



**Before:** Judge Alexander W. Hunter, Jr.

**Registry:** New York

**Registrar:** Hafida Lahiouel

TIEFENBACHER

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**ORDER**

**ON CASE MANAGEMENT**

---

**Counsel for Applicant:**  
Mariam Munang, OSLA

**Counsel for Respondent:**  
Thomas Jacob, UNDP

## **Introduction**

1. On 15 February 2016, the Applicant, a former D-1 level permanent staff member of the United Nations Development Programme (“UNDP”), filed an application contesting the decision not to “award [him]” the position of Directorate Manager, Bureau of Programme and Policy Support, UNDP. The Applicant submits, in essence, that the contested decision was procedurally flawed and tainted by bias against him.
2. On 16 March 2016, the Respondent filed a reply to the application, submitting that the contested decision was lawful and that the Applicant’s claims are without merit.
3. This case was assigned to the undersigned Judge on 1 July 2016.
4. By Order No. 167 (NY/2016) dated 11 July 2016, the Tribunal directed the parties to file further submissions and also invited them to consider informal resolution of the dispute.
5. On 19 July 2016, the Respondent filed a submission on behalf of both parties, requesting suspension of the proceedings until 30 August 2016 in order to allow the parties to undertake informal settlement discussions.
6. By Order No. 174 (NY/2016) dated 19 July 2016, the Tribunal suspended the proceedings until Tuesday, 30 August 2016.
7. On 29 August 2016, the parties filed a joint submission stating that despite several attempts they were unable to resolve the matter. The parties noted in their submission that Counsel for both the Applicant and the Respondent will be on leave until 6 September 2016.

## Consideration

8. It is regrettable that the parties were unable to resolve the matter amicably. The Tribunal will therefore issue appropriate orders to prepare this case for a hearing on the merits. In view of the calendar of hearings for the month of September, this matter will be set for a two-day hearing on Thursday–Friday, 22–23 September 2016. In preparation for the hearing on the merits, the parties will file a joint submission by Thursday, 15 September 2016, addressing a number of issues, and attend a case management discussion on Monday, 19 September 2016.

9. The Tribunal observes that, on 22 July 2016, the Tribunal (Judge Meeran) issued a judgment in the matter of *El-Kholy* UNDT/2016/102, concerning a decision of the UNDP to terminate the appointment of a permanent staff member following the abolition of her post. *El-Kholy* contains some pronouncements that may be of relevance to the present matter as well. The Tribunal expects the parties to consider the effect of *El-Kholy*, if any, in their jointly-signed submission.

10. The Tribunal reminds the parties that, at this stage of the proceedings, they are free to attempt informal resolution of the dispute. Should they decide to do so, they shall promptly inform the Tribunal of their decision.

11. Pursuant to art. 19 of the Tribunal’s Rules of Procedure, and in the interests of a fair and expeditious disposal of the case,

IT IS ORDERED THAT:

12. By **5:00 p.m., Thursday, 15 September 2016**, the parties shall file a jointly-signed submission, responding under separate headings to each of

the following issues. Where there is disagreement over an issue, fact or statement, the submission shall identify the parties' respective positions:

- a. A consolidated list of agreed legal issues (addressing, *inter alia*, the effect of the application of staff rule 13.1(d) and the recent judgment in the matter of *El-Kholy* UNDT/2016/102);
- b. A consolidated list of agreed facts in chronological order (reflecting, *inter alia*, whether the successful candidate for the contested post was a staff member of the Organization at the time of the selection exercise and, if so, the successful candidate's type of appointment (permanent, continuing, fixed-term, or temporary));
- c. Lists of witnesses that the Applicant and the Respondent intend to call, confirming whether the witnesses will appear in person and providing their contact information to the Tribunal. The parties shall also include a proposed order of appearance for their witnesses;
- d. Brief statements of the evidence each party intends to elicit from their respective witnesses;
- e. A consolidated, paginated bundle of legal authority relied upon by the parties in support of their submissions, including relevant case law of the United Nations Dispute and Appeals Tribunals, as well as the full text of any relevant administrative issuances;
- f. A consolidated, paginated agreed bundle of documents which the parties intend to rely upon at the hearing. The bundle shall contain an index of the documents contained therein.

13. The parties shall thereafter attend the following hearings on the following dates:

- a. At **11 a.m. on Monday, 19 September 2016**, a case management discussion; and
- b. At **10:00 a.m. on Thursday–Friday, 22–23 September 2016**, a hearing on the merits.

*(Signed)*

Judge Alexander W. Hunter, Jr.

Dated this 30<sup>th</sup> day of August 2016