



UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/GVA/2017/057,
058, 059, 060, 061, 062,
063, 064 and 065
Order No.: 169 (GVA/2017)
Date: 5 September 2017
Original: English

Before: Judge Rowan Downing, President

Registry: Geneva

Registrar: René M. Vargas M.

SAMOULADA
SCHMALZ
BOZIC
STEINBACH
ANDREEVA et al.¹
ANGELOVA et al.²
CARDENAS FISCHER et al.³
ANDRES et al.⁴
ABD AL-SHAKOUR et al.⁵

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**PRESIDENT'S ORDER
ON RECUSAL AND TRANSFER OF
CASES**

Counsel for Applicants:

Robbie Leighton

Counsel for Respondent:

HRLU/UNOG, UN-Women, UNDP, UNHCR, UNEP, UNOPS

¹ 11 Applicants from UNDP

² 14 Applicants from UNHCR

³ 20 Applicants from UNEP

⁴ 21 Applicants from UNOPS

⁵ 262 Applicants from UN Secretariat

Introduction

1. On 31 August 2017, I received a letter from Judge Teresa Bravo, informing me that she had recused herself from handling nine cases⁶ due to the existence of a conflict of interest.

Background

2. On 3 August 2017, the Geneva Registry of the Dispute Tribunal received 332 applications, which were registered under the above referenced nine case numbers. The Registry assigned these cases to Judge Bravo on 24 August 2017.

3. All the 332 Applicants in the nine cases are requesting the rescission of the Organisation's decision to implement a post adjustment change in the Geneva duty station which results in a pay cut. The Applicants also seek compensation for any loss accrued prior to such rescission.

4. The applications were served on the Respondent and the replies are due by 28 September 2017. On 30 August 2017, Judge Bravo issued Orders Nos.: 157, 158, 159, 160, 161, 162, 163, 164 and 165 (GVA/2017) recusing herself from the cases.

5. In her recusal Order, Judge Bravo recalled that though they are not staff members, judges serving at the Dispute Tribunal are compensated in the same manner as staff members, that is, with salaries and allowances equivalent to the D-2 level. Consequently, her conditions of service as a Judge were not independent of the United Nations staff salary system and hence are subject to the same modifications as those affecting staff members based in the Geneva duty station.

⁶ UNDT/GVA/2017/057 Samoulada, UNDT/GVA/2017/058 Schmalz, UNDT/GVA/2017/059 Bozic, UNDT/GVA/2017/060 Steinbach, UNDT/GVA/2017/061 Andreeva et al, UNDT/GVA/2017/062 Angelova et al, UNDT/GVA/2017/063 Cardenas Fischer et al, UNDT/GVA/2017/064 Andres et al, and UNDT/GVA/2017/065 Abd Al-Shakour et al

6. Judge Bravo further acknowledged to the parties that she was a recipient of a monthly post-adjustment sum which will be affected by the Organisation's decision that the Applicants were challenging before the Tribunal. As a result, she recused herself from the cases due to a situation of conflict of interest and pursuant to art 28(1) of the Dispute Tribunal's Rules of Procedure, informed the President of the Dispute Tribunal thereof.

Consideration

7. I find that the grounds for recusal provided by Judge Bravo are substantial and I accept her recusal.

8. For the same reasons proffered by my colleague, Judge Bravo, I cannot handle the cases in relation to the reduction of post-adjustment at the Geneva duty station. A clear conflict of interest exists precluding me from considering these cases. I therefore recuse myself from their adjudication. The question of the application of the doctrine of necessity does not arise in these cases, as there are judges sitting on the Dispute Tribunal not affected by the changes to the post adjustment in Geneva.

9. The above notwithstanding, as the President of the Dispute Tribunal, I have an obligation to decide the appropriate venue for the cases of the Applicants' to be determined, given that they cannot be determined at the Geneva Registry of the Dispute Tribunal.

10. The Dispute Tribunal has two other Registries with judges sitting full-time in Nairobi and New York, therefore either of the two Registries can handle these cases.

11. Article 6 of the Dispute Tribunal's Rules of Procedure, provides that:

1. An application shall be filed at a Registry of the Dispute Tribunal, taking into account geographical proximity and any other relevant material considerations.

2. The Dispute Tribunal shall assign cases to the appropriate Registry. A party may apply for a change of venue.

12. The Dispute Tribunal already has geographical criteria in place for distributing cases among the three Registries.

13. All the 332 Applicants and their counsel are physically based in Geneva, Switzerland.

14. Considering that the time difference between Geneva and New York is six hours, while the time difference between Geneva and Nairobi is only one hour, and taking into account the geographical proximity of the Applicants, it is practical to transfer the cases to the Nairobi Registry.

IT IS ORDERED THAT:

15. The nine cases that are subject of this Order are transferred to the United Nations Dispute Tribunal in Nairobi with immediate effect.

16. The Geneva Registry is directed to effect the necessary arrangements for the transfer of the files to the Nairobi Registry.

(Signed)

Judge Rowan Downing, President

Dated this 5th day of September 2017

Entered in the Register on this 5th day of September 2017

(Signed)

René M. Vargas M., Registrar, Geneva