



Before: Judge Sun Xiangzhuang (Presiding), Judge Joelle Adda, Judge Sean Wallace

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:

Jacob B. van de Velden, DAS/ALD/OHR, UN Secretariat

Maria Romanova, DAS/ALD/OHR, UN Secretariat

Notice: this Order has been amended pursuant to Order No. 53 (GVA/2024).

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 a 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 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.

9. By Order No. 168 (GVA/2023), the Tribunal asked the parties to file further submissions by 29 December 2023, and scheduled a second CMD, which was held virtually and *in camera* on 31 January 2024.

10. By Order No. 3 (GVA/2024), the Tribunal informed the parties of the composition of a Three-Judge Panel to adjudicate the matter.

11. By Order No. 20 (GVA/2024), the Tribunal rejected the Applicant's motion for production of the Financial and Board of Auditors Report for the period ending on 31 December 2020 (A/76/5/Add.11), and instructed the parties to file a joint statement of disputed and undisputed facts in relation to the 34 allegations against the Applicant in the Sanction Letter and the issue of recovery of financial loss by the Organization in the amount of USD63,626,806. The parties were also instructed to identify for each disputed fact, the evidence on which they will rely on, including the testimony of witnesses, and to inform the Tribunal whether the testimony of an expert witness is warranted.

12. On 29 March 2024, the Applicant filed additional documentation, numbered annexes 18 to 37, and submitted a request for further production of evidence.

13. On 2 April 2024, the parties filed their joint statement in response to Order No. 20 (GVA/2024).

14. By Order No. 42 (GVA/2024) of 29 April 2024, the Tribunal (i) instructed the Applicant to submit legible copies of annexes 18 to 37; (ii) granted the Applicant's request to file additional documentation by 28 May 2024; and (iii) called the parties to a new CMD, which was held virtually on 3 May 2024.

Consideration

The CMD of 3 May 2024

15. During the CMD, the Panel asked the parties to clarify their position vis-à-vis a hearing on the merits and their joint submission of disputed and undisputed facts, in which every allegation is either disputed, partially disputed or conceded with a caveat.

16. After much discussion, the parties agreed on the following:
- a. The Applicant concedes that he engaged without prior approval in undisclosed outside activities that involved financial arrangements with the Kendrick entities, that he failed to report these activities as required, and that said activities could be perceived as a conflict of interest;
 - b. The parties do not agree on the quantification of the financial arrangements between the Applicant and the Kendrick entities, but agree that any divergence in this respect is immaterial and irrelevant to the merits of this case; and
 - c. The parties do not anticipate an evidentiary hearing and request that the matter be determined based on the written submissions and evidence on record.
17. The Tribunal identified the following main issues to be determined:
- a. Whether there is clear and convincing evidence that the Applicant acted in bad faith against the best interests of the Organization and intently misled it into entering investments with the Kendrick entities under the Sustainable Investments in Infrastructure Initiative (“S3i initiative”);
 - b. Whether there is a causal link between the Applicant’s outside activities and financial arrangements with Mr. Kendrick and the financial loss suffered by the Organization under the projects of the S3i initiative;
 - c. Whether the Applicant is liable for the aforementioned loss;
 - d. Whether the disciplinary measure was proportionate to the misconduct; and
 - e. Whether the decision to withhold the release of the Applicant’s PF.4 form to UNJSPF is lawful.

Hearing on the merits

18. The Tribunal has identified the following potential witnesses for an evidentiary hearing aiming at clarifying the Applicant's role and behaviour vis-à-vis his position as Chief Executive of the S3i initiative and the decisions to proceed with the projects in partnership with the Kendrick entities:

- a. The Applicant;
- b. Mr. AA;
- c. Ms. BB; and
- d. Mr. CC.

19. Furthermore, the Tribunal also identified the following two expert witnesses proposed by the Respondent, who are qualified in the finance and budget area and will be able to testify regarding the quantification of the financial loss of USD63,626,806:

- a. Mr. DD; and
- b. Mr. EE.

20. The Respondent is instructed to confirm the availability and amenability of the proposed witnesses at paras. 18.b, c, and d, and 19.a and b above, to attend an *in person* formal hearing on the merits between 5 and 16 August 2024. The Applicant is equally instructed to confirm his availability.

21. With the response, the parties shall also provide a brief statement about the anticipated testimony of each witness.

22. Subsequently, the Tribunal will decide if a hearing on the merits will be held.

The withholding of the PF.4 form

23. As agreed during the CMD, the Applicant shall revert back to the Tribunal regarding the amount of his pension fund benefit.

Annexes 18 to 37

24. During the CMD, the Applicant explained that he does not have current access to his United Nations email and, thus, is not able to comply with Order No. 42 (GVA/2024) to supply legible copies of annexes 18 to 37. The photographs that were submitted were taken from a backup programme that does not allow printing of physical or PDF copies.

25. As a result, the Applicant requested the Respondent to retrieve the aforementioned emails from the Applicant's United Nations IT equipment, to which the Respondent agreed as long as the requested emails are clearly identifiable by date and time.

26. In view of the foregoing, the Applicant's deadline to produce legible copies of the email correspondence submitted in annexes 18 to 37 is revoked. The Respondent shall produce them instead, with the help from the Applicant in the identification of said correspondence, if needed.

Additional documentation

27. The Applicant further clarified that, contrary to his previous submission, he does not intend to file additional documentation in these proceedings. Accordingly, the deadline imposed by Order No. 42 (GVA/2024) is revoked also in this respect.

28. The parties are furthermore advised that no more written submissions or production of evidence will be accepted beyond this stage, except if ordered by this Tribunal or in case of exceptional circumstances.

Conclusion

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

- a. The Applicant's instruction to resubmit evidence and file additional documentation in Order No. 42 (GVA/2024) is revoked;

- b. The Respondent shall produce legible copies of the email correspondence contained in the Applicant's annexes 18 to 37 by **Monday, 20 May 2024**;
- c. The parties shall confirm the availability of the witnesses to attend a hearing on the merits, as per paras. 18 to 21 above, by **Monday, 3 June 2024**;
- d. The Applicant shall inform the Tribunal the amount of his pension fund benefit by **Monday, 3 June 2024**

(Signed)

Judge Sun Xiangzhuang (Presiding)

Dated this 8th day of May 2024

Entered in the Register on this 8th day of May 2024

(Signed)

René M. Vargas M., Registrar, Geneva