



**Before:** Judge Joelle Adda  
**Registry:** New York  
**Registrar:** Nerea Suero Fontecha

NADEAU

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON CASE MANAGEMENT**

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**Counsel for Applicant:**

Peter A. Gallo, Esq.

**Counsel for Respondent:**

Alan Gutman, ALD/OHR, UN Secretariat

## Introduction

1. By Order No. 109 (NY/2019) dated 18 July 2019, the Tribunal made the following orders:

... By **4:00 p.m. on Tuesday, 3 September 2019**, the parties are to file a jointly signed statement providing, under separate headings, the following information:

- a. A consolidated list of the agreed facts. In chronological order, this list is to make specific reference to each individual event in one paragraph in which the relevant date is stated at the beginning;
- b. A consolidated list of the disputed facts. In chronological order, the list is to make specific reference to each individual event in one paragraph in which the relevant date is stated at the beginning. If any documentary and/or oral evidence is relied upon to support a disputed fact, clear reference is to be made to the appropriate annex in the application or reply, as applicable. At the end of the disputed paragraph in square brackets, the party contesting the disputed fact shall set out the reason(s);
- c. A list of any additional written evidence, which a party requests to produce, or request the opposing party to produce, and stating the relevance thereof;
- d. Whether the parties request a hearing for witnesses to provide testimony to support any disputed facts and, if so:
  - i. Provide a list of the witnesses that each party proposes to call; and
  - ii. Provide a brief statement or summary of the disputed fact(s) to be addressed by each witness;
- e. If the parties would be willing to enter into negotiations on resolving the case amicably either through the assistance of the Office of the Ombudsman and Mediation Services or *inter partes*.

2. On 3 September 2019, Counsel for the Applicant filed a “notice of unavailability” in which he informed the Tribunal that he would “be travelling extensively during the entire month of September ... before returning to New York in early October” and that “[r]eplying to any communications in that period cannot be guaranteed”.

3. On 3 September 2019, the Applicant filed another submission, but on an *ex parte* basis.

4. On the same date (3 September 2019), the Respondent filed a submission in response to Order No. 19 (NY/2019) in which he stated that, “Counsel for the Respondent has engaged Counsel for the Applicant in efforts to file a jointly signed statement. Counsel for the Applicant has not cooperated with those efforts, and the Parties have been unable to agree to a jointly signed statement”.

5. To the Respondent’s 3 September 2019 submission was appended a copy of an email exchange between the two Counsel regarding the preparation of the jointly signed statement which the Tribunal had ordered them to submit by 3 September 2019. From this exchange follows that, on 2 September 2019 at 10:36 p.m., Counsel for the Applicant emailed Counsel for the Respondent his “suggested schedule of facts”, stating that “If you care to delete any you disagree with you are at liberty to do so, but I will not agree to any additions”. By email of 3 September 2019 at 8:56 a.m., Counsel for the Respondent requested Counsel for the Applicant to “send the document in MS Word format. This will allow to work on the draft jointly as required by the Dispute Tribunal”. By email of the same date at 2:17 p.m., Counsel for the Applicant responded as follows:

Oh dear. I have had a quick look at UNDT Practice Direction No. 4 on the subject of filing applications and replies, then another quick look at UNDT Practice Direction No. 5 on the subject of filing motions, and I

must have an out of date version because I can't see the part that says I have an obligation to use Microsoft Word.

Of course, I could let you have a copy in Word format on a VOLUNTARY basis.

Some people might even say that was the decent (and very reasonable) thing to do. So might I ..... but then again, ST/AI/2010/5 says that there should be "consultation" with the staff member before imposing a Performance Improvement Plan - and in those circumstances, the Administrative Law Section argued that because it is not stated in black and white that "consultation" means even attempting to answer questions... ignoring the fairly obvious observation that the decent (and very reasonable) thing to do might have been to answer those questions on a vo[lu]ntary basis too.

That, unfortunately, is not how things work in the [United Nations]. I learned the hard way that dealing with your office in good faith is utterly pointless because you will use any minor technicality - legal, ethical or otherwise - to protect corruption and incompetence.

Staff members may be asked to compromise but the Administrative Law Section will concede nothing.

Do you know, oddly enough, that there is one recorded exception to that statement? There is actually a known example of the Administrative Law Section ever failing to take advantage of a technicality that could have a case summarily kicked.

Very curious, it was in [Case No. redacted] when a staff member filed a request for Suspension of Action pending Management Evaluation, despite not actually having bothered to file a management evaluation request, and, even more curiously, the Applicant in that case was none other than one [name redacted]. Why [name redacted] was willing to let that one slide is just one of life's little mysteries isn't it?

