



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2012/047
UNDT/NBI/2012/072
Order No.: 240 (NBI/2014)
Date: 30 October 2014
Original: English

Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko

BA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S MOTION
TO WITHDRAW**

Counsel for the Applicant:
Alexandre Tavadian, OSLA
George Irving

Counsel for the Respondent:
Susan Maddox, ALS/OHRM
Cristiano Papile, ALS/OHRM

Introduction

1. The Applicant is a staff member of the Economic Commission for Africa (ECA). She filed an Application on 10 August 2012 contesting the decision to issue allegations of misconduct against her. This Application was registered in the Registry's records as UNDT/NBI/2012/047.

2. The Respondent submitted his Reply on 7 September 2012.

3. At the conclusion of the above disciplinary process, the Applicant subsequently filed a second Application on 10 December 2012 contesting the decision to impose on her the disciplinary measure of demotion with deferment, for one year, of eligibility for consideration for promotion. This Application was registered in the Registry's records as UNDT/NBI/2012/072.

4. The Respondent submitted a Reply on 9 January 2013.

5. On 23 April 2014, the Tribunal issued Order No. 081 (NBI/2014) consolidating the two cases and informing the Parties of the date the hearing would be held on.

6. On 30 May 2014, the Parties submitted a joint motion for postponement of the hearing in order to explore informal resolution. This Motion was granted until 4 August 2014.

7. On 31 July 2014, the Parties submitted another joint Motion for postponement of the hearing, which was granted pursuant to Order No. 193 (NBI/2014). The Tribunal suspended proceedings until 1 October 2014.

8. On 29 September 2014, the Parties informed the Tribunal that they were still exploring informal settlement and moved the Tribunal for a further postponement of proceedings until 31 October 2014.

9. On 17 October 2014, the Applicant filed a motion to withdraw her applications based on the fact that she and the Respondent had reached an amicable settlement of the matter. She also moved the Tribunal for the redaction of her name from the final Order on Withdrawal and from all prior Orders and Judgments in connection with her Applications.

Considerations

10. The Applicant is petitioning the Tribunal to redact her name from the final order that would dispose of her cases in view of the settlement reached between the parties. The justification for the motion is set out as follows: “[The Applicant] is a deeply religious woman [...] and would be highly embarrassed by further public disclosure of the case. It would defeat the purpose of the settlement of the matter to subject her and her family to further public ridicule”.

11. Article 11.6 of the Statute of the Tribunal provides: “The judgments of the Dispute Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal”. A similar provision is embodied at article 26.2 of the Rules of Procedure of the Tribunal and it reads: “The judgments of the Tribunal shall protect personal data and shall be available at the Registry of the Tribunal”. The Tribunal issues not only judgments but also other major decisions that are labeled as orders that are published. The provisions regarding the protection of personal data should also extend to such orders if the above provisions are to have any meaningful effect.

12. The term personal data is not defined in either the UNDT Statute or in the Rules of Procedure. In many national jurisdictions, legislation relating to personal data embodies a definition of what should be understood by the term. In all the cases decided so far by the Tribunal at first instance or on appeal the term has been invoked to redact names of parties or witnesses from judgments. It can safely be assumed that a name is the most common means of identifying someone. However, whether any

potential identifier actually identifies an individual depends on the context. A name especially a common name by itself may not be considered personal data but if associated with other elements it may constitute personal data.

13. When considering a motion to redact names from a judgment a number of factors need to be considered. Has the judgment been the result of a hearing in public, as is usually the case? Is there any particular private element of a litigant's life, personal or professional, that necessitates protection? Has the request been made timely? How would the public interest of open and transparent justice be served if a redaction of names is granted? That list is of course not exhaustive but these factors have to be borne in mind.

14. In the present case, the Tribunal notes that the matters have been on the docket of the Tribunal for almost two years. The Orders issued by the Tribunal have been on the website of the Office of Administration of Justice (OAJ) for nearly two years. At the time the cases were filed with the Registry and the Orders were issued and published, the Applicant did not show any apprehension or concern about her reputation or her exposure to ridicule. This belated realization of the need for confidentiality is simply beyond comprehension. The Tribunal will here refer to what the United Nations Appeals Tribunal (UNAT) stated in *Pirnea* 2014-UNAT-456:

Article 10(9) of the Statute provides that “[t]he judgements of the Appeals Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal”. Article 20(2) of the Rules provides that “[t]he published judgements will normally include the names of the parties”.

The foregoing provisions make clear that one of the purposes or goals of the new system for the administration of justice is to assure that the judgments of the Appeals Tribunal are published and made available to the Organization's staff and the general public. Public dissemination of the appellate judgments helps to assure there is transparency in the operations of the Appeals Tribunal. It also means, sometimes fortunately and other times unfortunately, that

the conduct of individuals who are identified in the published decisions, whether they are parties or not, becomes part of the public purview.

Initially, it must be noted that Mr. Pirnea's motion for confidentiality is late. He did not seek confidentiality before the UNDT or at the time his case was on appeal. Now that the Appeals Tribunal's Judgment has been published for more than a year, it is unlikely that confidentiality can be achieved or implemented.

Apart from the lateness of Mr. Pirnea's motion, this Tribunal does not find that it has any merit. Rather, this Tribunal has determined that "[t]he names of litigants are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and, indeed, accountability" [*Servas v. Secretary-General of the United Nations, Order No. 127 (2013)*]. And Mr. Pirnea has not shown any "greater need than any other litigant for confidentiality" [*Servas v. Secretary-General of the United Nations, Order No. 127 (2013)*]. Staff members challenge many types of employment-related decisions before the internal justice system. Some of these decisions pertain to personal matters, such as disability or illness, and others pertain to the staff member's performance - and even to claims of serious misconduct. If confidentiality attached to the staff member's identity in each case, there would be no transparency regarding the operations of the Organization, which would be contrary to one of the General Assembly's purposes and goals for the internal justice system [*See Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, Judgment No. 2013-UNAT-292*].

15. The above observations would be equally applicable *mutatis mutandis* to art. 11.6 of the UNDT Statute and art. 26.2 of the Rules of Procedure.

ORDER:

16. The request for the redaction of the name of the Applicant is rejected for the following reasons. First it is a belated one; secondly the Applicant has not convincingly shown "greater need than any other litigant for confidentiality"; and

thirdly the Applicant has not shown any exceptional reason that requires a departure from open and transparent justice.

17. The Tribunal hereby records the contents of the Applicant's Motion and orders that the matters of *Ba v. Secretary-General of the United Nations* (Case Nos. UNDT/NBI/2012/047 & UNDT/NBI/2012/072) be struck off the Court's docket.

(Signed)

Judge Vinod Boolell

Dated this 30th day of October 2014

Entered in the Register on this 30th day of October 2014

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi