



Before: Judge Alexander W. Hunter, Jr.

Registry: Geneva

Registrar: René M. Vargas M.

BANAJ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Jérôme Blanchard, LPAS, UNOG

Introduction

1. By application filed on 8 January 2021, the Applicant, a staff member of the United Nations Office on Drugs and Crime (“UNODC”), contests the decision to close her complaint of prohibited conduct under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) with managerial action pursuant to sec. 5.18(b) of ST/SGB/2008/5, with respect to Mr. S., and with no further action pursuant to sec. 5.18(a), with respect to Ms. K..
2. The application was served on the Respondent who submitted his reply on 10 February 2021 with the following annexes filed on an *ex parte* basis:
 - a. Annex 1: The Referral by the Investigations Division of the Office of Internal Oversight Services to UNODC dated 16 October 2018;
 - b. Annex 5: Investigation Report dated 28 August 2019;
 - c. Annex 6: Additional information from the investigation panel dated 18 December 2019;
 - d. Annex 8: Internal Office Memorandum dated 29 April 2020 from the responsible official to Mr. S. concerning closure of the matter in accordance with sec. 5.18(b) of ST/SGB/2008/5, and sec. 7.5(b) of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) and a request for comment for a reprimand; and
 - e. Annex 9: Internal Office Memorandum dated 29 April 2020 from the responsible official to Ms. K. concerning closure of the matter pursuant to sec. 5.18(a) of ST/SGB/2008/5 and sec. 7.4 of ST/AI/2017/1 with no further action.

Consideration

3. Having reviewed the annexes filed *ex parte*, the Tribunal concludes that they are relevant for the Applicant’s case.

4. The Tribunal recalls that art. 18.4 of the Tribunal's Rules of Procedure provides it with the power to "impose measures to preserve the confidentiality of evidence, where warranted by security interests or other exceptional circumstances".

5. Regarding the right to confidentiality of evidence, the Appeals Tribunal ruled in *Bertucci* 2011-UNAT-121 (see paras. 46 to 48) as follows:

46. [...] this Tribunal agrees with the International Labour Organization Administrative Tribunal (ILOAT) that "it is for the party making [the] claim [of confidentiality] to establish the grounds upon which the claim is based" (Judgment No. 2315 (2004), para. 28) and that "the staff member must, as a general rule, have access to all evidence on which the authority bases (or intends to base) its decision against him. Under normal circumstances, such evidence cannot be withheld on the grounds of confidentiality" (Judgment No. 2229 (2003), para. 3 (b)).

47. The documents relating to the process that led to the contested administrative decision are part of the case file. They must therefore, in principle, come under the Tribunal's control, unless they are covered by a right to confidentiality by virtue of the internal law of the United Nations.

48. The exceptions to this principle, if they exist, must be interpreted strictly. In its resolution 63/253, the General Assembly chose to establish a new administration of justice system that was "transparent" and "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". This is an overriding objective that prevails over claims of confidentiality that are not sufficiently specific and justified.

6. In accordance with the above-mentioned principles, and for the sake of fairness and transparency, the Tribunal finds it appropriate to disclose these *ex parte* documents.

7. Considering that the aforementioned documents may contain information concerning third persons and/or are internal communications, the Tribunal will instruct the Respondent to redact them to protect all information concerning individuals other than the Applicant and to refile them on an under seal basis.

8. Upon receipt of the Respondent's filing, the Applicant will be given an opportunity to submit a rejoinder.

Conclusion

9. In view of the foregoing, it is ORDERED THAT:

a. Pursuant to para. 7 above, the Respondent shall redact all annexes to his reply in Case No. UNDT/GVA/2021/002 and refile the redacted documents on an under seal basis by **Friday, 21 January 2022**; and

b. By **Monday, 7 February 2022**, the Applicant may file a rejoinder.

10. The Applicant shall not disclose, use, show, convey, disseminate, copy, reproduce or in any way communicate without the Tribunal's prior authorization the redacted annexes to the Respondent's reply shared with her, except for the filing of an appeal with the Appeals Tribunal.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 18th day of January 2022

Entered in the Register on this 18th day of January 2022

(Signed)

René M. Vargas M., Registrar, Geneva