



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2015/035  
UNDT/NY/2015/062  
Order No.: 233 (NY/2016)  
Date: 5 October 2016  
Original: English

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

**Registry:** New York

**Registrar:** Hafida Lahiouel

AUDA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON CASE MANAGEMENT**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Alan Gutman, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant has two separate but related applications registered under Cases No. UNDT/NY/2015/035 and UNDT/NY/2015/062. By Order No. 213 (NY/2016) dated 8 September 2016, the two cases were consolidated into a combined proceeding.

## **Procedural history**

2. On 12 July 2016, the Tribunal issued Order No. 168 (NY/2016) and Order No. 169 (NY/2016) in Case No. 2015/035 and Case No. 2015/062, respectively. The orders were identical in content. The parties were ordered to respond to a number of issues listed in the order, including whether they agreed to attempt informal resolution of the matters and whether the two cases should be consolidated through an order for combined proceedings.

3. On 20 July 2016, the parties filed jointly-signed statements in both Case No. 2015/035 and Case No. 2015/062. The jointly-signed statements read:

The parties conferred on 19 July 2016. The parties agreed to attempt informal resolution of Case No. 2015/035 and Case No. 2015/062. The parties, however, were unable to agree on the modalities for attempting informal resolution, or a request for suspension of the proceedings.

4. On 21 July 2016, the Tribunal issued Order No. 177 (NY/2016) and Order No. 178 (NY/2016), directing the parties to file a jointly-signed statement in relation to each case, as per Orders No. 168 (NY/2016) and 169 (NY/2016).

5. On 28 July 2016, the parties filed their jointly-signed statements submitting, *inter alia*, that they were in agreement that the two cases should be

consolidated through an order for combined proceedings, and proposing that the cases be heard on 14 and 16 September 2016.

6. By Order No. 213 (NY/2016) dated 8 September 2016, the Tribunal consolidated the two cases into a combined proceeding and ordered the parties to file a joint submission stating whether they agree to attempt informal resolution of the two cases, failing which they were to propose agreed dates for a two-day hearing on the merits between 3 October 2016 and 6 October 2016.

7. On 14 September 2016, the parties filed a joint submission indicating that the only date on which both parties were available in the first half of October was Thursday, 6 October 2016.

8. On the same day, 14 September 2016, the Applicant filed a motion identifying seven individuals as witnesses he would like to call at the hearing on the merits. He requested the Tribunal to “call/make an order for the witnesses listed to appear for the hearing” and to release the full report of the Second Fact-Finding Panel, including all annexes.

9. On 27 September 2016, the Tribunal held a case management discussion (“CMD”) in relation to these two cases. The Applicant and Counsel for the Respondent attended the CMD in person. The Tribunal noted at the CMD that some of the proposed witnesses were called by the Applicant for the purpose of providing oral evidence on the settlement-related discussions that took place between him and the Administration, including the Management Evaluation Unit. The Tribunal noted that such discussions were not a matter for adjudication as they have no probative value in relation to the substantive issues before the Tribunal. The Tribunal also reminded the parties that, in these types of cases, the Tribunal is not expected to conduct a *de novo* review and assume the functions of an investigative body (cf. *Messinger* 2011-UNAT-123).

10. On 27 September 2016, after the CMD, the Applicant filed a motion requesting the Tribunal to find that the Second Fact-Finding Panel's investigation was "fraught with significant procedural irregularities" because the Panel had not been properly constituted and to remand the case to Department of General Assembly and Conference Management ("DGACM") for a new fact-finding investigation.

11. By Order No. 225 (NY/2016) dated 28 September 2016, the Tribunal addressed the issues raised at the CMD held on 27 September 2016. The Tribunal directed the Respondent to disclose to the Applicant an unredacted copy of the Second Fact-Finding Panel's report, with the annexes, also in unredacted form. The Tribunal scheduled the hearing on the merits for a one-day hearing on 6 October 2016, as this was the only date available to both parties as per their joint submission of 14 September 2016. The Tribunal also directed the parties to file further submissions in preparation for the hearing, including a joint list of agreed witnesses.

12. On 28 September 2016, the Respondent replied to the Applicant's motion of 27 September 2016, producing, on an *ex parte* basis, a copy of the Office of Human Resources Management ("OHRM") roster with the names of rostered investigators and their personal contact information. The roster was dated "as of 3 October 2014" and included the names of both members of the Second Fact-Finding Panel, indicating that they were both trained in investigations.

13. By Order No. 226 (NY/2016) dated 28 September 2016, the Tribunal rejected the Applicant's motion dated 27 September 2016. The Tribunal directed the parties that no further motions shall be filed without its leave.

14. On 29 September 2016, the Respondent filed an unredacted copy of the Second Fact-Finding Panel's report, with annexes, pursuant to Order No. 225 (NY/2016)

15. On 30 September 2016, the Applicant filed a motion seeking leave to request “the release of the copy of the OHRM roster submitted by the Respondent on an *ex parte* basis, without the personal contact information.”

