



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2012/025

Order No.: 082 (NBI/2012)

Date: 14 June 2012

Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

KARSEBOOM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

CASE MANAGEMENT ORDER

Counsel for Applicant:
H. Esther Shamash, OSLA

Counsel for Respondent:
Steven Dietrich, ALS/OHRM, UN Secretariat
Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant filed an Application with the United Nations Dispute Tribunal (UNDT) on 27 April 2012 which was served upon the Respondent on 30 April 2012. In accordance with art. 10 of the Rules of Procedure of the UNDT, the deadline for the Respondent's Reply was 30 May 2012.

2. On 23 May 2012, the Respondent filed an Application for Extension of Time to File Reply in which he states that he "has not received complete instructions to enable him to prepare his Reply to the Application."¹

3. On 29 May 2012, the Respondent filed an Addendum to the Motion for Extension of Time to File the Reply, stating that in addition to the relief sought in the original motion, the Respondent also seeks an alternative relief of waiver of time limits to file his Reply in accordance with article 35 of the Tribunal's Rules of Procedure.

4. On 5 June 2012 the Tribunal issued Order 076 (NBI/2012) by which it granted the Respondent's motion for waiver of time limits and extension of time and directed the Respondent to file his Reply by Friday 15 June 2012.

5. On 11 June 2012 the Respondent filed a *Motion for an order directing the Medical Services Division to release the Applicant's Medical information to the Administrative Law Section for the purposes of preparing a Reply and variation of Order No 076 (NBI/2012)*. In this motion, the Respondent requests the Tribunal to issue the following orders under articles 18(2), 19(1) and 35 of the Rules of Procedure:

- a. Find that the Applicant has waived the confidentiality of his medical records by placing his medical condition in issue through his challenge to the ABCC's determination as to the nature of his injuries;

¹ Respondent's Motion for Extension of Time to File Reply at 2, para. 2.

- b. Direct the Medial Services Division (MSD) to release all necessary medical information relating to the Applicant to the Administrative Law Section (ALS) for the purposes of defending the Application; and
- c. Vary Order No. 076 (NBI/2012) by extending the time limit for the Respondent to file his Reply within 10 days of the date of the release of the medical information by MSD to ALS.

6. On 12 June 2012 the Tribunal invited the parties to a status conference which took place on 13 June 2012 and was attended by the Applicant and his counsel (by teleconference) and counsel for the Respondent (present in Nairobi).

THE CASE MANAGEMENT HEARING

7. During the case management hearing, the Tribunal sought clarifications and/or preliminary from the parties on some aspects of the Respondent's Motion dated 11 June 2012 and their possible impact on the management of the case. The following transpires from the discussions that unfolded:

- a. That Counsel for the Respondent had not and will not receive medical information relating to the Applicant from the MSD of the Secretariat without the written consent of the Applicant;
- b. That the Applicant had received only recently a copy of his medical records from MSD. The translation from Spanish into English of the said records should be completed within eight days;
- c. That it is upon review of the translated version of the medical records of her client that counsel will be in a position to advise the Applicant on the issue of the waiver of the confidentiality of his medical records;

- d. That upon review of the English translation of her client's medical records she may seek leave from the Tribunal to update her client's initial application;
- e. That counsel for the Applicant has no objection in principle to the Respondent's request for further waiver of the time limit and extension of time for the Respondent to file his Reply;
- f. That a new counsel will have to be assigned to the Applicant as the current counsel is due to leave the Office of Staff Legal Assistance within two weeks. As a consequence, the new counsel may require additional time to acquaint herself with the case before taking over.
- g. That all parties agree to the need:
 - i. for the proceedings in this case to adjourn pending the translation of the medical records of the Applicant from Spanish into English and their subsequent review by counsel for the Applicant;
 - ii. For all deadlines in this matter to be suspended;
 - iii. For another case management hearing to be held on Thursday 28 June 2012 to take stock of developments in the case and further directions.

CONSIDERATION

8. Article 19 of the Rules provides 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. Article 35 of the Rules provides that "[s]ubject 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".

10. From the facts that have been canvassed by both parties this matter does raise some urgent procedural difficulties that need to be addressed and resolved in a manner that is conducive to a proper administration of justice towards both parties.

11. The Tribunal is conscious of the fact that the Respondent was ordered to file his Reply by 15 June 2012. It is obvious that the Respondent will not be in a position to meet this deadline as he is not in possession of the medical records which he argues are essential to his case. Whether the Respondent will ever be allowed access to these records in view of the confidentiality surrounding medical data is a matter that is still pending.

12. On the other hand, the Applicant has also indicated that at the time his Application was filed he was not in possession of his medical records. In view of this he may move the Tribunal to amend his pleadings and if such a motion is granted the Respondent may require more time to file his Reply.

13. In view of that situation,

IT IS ORDERED THAT:

14. Order 076 (NBI/2012) dated 5 June 2012 that directed the Respondent to file his Reply by 15 June 2012 is suspended;

15. All deadlines in regard of filing of pleadings are also suspended until the date of the next case management hearing which has been fixed to 28 June 2012 at 16:00, Nairobi Time (UTC+3).

(Signed)

Judge Vinod Boolell

Dated this 14th day of June 2012

Entered in the Register on this 14th day of June 2012

(Signed)

Jean-Pelé Fomété, Registrar, Nairobi