



UNITED NATIONS DISPUTE TRIBUNAL

Date: 22 October 2009

Original: English

**Before:** Judge Vinod Boolell

**Registry:**

**Registrar:**

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

JUDGMENT ON MEDIATION

**Counsel for Applicant:**  
Self Represented

**Counsel for Respondent:**  
Joerg Weich, HRMS/UNON

No change in the format of this judgment has been modified for publication purposes in accordance with Article

## **1. CASE BACKGROUND**

1.1 The Applicant, a staff member of the United Nations Human Settlements Programme (UN-Habitat), was initially based in Islamabad, Pakistan. On 10 June 2008, the Human Resources Management



subsequently filed a Statement of Appeal against the decision with the Nairobi Joint Appeals Board on 20 April 2009.

1.6 The Respondent's Representative filed his Reply to the Statement of Appeal on 15 June 2009. The Applicant and the Respondent's Representative ("the Parties"), were informed that the appeal had been transferred to the Nairobi UNDT in accordance with ST/SGB/2009/11 – *Transitional Measures Related to the Introduction of the New System of Administration of Justice* on 8 July 2009 and 30 July 2009 respectively.

1.7 On 9 October 2009, the Registrar of the Nairobi UNDT informed the Parties that the Judge responsible for the case had perused the documents on record and had formed the opinion that the documentary evidence submitted was adequate for the issuance of a Judgment without the necessity of holding a hearing in accordance with Article 16(1) of the UNDT Rules of Procedure ("the Rules"). The Applicant and the Respondent's Representative indicated that they had no objection to this proposed course of action on 13 October 2009 and on 12 October 2009 respectively.

1.8 On 15 October 2009, the Registrar of the Nairobi UNDT informed the Parties that the Judge responsible for the case was proposing, in accordance with Article 15(1) of the UNDT Rules, to refer the case to the Mediation Division in the Ombudsman's Office for mediation and to suspend further proceedings in the case pending the outcome of the mediation attempt. The Parties were also requested to inform the Tribunal whether they consented to the proposal pursuant to Article 15(2) of the Rules. The Applicant and the Respondent's Representative indicated that they had no objection to this proposed course of action on 16 October 2009 and on 19 October 2009 respectively.

## **2. The Applicable Law**

### **2.1 The proposal of the Tribunal for Mediation**

2.1.2 The relevant provisions of the Rules provide:

*Article 15.1: At any time during the proceedings, including at the hearing, the Dispute Tribunal may propose to the parties that the case be referred for mediation and suspend the proceedings.*

*Article 15.2: Where the judge proposes and the parties consent to mediation, the Dispute Tribunal shall send the case to the Mediation Division in the Office of the Ombudsman for consideration.*

### **2.2 The philosophy behind the Mediation Procedure**

2.2.1 Whilst,

*“[r]eaffirming the decision in paragraph 4 of its resolution 61/261 to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike<sup>1</sup> 18( )TJ-23-1.ormtionacoi-1dtuelyuation, 10 Tc*

*20. Requests the Secretary-General to consider and make proposals at its sixty-fifth session for providing incentives for employees seeking dispute resolution to submit disputes to mediation under the auspices of the Office of the Ombudsman;*

*21. Recalls its request to the Secretary-General, containe*

2.3.2 The scope and purpose of the Staff Regulations are set out as follows<sup>3</sup>:



the fact that a case must be determined within a reasonable delay so that parties, that is, both a staff member and the Organization, should be informed of the outcome of the case as soon as is reasonable in the interests of the staff member and the Organization, as well as in keeping with international norms on fair proceedings.

### **3 Time limit and outcome of the Mediation**

3.1 Under Article 15.6 of the Rules, it is the responsibility of the Mediation Division to apprise the Tribunal of the outcome of the mediation in a timely manner. What constitutes “timely manner”?

3.2 In cases where the mediation is *completed* within the normal three months, it is expected that the Tribunal would be informed of the outcome without delay.

3.3 Where the Mediation Division, after consultation with the parties, requests for additional time, the Tribunal may set a time-limit within which it wishes to be appraised of the status or outcome of the process.

### **4. CONCLUSIONS**

4.1 On the one hand, the Respondent has admitted that an error had been made when the initial offer of appointment was forwarded to the Applicant. On the other hand, the Applicant signed the formal letter of appointment on the basis of the initial offer that listed the entitlements as the formal letter did not embody these entitlements. Given these circumstances the Tribunal considers that the case is one that is eminently suitable for mediation. This process will give an opportunity to the Parties to reach a satisfactory solution in what appears to be a case of error and misunderstanding.

4.2 The Tribunal therefore refers the present matter to the Mediation Division in the

4.4 The outcome of the mediation should, subject to what is prescribed at paragraph 4.5 below, be forwarded to the Tribunal within a reasonable delay after it is completed within three months or before.

4.5 In case the Mediation Division, after consultation with the Parties, requires more time to complete the mediation process, it will notify the Registry indicating the length of time required to complete the process as provided by Article 15.5 of the Rules, based on which notification the Tribunal will make the appropriate order.

4.6 The Mediation Division is also directed to inform the Tribunal of the outcome of the mediation in a timely manner pursuant to Article 15.6 of the Rules. In case additional time is required, the Tribunal will decide on the time limit that should be imparted for the completion of the mediation process. The time limit so allowed would also include the period within which the Tribunal should be informed of the outcome of the mediation.

4.7 The present proceedings are accordingly suspended pending the mediation process as prescribed by Article 15.4 of the Rules.

*(Signed)*

Judge Vinod Boolell

Dated this 22<sup>nd</sup> day of October 2009

Entered in the Register on this 22<sup>nd</sup> day of October 2009

*(Signed)*

Jean-Pelé Fomété, Registrar, UNDT, Nairobi