



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

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 months’ 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 an 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 an 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) of 28 November 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) of 15 December 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) of 12 January 2024, the Tribunal informed the parties of the composition of a Three-Judge Panel to adjudicate the matter.

11. By Order No. 11 (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. 11 (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 by 28 May 2024; (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.

15. By Order No. 49 (GVA/2024) of 8 May 2024, the Tribunal: (i) revoked the Applicant's deadline of Order No. 42 (GVA/2024); (ii) instructed the Respondent to produce legible copies of the email correspondence contained in the Applicant's annexes 18 to 37; (iii) instructed the parties to confirm the availability of the proposed witnesses to attend a hearing on merits; and (iv) instructed the Applicant to inform about the amount of his pension fund benefit.

16. On 14 May 2024, the Respondent filed a motion requesting the removal of Orders No. 49 (GVA/2024), 42 (GVA/2024), and 168 (GVA/2023) from the Tribunal's public website, which was rejected by Order No. 53 (GVA/2024) of 14 May 2024.

17. By email dated 15 May 2024, the Respondent informed the Tribunal that the Counsel for the Applicant told him to "hold off on trying to locate the emails since the Applicant has an IT expert and it seems to be working". Accordingly, the Respondent said that it would wait for the Applicant to produce the legible copies of annexes 18 to 37, at which point he would seek leave to review it and comment on it.

18. On 16 May 2024, the Tribunal responded to the Respondent's email reiterating that it expected the submission of legible copies of annexes 18 to 37 by 20 May 2024. The evidence should be filed by the Respondent, pursuant to Order No. 49 (GVA/2024), or by the Applicant, if the parties mutually agreed on this change. The Respondent would then be allowed to file brief comments on the new evidence by 27 May 2024.

19. On 20 May 2024, the Applicant filed a revised submission of additional documentation and a motion to admit a corrigendum to the joint submission on agreed and disputed facts of 1 April 2024.

20. On 24 May 2024, the Respondent filed a motion for an extension of time to file a response.

Consideration

The parties' motions

21. In response to the Tribunal's instruction to produce legible copies of annexes 18 to 37, the Applicant filed a revised submission of additional documentation containing new annexes 18 to 34, and a corrigendum to the joint submission on agreed and disputed facts of 1 April 2024.

22. In support of his motions, the Applicant explained the following.

23. Through the support of technical assistance, he was able to produce legible copies of previously filed additional documentation, thus complying with Order No. 49 (GVA/2024). In reviewing the material, the Applicant noticed some errors in the ordering of the documents and the omission of relevant material.

24. As it follows, the Applicant requested leave to submit a revised set of documentation containing new annexes 18 to 34, along with an amended explanation of each document. This revised documentation required a corrigendum to the prior joint submission of agreed and disputed facts indicating the proper new annex references.

25. Apart from submitting legible copies of documentation that had already been introduced through annexes 18 to 37, the Applicant requested leave to submit into evidence new annexes 22, 33 and 34. These contain several documents that were not able to be produced previously, namely, relevant emails, links to two video files, and text messages.

26. In response, the Respondent requested additional time to file his comments on the Applicant's submissions arguing that he has to review a revised set of new documentation, amended explanations of what each new document addresses, and a corrigendum to the joint submission of 1 April 2024.

27. Having reviewed the parties' submissions, and in the interest of justice, the Tribunal will grant the Applicant's motions to admit into evidence new annexes 18 to 34, and the aforementioned corrigendum. Annexes 18 to 37 filed on 29 March 2024 will be disregarded and replaced by this revised documentation.

28. Considering the introduction of new evidence at this stage, the Respondent's motion for an extension of time to file a response to the Applicant's submissions is equally granted, in the interest of fairness and equality of arms. He shall file it by 3 June 2024, as requested.

Conclusion

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

- a. The Applicant's revised submission of additional documentation is accepted into the case record;
- b. The Applicant's motion to admit a corrigendum to the joint submission of agreed and disputed facts is granted; and
- c. The Respondent shall file a response to the Applicant's revised submissions by **Monday, 3 June 2024**.

(Signed)

Judge Sun Xiangzhuang (Presiding)

Dated this 30th day of May 2024

Entered in the Register on this 30th day of May 2024

(Signed)

Liliana López Bello, Legal Officer, for René M. Vargas M., Registrar, Geneva