



UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/NY/2018/011
UNDT/NY/2018/032
UNDT/NY/2020/008
Order No.: 99 (NY/2020)
Date: 8 June 2020
Original: English

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

PAPATHANASSIOU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:

Katya Melliush, OSLA

Counsel for Respondent:

Matthias Schuster, UNICEF
Chinonyelum Esther Uwazie, UNICEF

Introduction

1. By Order No. 79 (NY/2020) dated 22 April 2020, the Tribunal ordered (a) the Respondent to file certain documentation referred to in the reply by 7 May 2020, and (b) the parties to file consolidated lists of agreed and disputed facts by 4 June 2020 as the Respondent essentially disputed all facts presented by the Applicant.

2. On 7 May 2020, the Respondent filed his submission as per Order No. 79 (NY/2020) informing the Tribunal that some UNICEF security reports could not be obtained, because they only existed in a paper version in the ABCC's offices, which were closed due to the COVID-19 situation.

3. On 4 June 2020, the parties filed the consolidated lists of agreed and disputed facts. The Applicant further requested leave to file some additional written evidence and appended the relevant documentation. The Respondent did not object thereto.

4. On 5 June 2020, the Applicant filed a "motion to amend pleadings and adduce evidence". In the motion, the Applicant "seeks leave to amend the Application to include a claim for moral damages for harm caused by procedural irregularity and delay, and to adduce the attached additional evidence marked as Annex X, a short medical report attesting thereto".

5. On the same date (5 June 2020), the Respondent responded that he objected to the Applicant's 5 June 2020 motion.

Consideration

6. Considering the particular circumstances of the present cases, the Tribunal will allow the additional evidence filed by the Applicant on 4 June 2020, also taking into account the Respondent's lack of objection thereto.

7. Regarding the Applicant's 5 June 2020 motion, the Applicant, *inter alia*, submits that:

... It is respectfully submitted that such an amendment will not unduly prejudice the Respondent, who may be afforded an opportunity to reply to it specifically. This is unlikely to cause a significant delay to the course of proceedings. By contrast, denial of such an amendment might prejudice the Applicant significantly, by denying him the right to pursue a remedy which, in all the circumstances of the case, ought *prima facie* to apply in his case.

8. The Respondent, in response, objects to the motion, contending that:

... The Applicant has provided no valid justification for including his additional claims at this late stage, more than three months after the filing of the Application. No reasonable explanation has been provided why the additional relief has not been claimed before. The Applicant has been represented by the Office of Staff Legal Assistance throughout the case and related cases. The fact that different OSLA counsel is now litigating the case does not justify amending the application, especially when the Respondent has already filed a reply.

... No explanation has been offered why the statement by the Applicant's treating physician was only produced now, in particular, in light of the alleged harm suffered by the Applicant.

... In the event that the Tribunal were to grant the motion, the Respondent requests sufficient time to respond to the amended pleading.

9. The Tribunal notes that under art. 10.5(b) of the Statute of the Dispute Tribunal, a claim regarding compensation for harm must be "supported to evidence". If the Applicant's motion were rejected, he would effectively be denied the possibility of

pursuing a claim for remedy. Accordingly, in the interest of justice and due process, the Tribunal will allow (a) the Applicant to adduce the evidence and amend his corresponding pleadings, and (b) the Respondent to subsequently comment thereon.

10. In light of the above,

IT IS ORDERED THAT:

11. The Applicant's (i) request for filing additional evidence of 4 June 2020 and (ii) motion of 5 June 2020 are granted;

12. By **4:00 p.m. on Friday, 19 June 2020**, the Applicant is to file his closing statement, which is to be five pages maximum, using Times New Roman, font 12 and 1.5 line spacing. Aside from the Applicant's submissions pertaining to his 5 June 2020 motion, the closing statement is solely to be based on previously filed pleadings and evidence, and no new pleadings or evidence are allowed at this stage;

13. By **4:00 p.m. on Friday, 26 June 2020**, the Respondent is to file his closing statement responding to the Applicant's closing statement at a maximum length of five pages, using Times New Roman, font 12 and 1.5 line spacing. Aside from the response to the Applicant's submissions pertaining to his 5 June 2020 motion, the closing statement is solely to be based on previously filed pleadings and evidence, and no new pleadings or evidence are allowed at this stage;

14. By **4:00 p.m. on Wednesday, 1 July 2020**, the Applicant may file a statement of any final observations responding to the Respondent's closing statement. This statement of final observations by the Applicant must be a maximum of two pages, using Times New Roman, font 12 and 1.5 line spacing. It must be solely based on previously filed pleadings and evidence, and no new pleadings or evidence are allowed at this stage.

15. Unless otherwise ordered, on receipt of the latest of the aforementioned statements or at the expiration of the provided time limits, the Tribunal will adjudicate on the matter and deliver Judgment based on the papers filed on record.

(Signed)

Judge Joelle Adda

Dated this 8th day of June 2020