I am sure it had absolutely nothing to do with who the Applicant was. I am sure it has absolutely nothing to do with [name redacted]'s jack-in-the-box performance in [case name redacted], and also in [case name redacted]; and all the other cases you settled out of court - always protecting the incompetent and the corrupt, and desperate to keep [name redacted] as far away from the witness box as it is possible to be.

Life is truly full of strange coincidences.

So I am afraid you will have to take the PDF and draw neat little lines though anything you disagree with, and then sign it and submit it.

When you are done with that, you can run and complain if you like, and we can have a long and involved debate about how accountability is a Core Competency for UN staff members.

Or you can tell me why I am wrong, and attach all the emails that [name redacted] and [name redacted] sent me offering to meet to settle this case. I will be back in a month. That should give you plenty time to speak to your client about settling.

### **Consideration**

6. The Tribunal notes that, in response to Order No. 19 (NY/2019), none of the parties have made any request for production of further evidence. The case is therefore ready for adjudication and the proceedings are to be closed. Accordingly, the parties will be instructed to file their closing statements.

7. The Tribunal observes that its time and resources are limited and that, under art. 7 of the Code of Conduct for Judges of the Dispute and Appeals Tribunals, “Judges must perform all assigned judicial duties, including tasks relevant to the judicial office or the operation of the Tribunals, diligently and dispose of judicial work promptly in an efficient and professional manner” and that “Judges must give judgement or rulings in a case promptly”. To determine the case in the prescribed manner, the Tribunal necessarily relies on the parties’ full cooperation and they must comply with all orders in good faith.

8. The Tribunal further notes that art. 4 of the Code of Conduct for legal representative and litigants in person sets the following basic standards,

1. Legal representatives and litigants in person shall maintain the highest standards of integrity and shall at all times act honestly, candidly, fairly, courteously, in good faith and without regard to external pressures or extraneous considerations.

2. Legal representatives and litigants in person shall act diligently and efficiently and shall avoid unnecessary delay in the conduct of proceedings.

3. Legal representatives should encourage and facilitate dialogue between the parties with a view to settling disputes in appropriate cases.

4. Legal representatives shall maintain the highest standards of professionalism and shall act in the best interests of the party they represent, subject always to upholding the interests of justice and ethical standards.

9. The attitude of Counsel for the Applicant and his unwillingness to cooperate with Counsel of the Respondent as expressed in his email of 3 September 2019 falls below all these basic standards of conduct. For no other apparent reasons than to complicate the work of Counsel for the Respondent and retaliate for matters not related to the present case, Counsel for the Applicant therefore also impedes the Tribunal from duly undertaking its obligations under its Code of Conduct.

10. The Tribunal warns the parties that any attempt to deliberately delay and obstruct the proceedings may lead the Tribunal to determine that the relevant party has “manifestly abused the proceedings”, which may lead to the imposition of cost against that party in accordance with art. 10.6 of the Statute of the Dispute Tribunal. Also, under art. 9 regarding the administration of the Code of Conduct for legal representative and litigants in person, the Tribunal may “issue orders, rulings or directions in order to implement the provisions of the present Code”. As the Tribunal reads this provision, nothing therein excludes the Tribunal from reporting any breaches of this Code to the relevant bar association(s) of which a private counsel is member and through which s/he is authorized to practice law in the national jurisdiction as per art. 12.1 of the Dispute Tribunals’ Rules of Procedure.

11. Finally, the Tribunal finds that the Applicant’s *ex parte* submission of 3 September 2019 contains no information relevant to the determination of the present

case. However, for the integrity of the file, the Tribunal will not strike it from the record and will also maintain its status as *ex parte*.

IT IS ORDERED THAT:

12. The *ex parte* status of the Applicant's submission of 3 September 2019 is granted;

13. By **4:00 p.m. on Friday, 4 October 2019**, the Applicant is to file his closing statement, which is solely to be based on the submissions and evidence on record. The statement is to be five pages maximum, using Times New Roman, font 12 and 1.5 line spacing. Any new submissions and/or evidence will be struck from the record;

14. By **4:00 p.m. on Friday, 18 October 2019**, the Respondent is to file his closing statement responding to the Applicant's closing statement and maximum be six pages, using Times New Roman, font 12 and 1.5 line spacing. Any new submissions and/or evidence will be struck from the record;

15. By **4:00 p.m. on Friday, 25 October 2019**, the Applicant is to file his final observations responding to the Respondent's closing statement, which is to be two pages maximum, using Times New Roman, font 12 and 1.5 line spacing. Any new submissions and/or evidence will be struck from the record.

(Signed)

Judge Joelle Adda

Dated this 10<sup>th</sup> day of September 2019