



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

NKOYOCK FILS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Sètondji Roland Adjovi, Etudes Vihodé

Counsel for Respondent:

Jacob van de Velden, AAS/ALD/OHR, UN Secretariat

Andrea Ernst, AAS/ALD/OHR, UN Secretariat

Introduction

1. On 24 December 2020, the Applicant, a staff member at the United Nations Office of Counter-Terrorism (“UNOCT”), Vienna, filed an application contesting the decision dated 23 September 2020 by the Under-Secretary-General for Management Strategy, Policy and Compliance (“USG/DMSPC”) to sanction him for misconduct for allegedly creating a hostile, offensive, and humiliating work environment for four staff members at the Department of Software Products for Member States (“SPMS”).
2. The disciplinary sanction consisted of a loss of three steps in grade, and deferment for three years of eligibility for consideration for promotion in accordance with staff rule 10.2(a)(ii) and (vi), together with a requirement to attend on-site or on-line interactive training on workplace civility and communication details of which would be decided upon by the UNOCT. In the same filing, the Applicant submitted a motion for a hearing and proposed to call eleven witnesses.
3. On 28 January 2021, the Respondent filed his reply.
4. On 29 April 2021, the Applicant filed a motion for production of evidence.
5. On 5 May 2021, the Respondent filed its response objecting to the forementioned motion.
6. On 24 May 2022, the instant case was assigned to the undersigned judge.

Consideration

Motion for a hearing

7. The Applicant submitted a motion for a hearing and requested this Tribunal to call eleven witnesses. However, the Applicant did not indicate how each witness he intends to call may assist in the determination of this matter.
8. Therefore, having considered the Applicant’s motion, the Tribunal instructs the parties to inform whether a hearing is warranted, identifying all the relevant facts and material issues, if any, that may require a fact-finding hearing.

9. In addition, the parties are instructed to provide a list of potential witnesses explaining the relevance of each testimony for the determination of the issues in dispute.

Motion for production of evidence

10. In his submission dated 29 April 2021, the Applicant requests the production of a “0019/020 investigation report” prepared by the Office of Internal Oversight Services (“OIOS”). The Applicant submits that “the OIOS investigation report for the ST/SGB/2017/2/Rev.1 case completed by full time professional and properly trained investigators is extremely relevant to the [his] case, in particular that the departmental investigation for the ST/SGB/2008/5 case covering the same facts and incidents conducted by amateur retirees was unprofessional and biased”.

11. However, the Tribunal notes that the background of this report provided by both parties suggests that said investigation refers to a complaint of retaliation filed against the Applicant by some of the people involved in the first investigation, namely, the complainants and two witnesses. This investigation was conducted in the framework of ST/SGB/2017/2/Rev.1 “Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations”. OIOS investigated whether the Applicant had retaliated against the complainants after they had filed a complaint and testified against him in the first investigation of prohibited conduct.

12. Having examined the parties’ submissions, it is not clear how this investigation report by OIOS would serve in the determination of the issues at hand. First, the complaint itself relates to a separate and distinct set of incidents that did not overlap with the facts of the contested decision and, secondly, the outcome of this second investigation does not impact the contested decision.

13. In addition, in the context of a retaliation complaint, confidentiality is critical to protect the identity of whistle-blowers, witnesses, and the process of investigating retaliation claims itself. Pursuant to secs. 3 and 7.2 of the ST/SGB/2017/2/Rev.1, “[it] is the duty of the Administration to protect the confidentiality of the individual’s identity and all communications through those

channels to the maximum extent possible” and, “the Ethics Office shall maintain the confidentiality of all communications received from complainants who request protection against retaliation, and from all relevant third parties”.

14. Accordingly, there must be a compelling and relevant reason for the Tribunal to order the Ethics Office to disclose a confidential document.

15. Thus, the Applicant is instructed to provide a detailed justification into how the facts and the outcome of the “0019/020 investigation report” by OIOS relates to the facts of the instant case and/or affects the outcome of the contested decision.

Conclusion

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

- a. The parties are instructed to inform by **Monday, 13 June 2022**, whether a hearing is warranted as per para. 8 above;
- b. The parties are instructed to provide by **Monday, 13 June 2022**, a list of potential witnesses as per para. 9 above; and
- c. The Applicant is instructed to provide by **Monday, 13 June 2022**, a detailed justification for the production of the “0019/020 investigation report” by OIOS pursuant to para. 15 above.

(Signed)

Judge Teresa Bravo

Dated this 2nd day of June 2022

Entered in the Register on this 2nd day of June 2022

(Signed)

René M. Vargas M., Registrar, Geneva