



Before: Judge Eleanor Donaldson-Honeywell
Registry: Geneva
Registrar: René M. Vargas M.

ISAKSSON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:
Robbie Leighton, OSLA

Counsel for Respondent:
Rosangela Adamo and Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant serves on a continuing appointment at the United Nations Interim Administration Mission in Kosovo (“UNMIK”), as a Security Officer.
2. On 18 February 2019, he filed an application before the United Nations Dispute Tribunal. On 26 February 2019, the Respondent moved the court to strike out the application.
3. On 4 March 2019, the Tribunal issued Order No. 13 (GVA/2019) directing the Applicant to file an amended application.
4. On 18 March 2019, the Applicant filed an amended application. The Applicant seeks to challenge the conduct and findings of the investigation, under the provisions of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority), and the managerial measures imposed on him as a result of those findings.
5. The Respondent filed his reply on 17 April 2019. It is the Respondent’s case that the impugned decision is legal, reasonable and procedurally fair, and that the managerial measures imposed were rational and proportionate.
6. On 2 February 2021, the Tribunal issued Order No. 16 (GVA/2021) setting this matter down for a case management discussion (“CMD”).
7. The CMD took place, as scheduled, on 10 February 2021. The Applicant was present and represented by Counsel, as was Counsel acting on behalf of the Respondent.

The Discussion

8. The dispute between the parties was summarised by the Tribunal as follows:
 - a. Whether the outcome of the investigation into the Applicant’s conduct resulted in a finding of harassment;

- b. Whether (if so) that finding was justified;
- c. Whatever the outcome of the fact-finding exercise, whether the investigation and the resultant actions by the Respondent were procedurally proper; and
- d. Whether the Applicant is entitled to rescission of the finding of harassment and the managerial measure imposed as a result.

9. Counsel for both parties agreed with the issues, as described and characterised by the Tribunal.

10. The Respondent went on to reiterate the point made in the reply that the contested decision did not entail a finding of harassment against the Applicant. According to Counsel for the Respondent, this was not a disciplinary matter and the measures imposed on the Applicant were managerial measures because the facts did not justify disciplinary proceedings. This, the Respondent submitted, was also the reason the investigation report was not disclosed to the Applicant. The Respondent's Counsel underscored concerns pertaining to the protection of witnesses in an investigative process which, it was argued, prevents the Respondent from disclosing investigation reports, when the facts at issue do not give rise to a disciplinary process.

11. The Applicant maintains that the decision-maker in this case expressly, by written communication on 17 August 2018, characterised the Applicant's conduct as harassment, which is tantamount to misconduct within the Organization's regulatory framework. In those circumstances, the Applicant ought to be permitted access to the investigative report to properly instruct Counsel in pursuing the remedies sought herein. The authorities cited by Counsel in support of this submission were *Adorna* UNDT-2010-205 and *Bertucci* 2011-UNAT-121.

12. The Tribunal strongly encouraged the parties to engage in settlement discussions.

13. In the event that settlement discussions do not succeed, the Tribunal will decide this matter on the basis of the parties' written submissions. Neither party objected to this proposition.

Considerations and Order

14. Having heard the parties' submissions, the Tribunal makes the following **ORDERS**:

- a. The parties will engage in *inter partes* discussions towards having this matter resolved, and jointly advise the Tribunal on the likelihood of settlement by **Friday, 26 February 2021**;
- b. The Respondent will disclose the investigation report at issue by **Monday, 2 March 2021**;
- c. The report will be disclosed **under seal**. The Applicant is prohibited from disseminating or sharing the report or parts of its contents with anyone; and
- d. In the event that settlement discussions are unsuccessful, the Applicant will file his closing submissions by **Friday, 12 March 2021**.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 11th day of February 2021

Entered in the Register on this 11th day of February 2021

(Signed)

René M. Vargas M., Registrar, Geneva