



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2010/052

Order No.: 159 (NBI/2011)

Date: 20 December 2011

Original: English

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**Before:** Judge Vinod Boolell

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

STOYKOV

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON CONFIDENTIALITY OF  
DOCUMENTS**

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**Counsel for Applicant:**

Miles Hastie, OSLA

**Counsel for Respondent:**

Steven Dietrich, Nairobi Appeals Unit, ALS/OHRM

Elizabeth Gall, Nairobi Appeals Unit, ALS/OHRM

## **Introduction**

1. The Applicant joined the United Nations Economic Commission for Africa (UNECA) in February 1995 as Chief, Building and Commercial Services Unit, Administration and Conference Services Division, at the P-4 level. He subsequently served on a series of contracts with ECA until November 1997, when he received a fixed-term appointment as Chief, Building Management and Commercial Services Unit (known as the Facilities Management Section (FMS)). In June 2004, the Applicant was promoted to the P-5 level.

2. On 5 February 2010, the Applicant was formally charged with misconduct (“the charge letter”) based on the findings and conclusions in the Procurement Task Force (PTF) Report No. PTF-R008/08 “Report on Procurement Operations at the Economic Commission for Africa (ECA) Staff Members” dated 19 December 2008 together with supporting documentation.

3. The Office of Human Resources Management (OHRM) informed the Applicant in the charge letter that “the cumulative effect of the matters set out above indicates that you have created a conflict of interest and compromised your impartiality and independence, and threatened the impartiality of the United Nations Procurement Service and the reputation of the Organization.” The Applicant was consequently imposed the disciplinary measure of dismissal from service.

## **Facts**

4. On 5 May 2010, the Applicant filed his Application with the United Nations Dispute Tribunal (UNDT) which was served on the Respondent on the same day. The Respondent’s Reply was filed on 1 June 2010.

5. A substantive hearing was held in Addis Ababa (Ethiopia) from 21 to 25 March 2011. On 11 May 2011, an expert witness provided oral evidence via video-conference.

6. On 23 June 2011, the Tribunal issued Order No. 63 (NBI/2011) stating that after reviewing the case records, further documentation was required from the Respondent. The Respondent was requested, as per art. 9 of the UNDT Statute, to provide information about the allegations at UNECA, the persons and/or organizations or department targeted and the outcome of any investigation taken.

7. On 22 July 2011, the Respondent submitted the documentation requested in Order No. 63 (NBI/2011). The Respondent requested the Tribunal to grant leave to: “(i) file and serve a redacted version of Annex R/2 on the Applicant; and (ii) file and serve additional submissions on the production of the documents in Annex R/3 to the Applicant and measures to preserve the confidentiality of the documents.”

8. On 26 July 2011 the Applicant filed a “Submission concerning disclosure of documents produced pursuant to Order No. 063”, seeking the right to “(a) request that inappropriate redactions be lifted; or (b) to seek advance leave from the Tribunal (which motion would be brought on notice to the Respondent), to disclose ‘counsel’s-eyes-only’ information to the Applicant, should it become necessary to receive proper instructions.”

### **Consideration**

9. It must be noted at the outset that Annex R/1 was not submitted on an *ex parte* basis but nevertheless shall be subject to confidentiality measures. Annexes R/2 and R/3 were submitted by the Respondent on an *ex parte* basis. In respect of Annex R/2, the Respondent stated that he “does not oppose an order for production of annex R/2 to the Applicant...subject to the imposition of sufficient measures to protect the confidential information contained in annex R/2...”

10. In terms of Annex R/3, the Respondent requested for leave to file further submissions regarding (a) the production of documents in annex R/3 and (b) the “measures to preserve the confidentiality of the documents in annex R/3...should production to the Applicant be ordered by the Dispute Tribunal.” Annex R/3 contains information regarding allegation of misconduct by staff members in UNECA and others including source of information, records of interview and

investigation reports. Annex R/3 contains case materials for the cases listed on the schedule in Annex R/2.

11. Article 18.4 of the Rules of Procedure of the Dispute Tribunal states that: “The Dispute tribunal may, at the request of either party, impose measures to preserve the confidentiality of evidence, where warranted by security interests or other exceptional circumstances.” When making such a determination, the Tribunal must “weigh the competing interest of the parties, the exigencies of the case, and notions of due process and fair trial.”<sup>1</sup>

12. On 26 July 2011, the Applicant in this case conceded to the disclosure of R/2 and R/3 on a “counsel’s eyes only” basis in his “Submission concerning disclosure of documents produced pursuant to Order No. 063”.

13. The disclosure of confidential information on a “Counsel’s eyes-only” basis is a form of limited disclosure preventing the Applicant in this case from viewing the sensitive information while nevertheless allowing the Applicant’s Counsel to litigate on the basis of that information.

14. The Tribunal acknowledges that the annexes in question (R/2 and R/3) contain sensitive information with regard to OIOS investigations of other staff members in UNECA, including the Applicant, which would require the imposition of the confidentiality measure.

15. In light of the foregoing:

**IT IS ORDERED THAT:**

16. Annex R/1, Annex R/2 and Annex R/3 shall be disclosed to Counsel for the Applicant.

17. This disclosure is granted subject to the strict condition of **that Counsel for the Applicant, shall in no circumstances, disclose or disseminate any information contained therein to any third party including the Applicant.**

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<sup>1</sup> UNDT Judgment No. UNDT/2011/069 *Morin* at para 33, page 16.

18. The Tribunal notes that the Applicant's Counsel filed his closing submissions on 5 August 2011 as agreed by the parties. But he did indicate in a Motion filed on 19 September 2011, that he might consider filing additional submissions on receipt of the documents subject to confidentiality.

19. Should Counsel for the Applicant feel the need to make use of any of the materials contained in the Annexes for the purposes of obtaining further instructions from the Applicant or to supplement his closing submissions that have already been filed, he should seek further direction from the Tribunal.

*(Signed)*

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Judge Vinod Boolell

Dated this 20<sup>th</sup> day of December 2011

Entered in the Register on this 20<sup>th</sup> day of December 2011

*(Signed)*

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Jean-Pelé Fomété, Registrar, Nairobi