



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/020

Order No.: 042 (NY/2024)

Date: 4 April 2024

Original: English

Before: Judge Margaret Tibulya

Registry: New York

Registrar: Isaac Endeley

O'MULLANE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:

Cristian Gimenez Corte

Counsel for Respondent:

Lucienne Pierre, AS/ALD/OHR, UN Secretariat

Introduction

1. On 9 July 2023, the Applicant filed the application.
2. On 4 August 2023, the Applicant filed a motion purporting to present “new facts and new instances of retaliation”.
3. On 9 August 2023, the Respondent filed the reply, contending that the application is not receivable and, in any event, it lacks merit.
4. On 10 August 2023, the Respondent filed a response to the Applicant’s motion of 4 August 2023.
5. On 17 August 2023, the Applicant filed a rejoinder to the Respondent’s submission of 10 August 2023.
6. By Order No. 099 (NY/2023) dated 5 October 2023, the Duty Judge ordered the Applicant to file a rejoinder to the Respondent’s reply addressing the issue of receivability.
7. On 19 October 2023, the Applicant filed a rejoinder to the Respondent’s submission on receivability as instructed in Order No. 099 (NY/2023).
8. The present case was assigned to the undersigned Judge on 1 April 2024.
9. On 3 April 2024, the Tribunal conducted a case management discussion (“CMD”) with the parties and their legal representatives.

Considerations

10. The following matters were discussed at the CMD:

Receivability of the application

11. The Applicant contended that there was no issue of receivability in this case as the Respondent had already filed his reply on the merits.

12. The Respondent pointed out that the reply includes a challenge against the receivability of the application. He requested the Tribunal to dismiss the application as not receivable.

13. The Tribunal recalls that under the jurisprudence of the Appeals Tribunal, the Dispute Tribunal is required to satisfy itself that an application is receivable under art. 8 of its Statute (see, for instance, *O'Neill* 2011-UNAT-182, as affirmed in *Christensen* 2013-UNAT-335, and *Barud* 2020-UNAT-998).

14. Consequently, the Tribunal will grant the Respondent's motion and will proceed to determine the receivability of the application as a preliminary matter.

Applicant's request for interim measures pending proceedings.

15. The Applicant submitted that since the filing of his application, he has suffered acts of retaliation. He requested the Tribunal to order interim measures to protect him.

16. The Respondent noted that the matter had already been resolved by the Tribunal.

17. The Tribunal recalls that the Applicant had filed a request for interim measures in Case No. UNDT/NY/2023/019, a separate but closely related case filed by the Applicant. The Tribunal also notes that the Applicant did not file a similar request for interim measures in this case. However, the Duty Judge in Case No. UNDT/NY/2023/019 gave the Applicant's motion for interim measures full consideration and subsequently rejected it under Order No. 097 (NY/2023) of 3 October 2023. Accordingly, the Applicant's oral request is moot.

Applicant's oral motion for joinder of Cases No. UNDT/NY/2023/019 and No. UNDT/NY/2023/020

18. The Applicant submitted that the two applications he had filed simultaneously—registered as Cases No. UNDT/NY/2023/019 and No. UNDT/NY/2023/020—are very closely related and that the one cannot be understood without the other. He requested the Tribunal to authorize the joinder of both cases.

19. The Respondent did not make any observations on this request.

20. The Tribunal finds that a decision on the joinder of the cases would be premature at this stage. The matter will be given due consideration after the issue of receivability is resolved.

Applicant's request for a hearing

21. The Applicant requested the Tribunal to conduct a hearing in this case so that he may call witnesses to testify in support of his case.

22. The Respondent did not make any submissions on this point.

23. The Tribunal finds that until and unless the issue of receivability is resolved, it would be premature to decide whether a hearing is necessary in this case.

24. In light of the foregoing,

IT IS ORDERED THAT:

25. The Respondent's motion on determining the receivability of the application as a preliminary matter is granted.

26. The Applicant's oral motion for interim measures is moot as the matter has already been resolved under Order No. 097 (NY/2023) in Case No. UNDT/NY/2023/019.

27. The Applicant's oral motion for the joinder of his two cases is premature and will be determined later.

28. The Applicant's request for a hearing is premature and will be determined later.

(Signed)

Judge Margaret Tibulya

Dated this 4th day of April 2024

Entered in the Register on this 4th day of April 2024

(Signed)

Isaac Endeley, Registrar, New York