



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: René M. Vargas M.

ARNOLD

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

George Irving

Counsel for Respondent:

Miryoungh An, AAS/ALD/OHR, UN Secretariat

Introduction

1. By application filed on 10 November 2022, the Applicant, a staff member of the United Nations Mission in Kosovo (“UNMIK”), contests the decision to impose on her the disciplinary measure of written censure, in accordance with staff rule 10.2(a)(i), together with the managerial action of managerial coaching for one year.
2. On 9 December 2022, the Respondent filed his reply.
3. By Order No. 122 (GVA/2023) of 18 September 2023, the Tribunal convoked the parties to a case management discussion (“CMD”).
4. On 20 September 2023, the CMD took place, as scheduled, virtually through Microsoft Teams, with Counsel for each party present.

Consideration

Oral hearing

5. At the CMD, the Tribunal consulted with the parties regarding whether a hearing would be required. While the Respondent considered that an oral hearing is not necessary because the material facts underlying the sanction at issue are not disputed, the Applicant requested the Tribunal to hold a hearing.
6. To support her request, the Applicant argues that some details of those facts require further clarification because she disputes them. She referred, for instance, to the use of colloquial expressions in the office and at whom they were directed, and to the reaction of the people involved. In her view, those details are important to properly determine the severity of the sanction.
7. The Applicant further indicated her willingness to testify before the Tribunal. She would like to call as witnesses at least certain complainant(s) or victim(s), and one of the investigators. While the Applicant took issue with the investigation panel’s failure to interview over 20 individuals that she proposed, she confirmed that although she does not intend to call all of them to testify, she would like to produce witness statements.

8. Noting that the sanction imposed in the present case is written censure, the lightest disciplinary measure, and considering that the standard of proof applicable to the matter at issue is that of preponderance of evidence, the Tribunal finds it appropriate to direct the Applicant to:

- a. Further elaborate on the reasons for her request for an oral hearing.; and
- b. File her list of witnesses within ten days from the date of this Order, and to indicate the issues on which the proposed witnesses will testify.

9. In accordance with the principle of equality of arms, the Tribunal will give the Respondent an equal opportunity to respond to the Applicant's submissions.

10. The Tribunal will reserve its decision on whether to hold a hearing in the present matter to a later stage.

Amicable settlement

11. During the CMD, the Applicant expressed her willingness to amicably settle the matter whereas the Respondent is not willing to consider any informal resolution at this time.

12. Having regard to the specific circumstances of the present case and noting that the General Assembly has consistently encouraged alternative dispute resolution, especially in circumstances where there is an ongoing employment relationship, the Tribunal finds it appropriate to encourage the parties to explore the possibility of having the dispute between them resolved without recourse to further litigation.

Conclusion

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

- a. By **Monday, 2 October 2023**, the Applicant shall file the submissions pursuant to para. 8 of the present Order;

- b. By **Thursday, 12 October 2023**, the Respondent shall file his submission, if any, pursuant to para. 9 of the present Order; and
- c. The parties shall explore resolving the dispute amicably and revert to the Tribunal in this respect by **Tuesday, 10 October 2023**.

(Signed)

Judge Sun Xiangzhuang

Dated this 21st day of September 2023

Entered in the Register on this 21st day of September 2023

(Signed)

René M. Vargas M., Registrar, Geneva