



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

DUPARC

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON
CASE MANAGEMENT**

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Jérôme Blanchard, LPAS, UNOG

Introduction

1. By application filed on 22 July 2019, the Applicant, a staff member of the Security and Safety Service (“SSS”), United Nations Office at Geneva (“UNOG”), contests the decision of the then Director-General, UNOG, to close his complaint of prohibited conduct under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) against the Chief, SSS, UNOG, with managerial action pursuant to sec. 5.18(b) of ST/SGB/2008/5.
2. On 19 August 2019, the Respondent submitted his reply with annexes 3 and 5 filed on an *ex parte* basis.
3. Following a suspension of proceedings and several case management Orders from this Tribunal related *inter alia* to the disclosure of the respective investigation report, the Applicant filed a rejoinder on 18 March 2022 in response to Order No. 76 (GVA/2021).
4. By Order No. 44 (GVA/2022) of 23 March 2022, the Tribunal instructed the Respondent to file his comments on the Applicant’s rejoinder by 4 April 2022.
5. By Order No. 47 (GVA/2022) of 28 March 2022, the Tribunal convoked the parties to a case management discussion (“CMD”).
6. Further to a request for an extension of time, the Respondent filed his comments on the Applicant’s rejoinder on 8 April 2022.
7. The CMD took place, as scheduled, on 12 April 2022 with Counsel for each party and the Applicant present.

Consideration

Inter partes settlement

8. Having regard to the circumstances of the case, the Presiding Judge began by asking the parties to consider the prospect of *inter partes* settlement of the matter at issue.

9. Both parties considered it difficult to amicably settle the matter given the nature of the case and the Applicant's desire to refer it for disciplinary action.

10. While it recognized potential difficulties in settling the matter at issue, the Tribunal encouraged the parties to explore the possibility of having the dispute between them resolved without recourse to further litigation.

No need for an oral hearing

11. Noting that in cases of harassment and abuse of authority it is not vested with the authority to conduct a fresh investigation into the initial complaint (see *Messinger* 2011 UNAT 123, para. 27), and considering the voluminous written record, the Tribunal is of the view that an oral hearing is not necessary in this case.

12. At the CMD, both parties agreed that the case could be determined on the written pleadings without holding a hearing on the merits.

Production of documents

13. When perusing the case file, the Tribunal found that some relevant information is missing, which was confirmed by the parties during the CMD.

14. The Tribunal recalls that art. 9.1 of its Statute provides that it "may order production of documents or such other evidence as it deems necessary". Furthermore, art. 18.2 of the Tribunal's Rules of Procedure stipulates that:

The Dispute Tribunal may order the production of evidence for either party at any time and may require any person to disclose any document or provide any information that appears to the Dispute Tribunal to be necessary for a fair and expeditious disposal of the proceedings.

15. Accordingly, at the CMD, after hearing the views of the parties, the Tribunal ordered the Respondent to produce the following documents:

- a. Documentary evidence related to the Administration's 2015 investigation into the irregularities in the recruitment process TJO 14/120;
- b. Documentary evidence in relation to the Applicant's e-performance document 2015-2016; and

c. Documentary evidence related to the process regarding recruitment in G-4 selections.

16. The Tribunal further invited the Respondent to submit any other relevant documentary evidence.

17. During the CMD, the Respondent's Counsel expressed his wish to file certain documentary evidence on an *ex parte* basis. The Tribunal will accept such filings and for the sake of fairness and transparency, it will disclose to the Applicant any *ex parte* documents to be filed by the Respondent should it conclude that they are relevant for his case.

18. Upon the ruling of and instruction from the Presiding Judge on the *ex parte* documents to be filed by the Respondent, the Geneva Registry will make them available to the Applicant, who will be given an opportunity to submit his comments, if any.

Closing submissions

19. Upon receipt of the Applicant's above-mentioned comments, if any, the parties will proceed to file their respective closing submission.

20. During the CMD, the Tribunal required the Applicant to clarify in his closing submission *inter alia* what role, if any, the subject of the investigation had played in certain alleged misconduct and how the alleged procedural irregularities would impact the outcome of the investigation.

21. Pursuant to art. 19 of the Tribunal's Rules of Procedure,

IT IS ORDERED THAT:

22. By **Friday, 22 April 2022**, the Respondent shall file the documentary evidence listed in para. 15 above.

23. By **Friday, 6 May 2022**, the Applicant shall file his comments, if any, in relation to the documentary evidence filed by the Respondent.

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24. By **Wednesday, 18 May 2022**, the parties shall file closing submissions.

(Signed)

Judge Teresa Bravo

Dated this 12th day of April 2022

Entered in the Register on this 12th day of April 2022

(Signed)

René M. Vargas M., Registrar, Geneva