



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/079/
JAB/2009/041
Judgment No.: UNDT/2009/082
Date: 25 November 2009
Original: English

Before: Judge Adams
Registry: New York
Registrar: Hafida Lahiouel

KRIOUTCHKOV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

**RESPONDENT'S MOTION TO STRIKE
OUT THE APPLICANT'S SUBMISSION
OF 19 NOVEMBER 2009**

Counsel for applicant:
Kevin Browning, OSLA

Counsel for respondent:
Josianne Muc, ALU

Introduction

1. In his motion of 20 November 2009, the respondent requests the United Nations Dispute Tribunal to strike out the applicant's submission of 19 November 2009 and to order the applicant to file and serve a new submission which is relevant and responsive to the Tribunal's order of 23 October 2009. Should the Tribunal allow the applicant's submission, the respondent requests an extension of the time limit to file a response to the applicant's submission in order to obtain new instructions from his client regarding the applicant's submission.

Submissions of the parties

2. In his motion, the respondent submits that the applicant has filed a new application on the merits by his submission of 19 November even though this submission was intended to be a response to an order of the Tribunal. Pursuant to this order, the applicant was to file and serve a statement of legal issues including a list of the rules or other institutional instruments and any judgments of the United Nations Administrative Tribunal upon which he relies, a statement of facts, as well as a list of documents to be relied on and a separate list of documents required to be produced by the respondent. In his submission, which followed a template format provided by the Office of Administration of Justice for applications on the merits, the applicant instead included a summary of the facts of the case and facts relied upon, grounds for contesting the administrative decision and remedies sought. The respondent contends that the applicant in this submission raised new factual and legal issues, that he relied on new documentation and that he requested remedies different from those sought before.

3. In the applicant's response of 23 November 2009 to the respondent's motion, he submits that the respondent's requests should be rejected. He concedes that certain parts of his submission derive from the said template for applications, but contends that this was not improper since nothing in the Rules of Procedure of the Tribunal regulates the format to be used for his submission. Furthermore, the

respondent has failed to identify the specific facts and arguments to which he objects. The applicant also submits that his counsel began to represent him on 19 October 2009, and that the legal arguments in his submission of 19 November were extrapolated from facts alleged in his previous filings. Finally, the applicant submits that since the remedy requested in the applicant's Statement of Appeal is no longer available, namely that he be appointed to the vacancy at the earliest possible date (the vacancy has been filled by someone else who now has a legal right to the position), the applicant should not be prohibited from seeking reasonable alternative remedies under article 10.5 of the Statute of the Tribunal.

Discussion

4. Neither the Statute nor the Rules of Procedure of the Tribunal prescribe the form of the parties' submissions filed in accordance with an order of the Tribunal.

5. In the absence of such provisions, the matter falls under article 36 of the Rules of Procedures pursuant to which—

1. 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.

6. The respondent has not specified anything in the form of the applicant's submission that substantively breaches his obligations under the directions made in the Tribunal's order of 23 October. The use of the word "grounds" in a subheading instead of "issues" is not a significant difference. Generally, it is of no importance which template the applicant has used for structuring his submission if it otherwise complies with the order.

7. Regarding the new factual or legal contentions allegedly submitted by the applicant on 19 November, the respondent has not specifically identified any of these. It is not for the Tribunal to guess what they are.

8. Furthermore, the Tribunal is vested with significant independent authority to undertake case management under article 19 of the Rules of Procedure which reads—

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. The Tribunal is disinclined to prevent the applicant from amending his earlier submission so long as the legal rights and interests of the respondent are not impaired. The respondent has not presented any arguments in this regard and nothing in the case suggests any.

10. Accordingly, the respondent's motion to strike out the applicant's submission is dismissed.

11. If the respondent considers that to do so is necessary or desirable in its interests, time for filing its response to the applicant's submission is extended until 18 December 2009, in which event a new date for the directions hearing currently scheduled for 15 December 2009 will be notified to the parties.

(Signed)

Judge Adams

Dated this 25th day of November 2009

Entered in the Register on this 25th day of November 2009

(Signed)

Hafida Lahiouel, Registrar, New York