



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/177
UNDT/NBI/2015/179
Order No.: 435 (NBI/2016)
Date: 19 September 2016
Original: English

Before: Judge Goolam Meeran

Registry: Nairobi

Registrar: Abena Kwakye-Berko

AWE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

CASE MANAGEMENT ORDER

Counsel for the Applicant:
Self-Represented

Counsel for the Respondent:
Nicole Wynn, ALS/OHRM

Introduction

1. The Applicant is a Resident Auditor in the Office of Internal Oversight Services. He serves at the P-4 level, and is based in Bamako, Mali.

The Applications

2. On 1 December 2015, the Applicant filed an Application (UNDT/NBI/2015/177) contending that the Respondent's decision, following the outcome of the investigation of his allegations pursuant to ST/SGB/2008/5 (Prohibition of Discrimination, Harassment, including Sexual Harassment and Abuse of Authority), was flawed in that it failed to grant him an effective remedy for the harm caused to him, and that the administration failed to provide him with a prompt and efficient internal means of redress. He also alleged that there were other procedural irregularities.

3. On 7 December 2015, the Applicant filed another Application, (UNDT/NBI/2015/179) also relating to the outcome of his complaint challenging the alleged procedural impropriety of the Respondent's actions but referring to particular matters, including failures to deal promptly with certain issues relating to Ms. Yasin following the outcome of the investigation into his complaint, which he contends was prejudicial to his rights as a staff member to be provided with a prompt and efficient means of redress.

4. On 31 August 2016, the Tribunal issued Order No. 425 (NBI/2016) setting this matter down for a case management discussion (CMD) to discuss the claims and issues raised in these separate claims and to deal with the Respondent's motion for combined proceedings and the Applicant's motion for disclosure of the reports of the Fact Finding Panel.

5. The CMD took place on 15 September 2016. The Applicant was self represented and the Respondent was represented by Ms. Nicole Wynn.

The Discussion

6. The Applicant identified the cause of action in each case as being the Respondent's distinct decisions in respect of Mr. Rutgers (2015/177) and Ms. Yasin (2015/179) following the Panel's investigation into his complaint. The Applicant contends that there has been no adequate remedy afforded to him in both cases despite the Panel's findings. The Respondent's decision in respect of Mr. Rutgers is not an adequate remedy, and that there has, in any event, been inordinate and unjustifiable delay in taking appropriate action following the Fact Finding Panel's findings in relation to Ms. Yasin.

7. Counsel for the Respondent submitted that action had been taken under ST/SGB/2008/5 in that Ms. Yasin has been referred to the Assistant Secretary-General for Human Resources Management (ASG/OHRM) for appropriate action which may include managerial or disciplinary steps.

8. The Tribunal pointed out that the Respondent in both cases is the Secretary-General who is the chief administrative officer of the Organisation, and is ultimately responsible for any action, default or failures on the part of the Administration.

9. The Tribunal expressed concern at certain aspects of these claims and enquired if there was any prospect of a discussion towards an amicable resolution.

10. Counsel for the Respondent informed the Court that she did not have instructions from the Respondent to have this matter resolved through alternative dispute resolution (ADR).

11. The Tribunal made clear its view that these cases have all the ingredients providing both parties with an incentive for an *inter partes* agreement, and that they may consider that continuing litigation and a judicial determination by the Tribunal is best avoided. However, this is a matter for the parties and the Tribunal

is ready upon further consideration of the documents to be disclosed, to rule on the merits.

12. The Tribunal considered the submissions and arguments in relation to disclosure of documents and saw no reason to refuse the Applicant's request for the reports of the Panel. With regard to the Applicant's motion for disclosure of correspondence between the Special Representative of the Secretary-General (SRSG) and the Fact Finding Panel, the Tribunal indicated that the request was far too wide and lacking in specificity. The Applicant modified his request and agreed to a more limited disclosure and provided an undertaking to use the documents solely for the purpose of these proceedings.

13. The Tribunal heard both parties on the issue of consolidation of these claims, and considered that the Respondent's arguments were persuasive in that there were common questions of law and fact in the cases; albeit significant points of difference in particular aspects. These could easily be dealt with in one consolidated judgment or two separate judgments after a combined hearing with common witness testimony and findings of fact.

IT IS ORDERED THAT:

14. On or before **27 September 2016:**

- a) The Respondent is to provide, to the Applicant the Fact Finding Panel's Reports dated 20 February 2015 and 24 March 2015, as well as correspondence between the Special Representative of the Secretary-General and the Panel from 20 February 2015 to 24 March 2015. The Respondent may redact these Reports to conceal the identities of **innocent** witnesses. An **unredacted** copy of both reports, and the correspondence, must be filed with the Registry *ex parte*. The Applicant is reminded to treat all the Reports and Communication being disclosed by the Respondent confidentially and **only** for the purposes of these proceedings.

- b) Insofar as it is being contended that the offending comments, which were recorded in the minutes, were as a result of misinformation provided by an informant, the Respondent is to state whether the said informant had been identified and interviewed in the course of the enquiries by the Fact Finding Panel.
- c) Given the findings of the Fact Finding Panel, and the SRSG, the Respondent is given leave to file any further submissions or arguments, not already submitted, to explain or otherwise justify the delay and/or failure to correct, amend or remove the impugned minutes.
- d) The Respondent is to confirm the total number of recipients of the said minutes, and describe what steps, if any, were taken to notify the recipients that the minutes were wholly unjustified, and found to be so, by a Fact Finding Panel.
- e) The Respondent's Motion dated 11 March 2016 for Consolidation of the two cases (2015/177 and 2015/179) is granted.
- f) The Applicant is directed to disclose all emails and correspondence between himself and the Respondent in which he has sought to enquire into the status of his complaint together with the Respondent's replies.

(Signed)

Judge Goolam Meeran

Dated this 19th day of September 2016

Entered in the Register on this 19th day of September 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi