruling, I intimated that it was a possibility that the respondent might be excluded from other cases until its contempt was purged.

8. Counsel for the respondent contended that it would, in effect, undermine the administration of justice to deny the respondent a hearing. Of course, this would generally be the case. But the respondent is not being denied the *opportunity* to be heard, which is the correct statement of the principle. The respondent has it in his hands to take advantage of the opportunity to be heard by obeying the orders of the Tribunal. It is the respondent's own acts that must have the effect of excluding him. Counsel's argument essentially is that the respondent should be able to be heard in the Tribunal whilst denying the obligation to obey the orders of the Tribunal. This is an untenable position.

9. In my view, it would entirely undermine the authority of the Tribunal if the respondent could continue to invoke the jurisdiction of the Tribunal in cases where there were no orders to which he objected, but was indifferent to what occurred in cases where there were orders he decided he would disobey. It would leave the Tribunal in the position that it would never know whether its orders would be complied with or not in the face of the undoubted legal obligation to obey the Tribunal's orders. Accordingly, the Secretary-General will not be heard in the accountability case and he should have fair notice that should his counsel make

application to be heard in the other cases before me, my present inclination is that until the disobedience of the Secretary-General is purged by producing the documents I have required to be produced, accompanied by an apology to the Tribunal and an undertaking not to disobey an order again, the respondent will not be entitled to appear, before me.

10. The fundamental purpose is not to punish the respondent, but to make clear that the respondent does not get to decide which orders he will comply with and which he will ignore. There is no other way the jurisdiction and integrity of the Tribunal can be upheld. I regard the refusal as a direct and brazen attack on the rule of law created by the General Assembly and solemnly embodied in the Statue of this Tribunal. The Secretary-General can either comply with the rule of law, or he can defy it, but it should be understood, that if he defies it, he cannot expect that the Tribunal will be prepared to listen to what might be said by him or on his behalf. I trust the matter is now clear.

*(Signed)*

Judge Adams

Dated this 8<sup>th</sup> day of March 2010