



---

Case No.: UNDT/NBI/2011/078

Order No.: 012 (NBI/2012)

Date: 20 January 2012

## **Introduction**

1. The Applicant, a former staff member of the United Nations Office at Nairobi (“UNON”), filed an Application on 8 December 2011 in which he contests a decision denying him payment of a non-removal allowance in lieu of removal costs in respect to his separation from service on retirement.

2. The Application was transmitted to the Respondent on 13 December 2011 with a deadline of 13 January 2012 by which to file a Reply. The Application was transmitted using the eFiling portal of the Tribunal’s Court Case Management System (“CCMS”).

3. Counsel for the Respondent had previously sought clarification, on 24 October 2010, on the proper means of service of submissions to the Dispute Tribunal. On 2 November 2011, Counsel was advised that the Tribunal now requires parties to utilize the eFiling portal.

4. On 16 December 2011, Counsel for the Respondent informed the Tribunal that she had not received the Application. On 20 December 2011, the Tribunal again advised Counsel for the Respondent that she was required to create an eFiling profile to access the case records as had been done by other Counsel for the Respondent in all of the Organization’s offices around the world.

5. On 20 December 2011, Counsel for the Respondent informed the Tribunal that she had elected not to create an eFiling account owing to certain noted limitations with that system and the fact that eFiling is not a compulsory

7. On 13 January 2012, Counsel for the Respondent filed an “Application for Declaratory Order in respect of Articles 8.3, 8.4 and 10.1 of the UNDT Rules of Procedure”. In the said Application, the Respondent seeks a declaratory order of the Tribunal indicating the responsibilities and rights of the parties in respect of the provisions of arts. 8(3), 8(4) and 10(1) of the UNDT Rules of Procedure regarding the acceptable means of filing and receiving submissions with the Tribunal through its Registry offices. The Respondent’s Counsel submitted that



than the eFiling portal is “*tantamount to the Registry amending the Tribunal’s Rules of Procedure*”.

13. Counsel for the Respondent appears to have misunderstood the meaning of the afore-mentioned provisions, the relevant parts of which read as follows:

**Article 8**

**Applications**

[...]

3. The signed original application form and the annexes thereto shall be submitted together. The documents may be transmitted electronically.

[...]

**Article 10**

**Reply**

The respondent’s reply shall be submitted within 30 calendar days of the date of receipt of the application by the respondent. The signed original reply and the annexes thereto shall be submitted together. The document may be transmitted electronically...

14. These Rules make it clear that submissions to the Tribunal may be transmitted electronically. In other words, any party may submit or file documents with the Tribunal electronically (as opposed to in hard copy). However, no party can dictate to the Tribunal the mode by which the Tribunal may transmit documents. Article 8(4) of the Tribunal’s Rules of Procedure requires the Registrar to transmit a copy of an application to the Respondent and to any other party a judge considers appropriate.

15. Article 8(4) gives the Registrar the discretion to determine how to transmit an application. In exercising that discretion and to ensure compliance with the Secretary-General’s efforts to improve the overall functioning of the formal system of administration of justice, the Registrar has in this case transmitted the Application using the eFiling portal. It is not for Counsel for the Respondent or

any party for that matter to dictate to the Tribunal how this transmission is to be done.

16. The Respondent in his capacity as the Chief Administrative Officer of the Organization has pioneered, supported and encouraged efforts to increase the

Entered in the Register on this 20<sup>th</sup> day of January 2012

*(Signed)*