



JUDGE KAMALJIT SINGH GAREWAL , Presiding.

Synopsis

1. On account of a technical defect in sending the e-mail notifying the counsel representing the Secretary-General before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) about the date of the trial, the Secretary-General was denied an opportunity of a hearing. The UNDT Judgment is set aside on this preliminary ground, without going into the merits of the case. The case is remanded back to the UNDT for a re-trial and an expeditious decision according to law. The parties are directed to appear, either personally or through counsel, before the Registrar, UNDT, Nairobi, on Monday, 19 July 2010, for further proceedings.

Facts and Procedure

2. Zhengfang Xu (Xu) is a staff member of the United Nations Office at Nairobi. While holding the post of Chinese Reviser at the P-4 level, Xu applied for the post of Chinese Reviser at the P-4 level in New York (Vacancy Announcement No. 08-CON-DGACM-418629-R-New York). Xu was eligible to be considered for the post at the 15-day mark with another candidate, who subsequently withdrew his name from consideration. Xu was not considered to be a suitable candidate at this stage, and was later included in the list of candidates eligible at the 30-day mark. Xu and eight other candidates were interviewed. The decision was taken to select another candidate for the post.

3. By letter dated 12 February 2009, Xu requested an administrative review of the decision. On 5 May 2009, and following confirmation of the contested decision, Xu filed an appeal with the Nairobi Joint Appeals Board (JAB). The appeal was transferred to the Dispute Tribunal following the introduction of the new system of administration of justice on 1 July 2009.

4. On 13 October 2009, the Secretary-General filed a motion for an extension of the time limit to file and serve a reply. On 23 October 2009, the UNDT granted the motion. A status conference was held on 4 November 2009. However counsel for the Secretary-General did not attend due to a miscalculation of the time difference between New York and

the effectiveness of service was not contested. It is contended that the technical error in the e-mails sent by the Registry meant that the guarantee of notification of a hearing, as provided by Article 16(3) of the rules of pr

present testimony at the hearing was “an after-thought to construct an argument to validate his request for re-trial”.

Considerations

11. Has man truly mastered the machine and its grammar or is the machine capable of producing technical howlers, with altogether unintended results, by omitting to put a punctuation mark at the proper place.

12. Xu's case was being heard by the UNDTat Nairobi. After pleadings had been completed the stage was set for trial and a status conference was scheduled for 4 November 2009. When the status conference was held on the specified date, the counsel for the Secretary-General did not attend due to a miscalculation of the time difference between Nairobi and New York. This led to a Legal Officer in the Registry of the UNDT sending an e-mail to all concerned on 19 November 2009, providing notification that the tentative hearing date was Friday, 18 December 2009. He further informed that the venue and time of the hearing would be confirmed in the formal hearing notice. This was presumably done by the e-mail of 2 December, which attached the hearing notice.

13. We have seen copies of the e-mails of 19 November and 2 December. Both e-mails

Judgment

18. The appeal is allowed on the ground that the Secretary-General's counsel was not served with the hearing notice for 18 December 2009 and therefore could not present his case. The matter is remanded back to the UNDT to be heard afresh. The UNDT shall endeavor to dispose of the case within three months from the date of receipt of the written Judgment. The parties are directed to appear, either personally or through counsel, before Registrar, UNDT, Nairobi, on Monday, 19 July 2010, for further proceedings.

Dated this 1st day of July 2010 in New York, United States.

Original: English

(Signed)

Judge Garewal, Presiding

(Signed)

Judge Boyko

(Signed)

Judge Simón

Entered in the Register on this 16th day of August 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar
United Nations Appeals Tribunal