



UNITED NATIONS DISPUTE TRIBUNAL

UNDT/NY/2009/039/
JAB/2008/080

Case No.: UNDT/NY/2009/117
UNDT/NY/2009/022/
JAB/2008/037

Order No. 44 (NY/2010)

Date: 9 March 2010

Original: English

Before: Judge Adams

Registry: New York

Registrar: Hafida Lahiouel

BERTUCCI and ISLAM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

RULING

Counsel for applicant (Bertucci):

François Lorient

Counsel for respondent:

Susan Maddox, ALU

Counsel for applicant (Islam):

Bart Willemsen, OSLA

Counsel for respondent:

Stephen Margetts, ALU

1. When this matter came on for hearing this morning, I brought counsel's attention to my two rulings in the *Bertucci* cases (UNDT/NY/2009/039/JAB/2008/80 and UNDT/NY/2009/117), Orders 42 and 43 (NY/2010). Counsel for the respondent sought time to enable him to discuss the issues with relevant persons in order to resolve the matter if possible. I gave that adjournment. Resuming the case at 1:30 p.m., I was informed that discussions have taken place which were as yet inconclusive but that further consideration would be given. Of course, counsel was unable to indicate what the outcome of that further consideration might be. A confrontation between the Tribunal and the respondent on a matter so fundamental as the issue here is obviously undesirable. I take some comfort in the apparent appreciation of its seriousness. It has been suggested to those instructing counsel for the respondent that a week is necessary for adequate reconsideration to occur. The question of principle is simple and easily understood. I am unable to see how any reasonable consideration of it could take so long. However, in light of counsel's application, I propose to allow the present case to proceed for today along normal lines. If by the end of the day, counsel for the respondent wishes to tender any evidence, that will be received on the *voir dire*, and the decision as to its admissibility made depending on whether the respondent continues to maintain its disobedient stance. It seems likely that this case will not finish today and hopefully the respondent will purge its disobedience.

2. At the close of the day's proceedings, the Tribunal ordered that the officer who made the decision that Tribunal's Order 40 (NY/2010) would not be complied with is to appear before me at 10:00 a.m., Wednesday, 10 March 2010.

(Signed)

Judge Adams

Dated this 10th day of March 2010