



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2015/035  
UNDT/NY/2015/062  
Order No.: 2 (NY/2017)  
Date: 9 January 2017  
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, a former Principal Officer at the D-1 level in the Department of General Assembly and Conference Management (“DGACM”), has two separate but related applications registered under Cases No. UNDT/NY/2015/035 and UNDT/NY/2015/062. Both cases are assigned to the undersigned Judge. By Order No. 2013 (NY/2016), dated 8 September 2016, the two cases were consolidated into a combined proceeding.

## **Case management**

### *Order No. 213 (NY/2016) of 8 September 2016*

2. By Order No. 213 (NY/2016) dated 8 September 2016, the Tribunal consolidated the two cases into a combined proceeding. Noting that the Applicant had a third matter pending before the Tribunal (Case No. UNDT/NY/2016/028), in which the parties agreed to suspend the proceedings pending informal discussions, the Tribunal ordered the parties to file a joint submission stating whether they agree to attempt informal resolution of the two present 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.

### *Joint submission of 14 September 2016*

3. On 14 September 2016, the parties filed a joint submission stating:

... The Respondent is available for a hearing on the merits to be held on Wednesday, 5 October 2016 and Thursday, 6 October 2016.

... The Applicant is available for a hearing on the merits to be held on Thursday, 6 October 2016, Friday, 7 October 2016 and throughout the week of Monday, 10 October 2016.

4. Accordingly, based on the joint submission of 14 September 2016, the only date on which both parties were available in the first half of October was Thursday, 6 October 2016.

*Applicant's motion of 14 September 2016*

5. Also on 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.

*Case management discussion of 27 September 2016*

6. 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. Referring to the Applicant’s motion dated 14 September 2016 concerning his proposed list of witnesses, the Tribunal noted at the CMD that some of these proposed witnesses were listed 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 (see Order No. 225 (NY/2016) dated 28 September 2016, summarizing the discussion at the CMD). The Tribunal also reminded the parties that, in these types of cases, the Tribunal is not expected to conduct a *de novo* review and is not to assume the functions of an investigative body (cf. *Messinger* 2011-UNAT-123).

*Order No. 225 (NY/2016) of 28 September 2016*

7. By Order No. 225 (NY/2016) dated 28 September 2016, the Tribunal scheduled a one-day hearing on the merits for 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-upon witnesses. At paras. 6 and 9, the Tribunal stated with regard to the scheduling of the hearing and witnesses:

... In their joint submission dated 14 September 2016, the parties indicated that the only date on which both parties were available in the first half of October was Thursday, 6 October 2016. Accordingly, the hearing will take place on that day. The parties shall ensure the attendance of their witnesses.

*Order No. 226 (NY/2016) of 28 September 2016*

8. By Order No. 226 (NY/2016) dated 28 September 2016, the Tribunal *inter alia* directed the parties that no further motions shall be filed without its leave.

*Applicant's motion of 5 October 2016*

9. 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.

*Respondent's response of 5 October 2016*

10. On 5 October 2016, the Respondent filed a response to the Applicant's motion of 5 October 2016. The Respondent submitted that there was no need for 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 requested to maintain the allocation of one full day (6 October 2016) for the hearing on the merits. The Respondent also objected to the Applicant's motion to call additional witnesses.

*Order No. 233 (NY/2016) of 5 October 2016*

11. By Order No. 233 (NY/2016), dated 5 October 2016, the Tribunal denied the Applicant's motion to postpone the hearing scheduled for 6 October 2016, noting that the two cases had been scheduled by Order No. 225 (NY/2016), dated 28 September 2016, with no objections from the parties. The Tribunal directed that the following witnesses testify at the hearing on 6 October 2016: (i) Ms. Novicki; (ii) Ms. Loregnard; and (iii) Mr. Ssekandi.

*Motion for recusal*

12. On 5 October 2016, the Applicant filed a "Request to the President of the Dispute Tribunal for Recusal of the Case Judge". In view of the request, the Tribunal suspended the proceedings.

13. On 2 December 2016, by Order No. 267 (NY/2016), the President of the Tribunal dismissed the applicant's request for recusal.

14. On 6 December 2016, by Order No. 273 (NY/2016) the Tribunal ordered the parties to attend a hearing in both cases on Thursday 12 January 2017 and ordered that "the parties shall ensure their availability also for Friday, 13 January 2017, should a second day of hearings be necessary. The parties likewise shall ensure the availability of their witnesses on these dates."

*Applicant's Motion of 5 January 2016 – Request for postponement and the appearance of additional witnesses*

15. The Applicant's instant motion requests a postponement of the hearing, stating:

The Applicant has been summoned to serve as juror in the New York Supreme Court at 9:00 a.m. on Monday 9 January 2017.

The Applicant is obliged to serve on the date scheduled given that the jury service has already previously been postponed twice. The Applicant may therefore not be available for the hearing on 12 January 2017. Given a previously scheduled leave through the end of the month of January 2017, the Applicant requests postponement of the hearing until Thursday 9 and Friday 10 February 2017.

16. The Applicant further requests that Ms. Struyvenburg and Mr. Gettu be called as witnesses, stating that “Order [No.] 273 (NY/2016) does not indicate whether the Dispute Tribunal Order [No.] 233 (NY/2016) in which the Tribunal agreed to have one member of each panel testify on behalf of the panel and decided not to call the responsible official to appear as a witness, [is] still in effect”. The Applicant notes he “has already requested that both members of the panel be called as witnesses... and requests that both members of the panels, in particular, Ms. Struyvenberg, be called as witnesses”. The Applicant further requests that Mr. Gettu, the responsible officer, be called as a witness, as “[his] subordinate... cannot fully testify on behalf of the responsible official.”

### **Consideration**

17. The Tribunal recognizes that should the New York Supreme Court summon the Applicant to appear for jury duty on 12 and 13 January 2017, he will not be available to appear before the Dispute Tribunal on the same dates. However, it appears that the Applicant has been summoned to present in the New York Supreme Court for only one day, notably on Monday, 9 January 2017. To date, there is, therefore, no apparent conflict with the hearing on the merits scheduled before this Tribunal, and the Applicant’s motion to postpone the hearing is denied. Should the New York Supreme Court summon the Applicant to serve as a juror on 12 and 13 January, the Tribunal will reconsider how to handle the further proceedings.

18. In accordance with art. 18.1 of the Tribunal’s Rules of Procedure, the Tribunal finds that the testimony of Ms. Struyvenburg would be cumulative and

therefore denies the Applicant's request that she be called as a witness. The Tribunal also denies the Applicant's request that Mr. Gettu be called as a witness for the reasons already set forth in Order No. 233 (NY/2016).

IT IS ORDERED THAT:

19. By **5:00 p.m. on Tuesday, 10 January 2017**, the Applicant is ordered to update the Tribunal as to whether he has been instructed to serve as a juror before the New York Supreme Court on 12 and 13 January 2017, and if so, provide substantiating documentation. The Tribunal will thereafter provide its instructions as to the further conduct of the proceedings.

20. The Applicant's request that two additional witnesses be called is denied.

*(Signed)*

Judge Alexander W. Hunter, Jr.

Dated this 9<sup>th</sup> day of January 2017