



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: René M. Vargas M.

YAKER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Albert Angeles, DAS/ALD/OHR, UN Secretariat

Marcos Zunino, DAS/ALD/OHR, UN Secretariat

Introduction

1. On 31 May 2023, the Applicant filed an application contesting the disciplinary measure of separation from service, with compensation in lieu of notice and with termination indemnity, imposed on him pursuant to staff rule 10.2(a)(viii).
2. On 3 July 2023, the Respondent filed his reply.
3. By Order No. 111 (GVA/2023) of 29 August 2023, the Tribunal ordered the Applicant to file a rejoinder by 28 August 2023, and the parties to explore resolving the dispute amicably with the instruction to revert to the Tribunal in this respect by 6 October 2023.
4. On 28 September 2023, the Applicant filed a rejoinder.
5. Between 11 October and 9 November 2023, the Tribunal extended several times the parties' deadline to revert to it concerning an amicable settlement. The latest deadline was set to 17 November 2023.
6. On 17 November 2023, the Applicant informed the Tribunal that discussions concerning an amicable settlement of the dispute were not successful. He consequently requested:
 - a. Leave to submit additional evidence that “[would] speak to the disproportionality of the sanction” in the form of “letters of recommendations and oral testimonies from former supervisors”; and
 - b. The holding of an oral hearing.
7. On the same day, the Respondent confirmed that the parties failed to reach an agreement. He also filed a motion requesting the Tribunal to decide the matter on the papers and to allow the parties to file written closing submissions before adjudicating the case.

8. By Order No. 160 (GVA/2023) of 21 November 2023, the Tribunal granted the Applicant's request for leave to file additional evidence by 5 December 2023. The Tribunal decided to defer a decision on the pending motions until a case was assigned to a Judge for the adjudication of the matter.

9. Following an extension of deadline, the Applicant filed additional evidence on 12 December 2023.

10. On 27 December 2023, the Respondent filed his comments on the Applicant's additional evidence.

11. On 27 February 2024, the present case was assigned to the undersigned Judge.

Consideration

The Applicant's additional evidence

12. Having examined the parties' submissions to date and the evidence on record, the Tribunal finds that the facts upon which the disciplinary measure was based are undisputed and the main issue in the present case is the proportionality of the sanction.

13. In support of his case, the Applicant filed new documentary evidence consisting of 25 letters and messages from former supervisors and colleagues attesting to his positive performance, character, and work ethic. Some of these documents also show that the Applicant's colleagues were not aware of his outside political activities.

14. The Applicant argues that his work performance, which resulted in the recognition of the United Nations Environment Programme ("UNEP") as a global leader in sustainable public procurement ("SPP"), was not considered as a mitigating factor. He further claims, *inter alia*, that his "commitment to [his] responsibilities remained unwavering, with no compromise in performance due to external activities" and that he ceased media appearances and charity work upon notification of the allegations against him, thus eliminating the supposed reputational risk.

15. In this respect, the Tribunal notes that since the Applicant's "long service and positive performance" was considered as a mitigating factor as per the Sanction Letter, the Applicant's documentary evidence of his positive performance is unnecessary.

16. First, the Applicant's positive performance is not questioned. Second, the Respondent has rightly pointed out that the Under-Secretary-General for Management Strategy, Policy and Compliance ("USG/DMSPC") concluded that the Organization was exposed to reputational risk not because the Applicant failed or underperformed in his job, but because the Applicant engaged in conduct that given his status as a serving staff member could adversely reflect on the Organization's independence and impartiality.

17. Similarly, the Applicant's argument concerning his colleagues' lack of awareness of his political activities is immaterial. Such lack of awareness does not change the undisputed fact that the Applicant engaged in public activities that could expose the Organization to reputational risk.

18. In light of the above, the Tribunal considers that the Applicant's documentary evidence filed on 12 December 2023 is irrelevant.

The Applicant's motion for a hearing and the Respondent's motion to file closing submissions

19. The Applicant requests an oral hearing to present witnesses including his former supervisors, colleagues, consultants or interns to "counter the reasoning presented by the Respondent that any outside activity interfered with [his] independence as an international civil servant".

20. Pursuant to art. 16.2 of its Rules of Procedure, the Tribunal "shall normally [hold a hearing] following an appeal against an administrative decision imposing a disciplinary measure". A hearing is normally required when the facts upon which the disciplinary measure was based are disputed.

21. However, the Tribunal does not consider it necessary to hold a hearing in the present case for the following reasons.

22. First, the Applicant does not contest the facts upon which the disciplinary measure was based, as he only “requests ... the Tribunal [to] substitute the sanction imposed with a proportionate one”. Second, the main legal issue to determine in the present case is the proportionality of the sanction for which there is no added value to hold a hearing. Third, the testimonies of the Applicant’s former supervisors, colleagues, consultants, or interns that he intends to call at a hearing are irrelevant as they are not in a position to give an opinion on or determine the Applicant’s independence, impartiality or compliance with the Organization’s rules.

23. Consequently, the Tribunal rejects the Applicant’s motion to hold a hearing and grants the Respondent’s motion to adjudicate the present case on the papers on record pursuant to art. 19 of its Rules of Procedure.

24. The parties will therefore be required to file their respective closing submission.

Conclusion

25. In view of the foregoing, it is ORDERED THAT by **Friday, 10 May 2024**, the parties shall file their respective closing submission, which shall:

- a. Exclusively refer to the evidence already on file; and
- b. Not exceed 10 pages, using font Times New Roman, font size 12 pts and 1.5 line spacing.

(Signed)

Judge Sun Xiangzhuang

Dated this 26th day of April 2024

Entered in the Register on this 26th day of April 2024

(Signed)

René M. Vargas M., Registrar, Geneva