



UNITED NATIONS DISPUTE TRIBUNAL

Cases No.: UNDT/NY/2012/003  
UNDT/NY/2013/033  
Order No.: 156 (NY/2013)  
Date: 24 June 2013  
Original: English

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**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Hafida Lahiouel

EL-KOMY

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON CASE MANAGEMENT**

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**Counsel for Applicant:**

Lennox Hinds  
Claire Gilchrist

**Counsel for Respondent:**

Alan Gutman, ALS/OHRM, UN Secretariat  
Sarahi Lim Baró, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant, an Arabic Translator, Arabic Translation Service, Department for General Assembly and Conference Management at the United Nations Headquarters, has two cases pending before the Dispute Tribunal. In the first case—Case No. UNDT/NY/2012/003—the Applicant contests the propriety of the extension of his probationary appointment instead of conversion to a permanent appointment status. In the second case—Case No. UNDT/NY/2013/033—the Applicant contests the decision to separate him from service following the decision not to grant him a permanent appointment upon the completion of his probationary employment period.

2. On 29 April 2013, the Tribunal issued Order No. 118 (NY/2013) on interim measures, ordering the Respondent to suspend the implementation of the decision to separate the Applicant from the date of the order pending the final determination of the substantive merits of the application or until such further order as may be deemed appropriate by the Tribunal. It was further stated that the Tribunal would determine whether the present case should be considered on an expedited basis following the receipt of the Respondent's reply and any further submissions, because of the particular circumstances of the case, including the Applicant's personal circumstances and the financial implications if the case were to be left pending a decision on the merits for an indefinite period of time.

3. On 28 May 2013, the Respondent filed a reply to the application in Case No. UNDT/NY/2013/033, stating, *inter alia*, that the application was without merit.

4. On 10 June 2013, Her Honour Judge Greceanu (as Duty Judge) issued Order No. 143 (NY/2013) in the present case, directing the parties to file, by 16 July 2013, a jointly-signed statement identifying agreed and disputed issues of law and fact. The parties were directed to indicate whether they were amenable to informal resolution of the matter and to state whether in their view the present case would

benefit from being considered together with Case No. UNDT/NY/2012/003. The issue of expedited consideration of the case was not addressed in said Order.

5. On 13 June 2013, the Tribunal (Judge Ebrahim-Carstens) issued Orders No. 146 (NY/2013) and No. 147 (NY/2013) in relation to the two cases, directing the parties to attend a case management discussion on 24 June 2013.

6. The case management discussion was attended by the Applicant, Ms. Claire Gilchrist (for the Applicant) and Ms. Sarahi Lim Baró (for the Respondent) in person. The Applicant confirmed at the case management hearing that he was represented by Mr. Lennox Hinds and Ms. Gilchrist in both matters presently before the Tribunal.

#### **Joint consideration**

7. The two pending cases being intrinsically connected, the parties agreed at the case management discussion to the joint consideration of the two cases. The Tribunal finds it to be appropriate for the fair and expeditious disposal of the two cases and to do justice to the parties to consider them jointly.

#### **Expedited consideration**

8. Counsel for the Applicant stated that the Applicant was of the view that the cases should be heard on an expedited basis. Counsel for the Respondent stated that she would need to consult with her client regarding the proposed expedited consideration of the cases.

9. Counsel confirmed that there were ongoing developments in the two cases, including rebuttal processes for 2011–2012 as well as a complaint of retaliation filed by the Applicant with the Ethics Office. According to Counsel for the Respondent, the Ethics Office apparently found that one statement in the Applicant's performance evaluation report for 2011–2012 was indicative of *prima facie* retaliation, but

contended that although the rebuttal panel had also found such statement objectionable, it still recommended maintaining the rating of “partially meets performance expectations”. Counsel for both parties agreed to confer on the latest developments in this regard and to agree the relevancy of this issue for the conduct of the current proceedings.

**Availability of parties**

10. Counsel for the Respondent stated that she would not be available in early August or early September 2013. Counsel for the Applicant stated that she and/or Mr. Hinds would be available throughout the summer and in September 2013.

**Informal resolution**

11. Following an indication from the Tribunal regarding various aspects of the two cases and developments in the matter, Counsel for the Applicant stated that the Applicant was open to informal resolution of the matter. Counsel for the Respondent noted that previous attempts to resolve the matter informally failed. She stated that she would need to consult with her client to ascertain the Respondent’s position on any further attempts at informal resolution.

**IT IS ORDERED THAT:**

12. By consent, Cases No. UNDT/NY/2012/003 and UNDT/NY/2013/033 are to be dealt with jointly, at a combined hearing, without prejudice to any separate contention the parties might seek to advance in a particular case.

13. All submissions filed by the parties in relation to these matters shall be filed in Case No. UNDT/NY/2013/033 only, in order to avoid any unnecessary duplication of filings.

14. Paragraphs 8 and 9 of Order No. 143 (NY/2013) are set aside.

15. By **5 p.m., Tuesday, 2 July 2013**, the parties are to file a jointly signed statement answering to each of the following:

a. Whether they agree to attempt to resolve the cases informally either through the Mediation Division or through *inter partes* discussions;

—*or*, in the event the parties do not agree to resolve the cases informally—

b. Whether they agree to the cases being heard on an expedited basis;

c. A joint proposal as to the date for the hearing on the merits, ensuring that the witnesses the parties intend to call are available on that day;

16. Tentative lists of witnesses that the Applicant and the Respondent intend to call at the hearing on the merits.

(Signed)

Judge Ebrahim-Carstens

Dated this 24<sup>th</sup> day of June 2013