16. By Order No. 230 (NY/2016) dated 30 September 2016, the Tribunal granted the Applicant’s motion of 30 September 2016, directing the Respondent to disclose to the Applicant (by filing through the eFiling portal) a redacted copy of the OHRM roster.

17. On 3 October 2016, the Respondent filed a redacted copy of the OHRM roster. The Respondent re-filed the document on 4 October 2016, due to technical issues with the file submitted on 3 October 2016.

18. On 3 October 2016, the Applicant filed a motion stating that the Respondent failed to comply with Order No. 226 in that “the correct interpretation of Order No. 226 (NY/2016) entails all persons on the roster involved in the Second Panel at the stage of constitution of the Panel, not only those appointed to serve on the Panel.” The Applicant requests the Tribunal to “order the release of the redacted copy of the OHRM roster, including, at the least, the names and other information relevant to the placement on the roster of all staff members of [DGACM], as well as all others on the roster, including consultants, who had been considered or should have been considered during the constitution of the Panel.”

19. By Order No. 232 (NY/2016) dated 4 October 2016, the Tribunal dismissed the Applicant’s motion of 3 October 2016, finding that the terms of Orders No. 226 (NY/2016) and No. 230 (NY/2016), concerning the disclosure of the OHRM roster, were fully complied with.

**Filings dated 4 and 5 October 2016**

20. On 4 October 2016, the parties filed a joint submission pursuant to Order No. 225 (NY/2016). As part of the joint submission, the Respondent identified three witnesses and attached signed statements of evidence. The Applicant, however, stated he had previously requested seven witnesses (three of whom—Ms. Novicki (chair of the First Fact-Finding Panel), Ms. Loregnard (Special Assistant to the Under-Secretary-General, DGACM), and Mr. Ssekandi (member of the Second Fact-Finding Panel)—were the same individuals called by the Respondent) and that his request remained pending. The Applicant provided no signed statements of evidence in relation to any of the persons identified by him.

21. On 5 October 2016, the Applicant filed a motion stating that his “motion to the Dispute Tribunal [of 14 September 2016] to call the two other members of the fact-finding panels and the responsible official [i.e., Mr. Gettu, former Under-Secretary-General, DGACM] as witnesses during the hearing is still pending with the Tribunal.” He requested the Tribunal to postpone the hearing scheduled for 6 October 2016, stating that the parties had previously agreed to hold a two-day hearing.

22. On 5 October 2016, the Respondent filed a response to the Applicant’s motion of 5 October 2016. The Respondent submits that he does not agree that there is a need in a two-day hearing and that “a hearing of half a day is sufficient to hear the testimony of the witnesses identified by the Respondent in the Joint Submission dated 4 October 2016.” The Respondent also objected to the Applicant’s motion to call additional witnesses.

**Consideration**

23. The Applicants motion of 14 September 2016 was discussed at the CMD held on 27 September 2016. By Order No. 225 (NY/2016) dated 28 September

2016, the case was scheduled for a hearing on 6 October 2016 and the parties were directed to provide an agreed list of witnesses, with statements of evidence. No objections were raised at the time to the hearing date or motions regarding lists of witnesses.

24. At the hearing, the Tribunal will hear the oral evidence of Ms. Novicki with regard to the First Fact-Finding Panel; Mr. Ssekandi with regard to the Second Fact-Finding Panel; and Ms. Loregnard with regard to any relevant matters. The Applicant has not explained the need to call the other members of the two fact-finding panels. Further, with regard to Mr. Gettu (former Under-Secretary-General, DGACM), the Tribunal notes that in his motion of 14 September 2016, the Applicant indicated that the evidence he wanted to elicit from Mr. Gettu “concern[ed] his decision to close out the investigation upon receiving the memorandum of Mr. Kumar [member of the First Fact-Finding Panel] of 11 November 2014, decision to decline the settlement offer made by the MEU [Management Evaluation Unit], and his memorandum to the Applicant dated 8 September 2015.” As stated in Order No. 225 (NY/2016), settlement discussions are not a matter for adjudication before the Tribunal. Further, the decision to close the First Fact-Finding panel is a matter of record and followed from the First Fact-Finding Panel’s inability to complete its work. Likewise, Mr. Gettu’s memorandum of 8 September 2015, conveying to the Applicant the outcome of the Second-Fact-Finding Panel’s investigation, is a matter of record and resulted from the investigation report prepared by the Panel. The Applicant has not persuaded the Tribunal that Mr. Gettu—who was not a member of either of the two investigation panels—could offer relevant evidence that would be of assistance in this case in addition to what is already on the record.

IT IS ORDERED THAT:

25. The Applicant’s motion of 5 October 2016 is denied.

26. These cases shall be heard on 6 October 2016. No adjournments will be granted.

27. The following persons shall testify at the hearing on 6 October 2016: (i) Ms. Novicki; (ii) Ms. Loregnard; and (iii) Mr. Ssekandi.

*(Signed)*

Judge Alexander W. Hunter, Jr.

Dated this 5<sup>th</sup> day of October 2016