



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2020-1402

Respondent

(Respondent/Applicant)

v.

Secretary-General of the United Nations

(Appellant/Respondent)

ORDER No. 393/Corr.2 (2020)

Reissued pursuant to Order No. 405 (2021)

1. The Respondent is a former Programme Analyst at the National Officer B-Grade level with the United Nations Development Programme in the United Arab Emirates (UAE), contesting the administrative decision not to renew his fixed-term appointment.
2. On 11 July 2018, the Respondent filed an application with the United Nations Dispute Tribunal (UNDT). On 7 April 2020, the Dispute Tribunal in New York issued Judgment No. 2020/051. The UNDT rescinded the contested decision and ordered the Organization to pay the Respondent compensation equal to the salary he would have earned had his appointment been extended until 30 June 2018.
3. On 8 June 2020, the Secretary-General filed an appeal against the judgment of the UNDT. On 10 August 2020, the Respondent filed his answer and a cross-appeal seeking additional compensation and moral damages. On the same day, he filed a Motion to file additional evidence *ex-parte*. On 28 October 2020, the Respondent filed a motion for confidentiality. The first motion is an application in terms of Article 2(5) of the UNAT Statute (read with Article 10 of the UNAT Rules of Procedure) requesting this Tribunal to receive additional documentary evidence (consisting of three documents) in the interest of justice. The second motion requests that this Tribunal receive two of the documents on an *ex parte* confidential basis, which we assume to be a request for non-disclosure of the documents to the Secretary-General.

4. Given the Respondent's request for confidentiality, the motions will be considered on an *ex parte* basis without referring them to the Secretary-General for a response. For reasons that will appear, there is no prejudice to the Secretary-General in following this approach.

5. The first document which the Respondent seeks admission (Annex 1 of his motion for additional evidence - in Arabic which is translated in Annex 3) contains financial information that has come to light which the Respondent alleges confirms that there was no need to terminate the program in which he worked, thus showing that the non-renewal of his appointment was unjustified and unlawful on additional grounds. In his motion for confidentiality, the Respondent requests non-disclosure of this document on the ground that its disclosure will render him liable to criminal prosecution in the UAE. He thus admits that he may have committed a criminal offence in obtaining this document.

6. The second document in respect of which the Respondent requests non-disclosure to the Secretary-General is Annex 4 to his motion for additional evidence, which he alleges provides proof of irregular expenditure by one of his supervisors and thus possibly an ulterior motive in relation to the decision to not renew his appointment. He requests non-disclosure because he fears retaliation.

7. There is no express provision in the UNAT Statute or Rules of Procedure that provides for the admission of evidence on a confidential basis or for the non-disclosure of admitted relevant evidence to the other party. Assuming for the purposes of argument that there is such a power, it should be exercised sparingly in the rarest of the cases. The right to challenge adduced evidence is part of the fundamental right to a fair trial that may be limited or circumscribed only in exceptional and compelling circumstances.

8. The fact that the Respondent fears prosecution and retaliation for the illegally and improperly obtained evidence is not a sufficient basis for admitting the evidence without disclosing it to the Secretary-General. It is not in the interests of justice to allow the Respondent to benefit from his admitted wrongdoing but to deny the Secretary-General the opportunity to deal in rebuttal with serious allegations of impropriety. Moreover, the admission of the evidence without disclosing it to the Secretary-General will render it of little or no weight or value. It will stand as

unexamined hearsay of limited relevance which may not be taken into consideration in reaching any decision on the relevant issues of the appeal.

9. The third document (Annex 2 of the motion for additional evidence) is a recent bank statement reflecting that the Respondent is in financial difficulty after the non-renewal of his appointment. He does not request confidentiality in relation to this document. However, this evidence too is of little relevance to whether the UNDT erred in its decision on the unlawfulness of the non-renewal of the Respondent's appointment. In so far as he may want to rely on the document to argue for increased compensation, the Respondent ought to have presented that evidence to the UNDT. There are no exceptional circumstances justifying the admission of this document into the record at this stage or for opening an additional line of factual enquiry that should properly have been done in the UNDT proceedings.

10. In the result, both motions fall to be dismissed.

IT IS HEREBY ORDERED that the Respondent's Motion for additional evidence and Motion for Confidentiality **ARE DENIED**.

Original and Authoritative Version: English

Dated this 23rd day of November 2020
in Cape Town, South Africa.

(Signed)
Judge John Raymond Murphy,
Duty Judge

Entered in the Register on this 23rd day
of November 2020 in New York, United States.

(Signed)
Weicheng Lin, Registrar