



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: René M. Vargas M.

VANSHELBOIM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

George Irving

Counsel for Respondent:

Isavella Maria Vasilogeorgi, DAS/ALD/OHR, UN Secretariat

Nicola Caon, DAS/ALD/OHR; UN Secretariat

Introduction

1. The Applicant, a former staff member of the United Nations Office for Project Services (“UNOPS”), contests the decision to impose on him the disciplinary measures of dismissal and a fine of twelve month’s net base salary. He also contests the decision to recover from him the amount of USD63,626,806 and to withhold the release of the PF.4 form (“separation notification”) to the United Nations Joint Staff Pension Fund (“UNJSPF”) until such indebtedness is fully recovered.
2. On 17 May 2023, the Respondent filed his reply.
3. By Order No. 120 (GVA/2023) of 14 September 2023, the Tribunal granted the parties’ request to exceed the page limit, directed the Applicant to file a rejoinder, and granted the Respondent’s motion to file translated documents. The Tribunal further encouraged the parties to seek alternative dispute resolution and, in response to the Applicant’s motion requesting the release of his separation notification to the UNJSPF, the Tribunal clarified that such claim could not be decided at the early stage of the proceedings, but that it would fast track consideration of the application due to this pressing matter.
4. Following a request for extension of time, which was granted, the Applicant filed his rejoinder on 13 October 2023.
5. On 19 October 2023, the parties filed a joint submission informing the Tribunal that they explored the possibility of amicable resolution, as instructed, but decided to pursue the litigation instead.
6. On 31 October 2023, the Respondent filed the translated documents pursuant to Order No. 120 (GVA/2023).
7. By email dated 24 November 2023, the Tribunal asked the parties to confirm their availability to virtually attend a case management discussion (“CMD”) between 11 and 15 December 2023.
8. By Order No. 163 (GVA/2023), the Tribunal invited the parties to attend a CMD, held virtually and *in camera* on 12 December 2023.

Consideration

9. During the CMD, the Tribunal asked the parties *inter alia* to inform it whether a hearing on the merits is warranted in this case and, if so, which witnesses each intends to call and why. The parties were also called to confirm availability to attend a hearing between 29 January and 2 February 2024.

10. During the discussions, both Counsel suggested that the Tribunal grant them an opportunity to define and orally present the legal issues arising in this case before they confirm which witnesses are relevant for the elucidation of factual matters in a hearing on the merits.

11. Finally, both parties requested the disclosure of missing evidence and that any upcoming session be closed to public. Additionally, Counsel for the Respondent alleged a possible violation of the code of conduct for legal representatives and litigants before the Tribunal.

Hearing on the merits

12. As both parties suggested, the Tribunal agrees that, given the complexity of this case and the amount of documentary evidence on the record so far, an opportunity for the parties to orally present their case and clearly define the legal issues surrounding the allegations of misconduct is warranted before the proceedings can move forward to a formal hearing with or without witnesses.

13. Accordingly, the parties are instructed to clearly identify the legal issues of this case through synthesised bullet points, and later present their position in a second *in camera* virtual CMD limited to this particular objective. At the second CMD, the parties are also expected to identify any potential witnesses for a formal hearing on the merits, clearly explaining the relevance of each testimony.

14. Following the second CMD, the Tribunal will make its decision concerning the hearing, its dates and scope, and whether it will be closed to the public or not. The parties will then be expected to file a joint trial bundle with the evidence deemed relevant for the determination of the facts and legal issues under dispute, and that will be tested during the hearing.

Missing documentation

15. Both during the CMD and in his response to the rejoinder, the Respondent claimed that the Applicant referred to several documents in his submissions that were yet not filed, and to quotations that were either incorrect or without reference. He thus requested clarification on these issues and full disclosure of evidence.

16. Conversely, Counsel for the Applicant requested the Respondent to disclose a Board of Auditors' report.

17. It is not clear to the Tribunal to which report the Applicant refers to. Accordingly, he is instructed to clearly identify it, explaining its relevance for the determination of the issues under dispute.

18. With respect to the Respondent's request, the Tribunal instructs him to clearly identify in bullet-point format the evidence that is allegedly missing from the record, and the quotations/remarks made by the Applicant that are either incorrect and/or lacking references.

The Respondent's response to the rejoinder

Request to exclude annexes 14-16 from the record

19. The Respondent argues that the Applicant attempted to adduce new evidence through annexes 14-16 to his rejoinder, and requested that the Tribunal refuse to admit them into the record. In the alternative, the Respondent requested that little evidentiary weight be given to those documents. Allegedly, annex 14 is a duplication of evidence already on the record, while the Applicant never submitted annexes 15 and 16 and were not part of the record available to the decision-maker at the time of the contested decision.

20. Although the Tribunal agrees with the Respondent that annexes 15 and 16 do not comprise of new evidence and should have been offered by the Applicant to the investigation at the relevant time or, at the latest, with the application, the Tribunal is not prepared to exclude them from the record solely based on this. The relevance of this evidence is yet to be confirmed, and the Respondent will have an opportunity to test the veracity and relevance of these documents during the upcoming hearing.

21. With respect to annex 14, since it is a mere duplication of already existing evidence, as per the Respondent's own description, the Tribunal sees no procedural issue in allowing the record to stay as is.

Code of conduct

22. Having examined both parties' submissions to date, the Tribunal does not find any violation on the Code of Conduct for legal representatives and litigants in person. Nevertheless, both parties are advised to maintain the expected highest standards of integrity, honesty, and professionalism required from a litigant in proceedings before this Tribunal.

Conclusion

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

- a. **By Friday, 29 December 2023:**
 - i. The Applicant shall file submissions in accordance with paras. 13 and 17 above; and
 - ii. The Respondent shall file submissions in accordance with paras. 13 and 18 above.
- b. The parties shall attend a second *in camera* CMD on **Wednesday, 31 January 2024 at 3 p.m. (Geneva time)**, which will be conducted virtually through Microsoft Teams and pursuant to paras. 12-13.

(Signed)

Judge Sun Xiangzhuang

Dated this 15th day of December 2023

Entered in the Register on this 15th day of December 2023

(Signed)

René M. Vargas M., Registrar, Geneva