



Before: Judge Eleanor Donaldson-Honeywell

Registry: Geneva

Registrar: René M. Vargas M.

EFRATI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Albert Angeles, DAS/ALD/OHR/UN Secretariat

Introduction

1. By application filed on 22 March 2024, the Applicant contests the decision dated 19 September 2023 to delay her long service step increment from 1 August 2026 to 1 August 2028.
2. On 1 April 2024, the Respondent filed his reply.
3. By Order No. 68 (GVA/2024), the Tribunal instructed the Applicant to file a rejoinder, and encouraged the parties to explore alternative dispute resolution.
4. On 19 July 2024, the Applicant filed her rejoinder.
5. On 29 July 2024, the parties filed a joint submission informing the Tribunal that they were not able to reach an amicable settlement.

Consideration

Motion for disclosure of evidence

6. As it was the case under Case No. UNDT/GVA/2023/061 (Efrati), the Applicant requested disclosure of “any and all communications between UNOV and ALD regarding the implementation of her modified sanction”. According to her, this evidence “will demonstrate that the Administration was initially unsure how to implement the sanction and that the matter was escalated to the ALD due to a lack of clarity”.
7. The Applicant claims that this evidence would also demonstrate that the modified disciplinary sanction agreed on by the parties was ambiguous with respect to its implementation. Such ambiguity, she claims, should have been resolved in her favour as demands the principle of *contra proferentem*.
8. The Tribunal, however, is not persuaded by the Applicant’s argument. In this connection, it recalls its determination in its Order No. 117 (GVA/2024):

8. If any ambiguity indeed exists (with respect to the implementation of the agreed sanction), the Tribunal is satisfied that it can decide on it based on the evidence on record, namely, the settlement agreement and the applicable legal framework.

9. In fact, the Tribunal finds that interoffice communication on how to implement a disciplinary sanction is not probative of any unlawfulness. Further, the Applicant never identified the specific communication that could demonstrate the alleged ambiguity. It follows that the granting of the Applicant's motion would amount to a fishing expedition, which the Tribunal will not allow.

9. In this case, however, the Applicant further supported her request for disclosure of evidence as follows:

The Applicant seeks an order for disclosure of the communications between ALD and UNOV HR following the alteration of sanction. That the question of how the sanction should be implemented required consideration for a period of two weeks and resulted in a response from the Chief Disciplinary Accountability section demonstrates that this was a decision taken not simply advice provided.

10. The Respondent opposes the request for disclosure. According to him:

- a. There was no alteration of the sanction agreed on by the parties;
- b. The Tribunal's power to order discovery is subject to the principles of relevance and the probative value of the documents sought to be discovered, and any communications between ALD and UNOV HR regarding implementation of the disciplinary measure are not relevant to the legal question raised by the Applicant, which concerns the correct interpretation and application of the disciplinary measure; and
- c. Any such communications between ALD and UNOV HR constitute legal advice concerning the terms of the settlement agreement, which arose out of litigation, and would be confidential and privileged.

11. Moreover, the Respondent requests that the receivability of the application be decided before the motion for discovery is considered.

12. The Tribunal agrees with the Respondent in part. Indeed, the contested decision did not alter the disciplinary sanction agreed on by the parties, and the requested communication is not relevant to the legal question raised by the Applicant.

13. Where the Tribunal disagrees is that, in this case, the communications that the Applicant requests are connected to the question of receivability of her application. In essence, the Applicant is seeking a communication from ALD that would qualify the implementation of the disciplinary sanction as a new and separate administrative decision.

14. This is the lens through which the Tribunal must assess the relevance and probative value of the requested evidence in this case.

15. In this context, the Tribunal is persuaded by the Applicant's argument. If there was indeed an advice and/or instruction from ALD to UNOV HR concerning the implementation of the sanction, it is best for procedural fairness that the Applicant be allowed to review it. Its potential probative value outweighs the Respondent's concerns with it.

16. Accordingly, the Applicant's request for disclosure of evidence will be granted. The Respondent shall file the contemporaneous communications between ALD and UNOV HR regarding implementation of the disciplinary sanction.

17. Furthermore, the parties are informed that the matter of receivability will be dealt with in the upcoming judgment.

Closing submissions

18. Having reviewed the evidence on record and the parties' submissions to date, the Tribunal considers itself sufficiently informed to render its judgment without the need for further disclosure of evidence beyond the above, or the holding of a hearing on the merits.

19. Pursuant to art. 19 of the Tribunal's Rules of Procedure, and for the fair disposal of the case, the parties will be instructed to file their respective closing submission. Upon the filing of closing submissions, the Tribunal will move forward with adjudicating the case.

Conclusion

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

- a. The Applicant's request for disclosure of evidence is granted;
- b. The Respondent shall file the requested evidence, as per paras. 15-16 above, by **Friday, 4 October 2024**; and
- c. The parties shall file their respective closing submission by **Friday, 18 October 2024**, which shall exclusively refer to the evidence already on file.

(Signed)

Judge Eleanor Donaldson-Honeywell
Dated this 26th day of September 2024

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

(Signed)

René M. Vargas M., Registrar, Geneva