



Before: Judge Eleanor Donaldson-Honeywell

Registry: Geneva

Registrar: René M. Vargas M.

MEHTA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Pratyush Miglani

Counsel for Respondent:

Angela Arroyo, UNDP

Introduction

1. On 13 January 2024, the Applicant, a former staff member of the United Nations Development Programme, filed an application contesting the decision not to confirm her probationary period and, as a result, to terminate her fixed-term appointment.
2. On 15 February 2024, the Respondent filed his reply.
3. On 20 February 2024, the Applicant filed a motion for production of evidence.
4. By Order No. 31 (GVA/2024) of 12 April 2024, the Tribunal instructed the Respondent to file his comments on the Applicant's motion for disclosure of evidence by 19 April 2024. It also encouraged the parties to explore amicable settlement of the matter and revert to the Tribunal in this respect by 17 May 2024.
5. On 17 April 2024, the Respondent filed his comments on the Applicant's motion.
6. On 8 May 2024, the Respondent informed the Tribunal that the parties explored the possibility of a settlement but the matter could not be resolved amicably.
7. On 13 May 2024, the Applicant filed her rejoinder.

Consideration

Motion for production of evidence

8. In her motion, the Applicant requests access to 1) emails contained in her work email account and to 2) the recording of several meetings held between the Applicant and her supervisor on the Microsoft Teams platform.

9. Concerning the access to her emails, the Applicant submits that the emails exchanged between her, her supervisors, and colleagues during her employment with the United Nations Capital Development Fund (“UNCDF”) are relevant for the adjudication of the present dispute to prove that her supervisors did not raise performance issues prior to the second performance review in July 2023.

10. The Respondent submits that all relevant emails from the Applicant’s official UNCDF account are already on record and that the Applicant has not provided any explanation of what emails from her official UNCDF account may exist in addition to those already disclosed in the record, or how such emails could support her contention.

11. Considering the case record and the parties’ submissions, the Tribunal finds it appropriate to grant the Applicant’s motion to ensure procedural fairness and give the Applicant the fullest opportunity to present her case. Therefore, the Respondent shall provide the Applicant access to her archived UNCDF emails covering the period from 1 September 2022 to 31 July 2023 or with a backup of her archived emails in a form that can be accessible to her.

12. However, the Tribunal highlights that the Applicant’s motion is granted without any acceptance of the archived UNCDF emails’ relevance or probatory value as listed in the Applicant’s rejoinder (para. 3).

13. Regarding the meetings with her supervisor via MS Teams, the Applicant claims that their recordings are also relevant to prove that no performance issues of “continuing concerns” were raised during them prior to the second review held in July 2023. She specifically requests the recording of the meetings that took place on:

- a. 23 December 2022;
- b. 1 February 2023;
- c. 23 March 2023;
- d. 5 April 2023;

e. 14 May 2023, and

f. 5 July 2023.

14. The Respondent informed the Tribunal that the virtual meetings held on the Microsoft Teams platform are not automatically recorded but that the meeting administrator can initiate a meeting recording if desired. However, the recording is automatically deleted after 60 days if no action is taken to save the recording. Noting that there are some discrepancies in the dates of the meetings referred to by the Applicant in her motion, the Respondent submits that no recordings were made of the meetings held on 6 December 2022, 28 December 2022, 23 March 2023, and 5 April 2023. Recordings were made of the meetings held on 1 February 2023, 18 May 2023, and 5 July 2023. However, as more than 60 days have passed since those meetings and the Applicant did not previously request the recordings, said recordings have been automatically deleted and are no longer available.

15. The Respondent points out that, in any event, the evidence of the content of all the meetings is already on record, including Notes for the Record (“NFRs”) that were shared with the Applicant for her to provide her comments at the time.

16. In light of the information provided by the Respondent, the Tribunal considers it appropriate to reject the Applicant’s motion for the production of the recording of the meetings held via MS Teams.

Conclusion

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

a. The Applicant’s motion for the production of the emails contained in her UNCDF email account is granted as per para. 11 above;

b. By **Friday, 27 September 2024**, the Respondent shall provide the Applicant access to her archived UNCDF emails covering the period from 1 September 2022 to 31 July 2023, or with a backup of her archived emails in a form that the Applicant can access;

- c. The Applicant's motion for the production of the meeting recordings is rejected;
- d. The Applicant is granted leave to file any additional evidence, if any, contained in her archived UNCDF emails referred to in para. 17.b above, by **Friday, 4 October 2024**; and
- e. The Respondent is granted leave to file his comments on said additional evidence from the Applicant, if any, by **Friday, 11 October 2024**.

(Signed)

Judge Eleanor Donaldson-Honeywell
Dated this 19th day of September 2024

Entered in the Register on this 19th day of September 2024
(Signed)

René M. Vargas M., Registrar, Geneva