



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/110
Judgment No.: UNDT/2009/055
Date: 28 October 2009
Original: English

Before: Judge Memooda Ebrahim-Carstens
Registry: New York
Registrar: Hafida Lahiouel

BHATIA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON REQUEST FOR
EXTENSION OF TIME TO FILE REPLY**

Counsel for applicant: Nabil Abdel-Al

Counsel for respondent: Steven Dietrich, ALU

BACKGROUND

1. On 7 May 2009, the Deputy Secretary General wrote to the applicant stating that no further action will be taken by the Secretary General on his appeal pursuant to the findings and conclusions of the Joint Appeals Board that his appeal before it was not receivable, nor successful on the merits.
2. The applicant having decided to appeal the Secretary General's decision, made an application for an extension of time until 7 September 2009 to lodge his appeal with the United Nations Dispute Tribunal (Dispute Tribunal).
3. The Dispute Tribunal granted the applicant an extension of time on 6 August 2009, for him to file his appeal on or before 8 September 2009.
4. The applicant duly complied by filing his application on 27 August 2009, which application was only served upon the respondent by the Registry on 18 September 2009, advising the respondent to file its reply by no later than 5:00 p.m., 19 October 2009.
5. On 19 October 2009, the respondent failed to file its reply. Instead, at 9:00 p.m., after close of business day, the Dispute Tribunal received a request for an extension of time until 26 October 2009 to file the respondent's reply.
6. Although the respondent's application was filed on 19 October 2009, it was only brought before me on Monday 26 October 2009, on which date the respondent had already filed a reply which was clearly out of time, before I had even considered the application for an extension of time.

ANALYSIS

7. Suspension, waiver and extension of time applications are provided for under the following provisions:

Article 8.3 of the Statute of the Dispute Tribunal (Statute), which states that:

The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases.

Article 7.5 of the Rules of Procedure (A/64/229) (Rules) which states that:

In exceptional cases, an applicant may submit a written request to the Dispute Tribunal seeking suspension, waiver or extension of the time limits referred to in article 7.1 above. Such request shall succinctly set out the exceptional circumstances that, in the view of the applicant, justify the request.

8. It is noted that the above provisions apply only to applications for a waiver or suspension of time made by an applicant, but that the following provisions are relevant in the instant case:

Article 10.1 of the Rules, which states that:

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. A respondent who has not submitted a reply within the requisite period shall not be entitled to take part in the proceedings, except with the permission of the Dispute Tribunal.

Article 36.1 of the Rules, which states that:

All matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Dispute Tribunal on the particular case, by virtue of the powers conferred on it by article 7 of its statute.

Article 35 of the Rules, which states that:

Subject to article 8.3 of the statute of the Dispute Tribunal, the President, or the judge or panel hearing a case, may shorten or extend a time limit fixed by the rules of procedure or waive any rule when the interests of justice so require.

And finally, Article 19 of the Rules, which states that:

The Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

9. It is clear from the facts in this case and Article 10.1 of the Rules, that the respondent is barred from taking part in these proceedings, except with the permission of the Dispute Tribunal. There is currently no such application for leave before me.

10. It is further noted that the principle reason advanced by the respondent in the request for an extension of time to file its reply is that it is still “in the process of finalizing its consultation with the Management of the new Office of Information and Communications Technology (OICT), formerly, Information and Technology Services Division (ITSD), Knowledge Management Service.”

11. The respondent has purported to file its reply a week late. That is not an inordinate delay. The applicant was granted an extension of a month to file his application. In his application, he raises numerous issues, some going back as far as 1998. The issues raised are important and have severe consequences as some of the relief the applicant claims dates back to January 1996. No doubt the respondent requires time to file its pleadings. I see no possible prejudice to the applicant and essentially it is a matter of fairness to both sides that the Tribunal has all relevant pleadings before it to come to a just finding in this matter.

12. Having perused the file, it is my considered view that in this particular matter, to attain a fair and expeditious disposal of the case and to do justice to the parties, it is necessary for the respondent to file a reply. Therefore I have decided to exercise my discretion pursuant to the aforesaid provisions, and to grant the respondent leave to take part in these proceedings and to file its reply out of time.

IT IS ORDERED THEREFORE THAT

- A. The respondent is hereby granted leave to take part in these proceedings;
- B. The submission filed on 26 October 2009 shall stand on record as a duly constituted reply.

(Signed)

Judge Memooda Ebrahim-Carstens

Dated this 28th day of October 2009

Entered in the Register on this 28th day of October 2009

(Signed)

Hafida Lahiouel, Registrar, New York