



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/111
Order No.: 141 (NY/2010)
Date: 7 June 2010
Original: English

Before: Judge Memooda Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

LIARSKI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON FILING OF SUBMISSIONS

Counsel for Applicant:

Rose Dennis, OSLA

Counsel for Respondent:

Susan Maddox, ALS/OHRM, UN Secretariat

1. On 17 March 2010, the Tribunal issued Order No. 51 (NY/2010) directing the respondent to file a submission providing, *inter alia*, an explanation as to the following:

- a. The process for and the factors taken into consideration in deciding whether a certain post involves significant functions in financial management, personnel management and general services administration. Official documents in support of any statement regarding the above must be submitted.
- b. The process for designation of a staff member to perform significant functions in the management of financial, human and physical resources, together with the factors that are taken into consideration in deciding whether a staff member can perform such functions. Official documents in support of any statement regarding the above must be submitted.

2. On 19 March 2010, the respondent filed a one-page submission stating:

As requested in Order Number 2010/51, please find attached:

- At Annex 1, the [generic job profile] for a senior Budget Officer applicable at the time.
- At Annex 2, an explanation of the Controller dated 19 March 2010 together with supporting documentation in relation to the designation process regarding financial management personnel.
- At Annex 3, an explanation of the Officer in Charge of the Professional and Above Staffing Section/OHRM dated 19 March 2010 with supporting documentation in relation to the designation process regarding human resources management personnel.

Information on the process relating to the designation of personnel managing physical resources has been requested but has not yet been received and will be forwarded upon receipt.

3. The note of the Controller, dated 19 March 2010 and attached as Annex 2 to the respondent's submission, was addressed to the Chief of Administrative Law

Section of OHRM. The explanation of the Officer-in-Charge of the Professional and Above Staffing Section of OHRM (Annex 3 to the respondent's submission) was in the form of an email sent to counsel for the respondent.

4. The Tribunal has not received any further submissions from the respondent with respect to the designation of personnel managing physical resources.

5. Having reviewed the respondent's submission dated 19 March 2010, I find it appropriate to make the following observation. When the Tribunal orders a party to file a submission on an issue of fact or law, it is not enough for counsel to transmit to the Tribunal emails and notes obtained from witnesses or various offices and departments in the Organisation or other sources. Such communications do not constitute submissions before the Tribunal. As in this instance, an email or a note to counsel for the respondent from an OHRM officer or the Controller is a communication from an officer of the Organisation to the counsel, not a submission to the Tribunal on behalf of the respondent. Counsel for the respondent may of course rely on such communications when preparing his or her submission on behalf of the respondent. However, if such a communication is forwarded to the Tribunal, with no substantive submission by counsel on behalf of the respondent, the Tribunal cannot infer—and should not be placed in a position of having to draw such an inference—that the view expressed in this communication is the *actual position* of the respondent with respect to the issue on which he was ordered to file a submission.

6. Upon my review of the case file, I have determined that further submissions are required.

IT IS ORDERED THAT –

1. By **Wednesday, 16 June 2010**, the respondent is to file and serve a submission:

- a. providing an explanation with respect to the process of designation of personnel managing physical resources;

- b. stating the name of the candidate selected for Vacancy No. VA-07-ADM-OM-OPPBA-412834-R-NEW YORK;
- c. explaining—with supporting documentation—whether any determination was made prior to the completion of the selection exercise in question as to whether the contested post involved performance of significant functions in financial management, personnel management and general services administration, and the outcome of such determination;
- d. stating whether the candidate selected for Vacancy No. VA-07-ADM-OM-OPPBA-412834-R-NEW YORK was considered for designation to perform significant functions in financial management, personnel management and general services administration either *prior to* or *after* his or her selection and appointment to the contested post, and, if so, what was the outcome of consideration; and
- e. stating whether para 10 of the Guidelines on Designation of Staff Members Performing Significant Functions in the Management of Financial, Human and Physical Resources applied to the contested selection exercise. If not, reasons must be stated. If yes, the respondent is to state whether para 10 was complied with.

2. By **Wednesday, 16 June 2010**, the respondent is to provide the applicant with redacted copies of the selection records (Galaxy documents) filed *ex parte* on 3 February 2010.

3. By **Tuesday, 22 June 2010**, the applicant is to file a submission in response to the respondent's submission of 16 June 2010. The applicant's submission shall not exceed eight pages and shall avoid the simple repetition of information that is already before the Tribunal.

4. No further submissions will be allowed without prior leave of the Tribunal.

(Signed)

Judge Memooda Ebrahim -Carstens

Dated this 7th day of June 2010