



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2011/078

Order No.: 012 (NBI/2012)

Date: 20 January 2012

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

WU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

Counsel for the Applicant:

Self-Represented

Counsel for the Respondent:

Miouly Pongnon, Senior Legal Adviser, UNON

Introduction

1. The Applicant, a former staff member of the United Nations Office at Nairobi (“UNON”), filed an Application on 8 December 2011 in which he contests a decision denying him payment of a non-removal allowance in lieu of removal costs in respect to his separation from service on retirement.

2. The Application was transmitted to the Respondent on 13 December 2011 with a deadline of 13 January 2012 by which to file a Reply. The Application was transmitted using the eFiling portal of the Tribunal’s Court Case Management System (“CCMS”).

3. Counsel for the Respondent had previously sought clarification, on 24 October 2010, on the proper means of service of submissions to the Dispute Tribunal. On 2 November 2011, Counsel was advised that the Tribunal now requires parties to utilize the eFiling portal.

4. On 16 December 2011, Counsel for the Respondent informed the Tribunal that she had not received the Application. On 20 December 2011, the Tribunal again advised Counsel for the Respondent that she was required to create an eFiling profile to access the case records as had been done by other Counsel for the Respondent in all of the Organization’s offices around the world.

5. On 20 December 2011, Counsel for the Respondent informed the Tribunal that she had elected not to create an eFiling account owing to certain noted limitations with that system and the fact that eFiling is not a compulsory requirement under the Tribunal’s Rules of Procedure. She added that until such time as an official order had issued from the Tribunal indicating that eFiling is compulsory, she would not create an eFiling account.

6. On 21 December 2011, the Tribunal informed Counsel for the Respondent that it considered that the Application had been properly transmitted to her on 13 December 2011 and that the deadline to file a Reply by or before 13 January 2012 still applied.

7. On 13 January 2012, Counsel for the Respondent filed an “Application for Declaratory Order in respect of Articles 8.3, 8.4 and 10.1 of the UNDT Rules of Procedure”. In the said Application, the Respondent seeks a declaratory order of the Tribunal indicating the responsibilities and rights of the parties in respect of the provisions of arts. 8(3), 8(4) and 10(1) of the UNDT Rules of Procedure regarding the acceptable means of filing and receiving submissions with the Tribunal through its Registry offices. The Respondent’s Counsel submitted that the plain meaning of the provisions of arts. 8(3), 8(4) and 10(1) of the Tribunal’s Rules of Procedure do not require that parties file or receive case documents using electronic means or an eFiling portal in CCMS.

8. The Respondent’s Counsel also seeks a direction from the Tribunal requiring the Nairobi Registry to transmit to her, outside of CCMS, a copy of Mr. Wu’s Application.

Considerations

9. Paragraph 71 of the Resolution adopted by the General Assembly on 6 February 2008, “Administration of Justice at the United Nations” (A/RES/62/228), requested the Secretary-General to report to the General Assembly on how information and communications technology could improve the functioning of the system of administration of justice. Paragraphs 62-67 of the Secretary-General’s Report to the General Assembly, “Administration of Justice at the United Nations” of 20 August 2008 (A/63/314), address the subject of e-filing. Paragraph 64 of the said Report specifically details the advantages the Secretary-General envisaged would be accomplished by an e-filing system which include:

- a. transparency for all parties and personnel;
- b. confidence in the receipt of submissions;
- c. automatic e-mail notification of case activity;
- d. immediate access to documents;

- e. ability to store and search documents electronically;
- f. ability to correct or update submissions, as necessary;
- g. ease and speed of transmission between offices;
- h. efficient transmission to the translation services;
- i. convenience for judges and personnel working in remote locations;
- j. significant reduction in costs of production and reproduction of submissions;
- k. significant reduction in storage space required; and
- l. environmental benefits.

10. In his report to the General Assembly, “Administration of justice at the United Nations” (A/66/275) of 8 August 2011, the Secretary-General advised Member States that the launching on 6 July 2011 of the electronic filing system of the Office of Administration of Justice represented a “major milestone”. In the Secretary-General’s view (as expressed in this report), this web-based system, which allows parties appearing before the Dispute Tribunal and the United Nations Appeals Tribunal to file and access case related documents, is “expected to increase efficiency, reduce delays and improve the overall functioning of the Registries”.

11. Representatives of relevant offices at the Secretariat, Funds and Programmes, including UNON, were invited to short training and induction sessions prior to the introduction of the system, in order to facilitate their understanding of the process and the use of the web-based tool. UNON is the only Office across the Secretariat, Funds and Programmes, which is not using this electronic filing system.

12. Counsel for the Respondent argues that arts. 8(3) and 10(1) “*make clear that submission to the Tribunal may be electronically submitted*” and that by the “*Nairobi Registry’s present refusal*” to serve the Respondent by any means other

than the eFiling portal is “*tantamount to the Registry amending the Tribunal’s Rules of Procedure*”.

13. Counsel for the Respondent appears to have misunderstood the meaning of the afore-mentioned provisions, the relevant parts of which read as follows:

Article 8

Applications

[...]

3. The signed original application form and the annexes thereto shall be submitted together. The documents may be transmitted electronically.

[...]

Article 10

Reply

The respondent’s reply shall be submitted within 30 calendar days of the date of receipt of the application by the respondent. The signed original reply and the annexes thereto shall be submitted together. The document may be transmitted electronically...

14. These Rules make it clear that submissions to the Tribunal may be transmitted electronically. In other words, any party may submit or file documents with the Tribunal electronically (as opposed to in hard copy). However, no party can dictate to the Tribunal the mode by which the Tribunal may transmit documents. Article 8(4) of the Tribunal’s Rules of Procedure requires the Registrar to transmit a copy of an application to the Respondent and to any other party a judge considers appropriate.

15. Article 8(4) gives the Registrar the discretion to determine how to transmit an application. In exercising that discretion and to ensure compliance with the Secretary-General’s efforts to improve the overall functioning of the formal system of administration of justice, the Registrar has in this case transmitted the Application using the eFiling portal. It is not for Counsel for the Respondent or

any party for that matter to dictate to the Tribunal how this transmission is to be done.

16. The Respondent in his capacity as the Chief Administrative Officer of the Organization has pioneered, supported and encouraged efforts to increase the efficiency of the internal administration of justice. His agents and representatives are properly equipped to be part and parcel of the milestones reached in this regard and must represent his interests in carrying out their duties. It is therefore not the place of Counsel to go against the publicly stated position of the Respondent by refusing or rejecting the CCMS. The Secretary-General has sanctioned the CCMS and all Counsel have received adequate notice and been offered training in order that the system can be used to improve the filing and accessing of case-related documents by parties appearing before the Dispute and Appeals Tribunals.

17. As a result of Counsel for the Respondent's decision not to create an eFiling account, she has failed to access the Application and to file a Reply within the requisite time limit required by art. 10 of the Tribunal's Rules of Procedure. This means that by operation of procedural law, the Respondent is not entitled to take part in the proceedings except with the leave of the Tribunal.

18. The Tribunal, however, in the interests of justice exercises its discretion and hereby grants the Respondent a period of one month to file a Reply.

IT IS ACCORDINGLY ORDERED THAT:

19. The Respondent file a Reply by Monday, 20 February 2012.

(Signed)

Judge Nkemdilim Izuako

Dated this 20th day of January 2012

Entered in the Register on this 20th day of January 2012

(Signed)

Jean-Pelé Fomété, Registrar, Nairobi