



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/122
Order No.: 083 (NBI/2020)
Date: 4 May 2020
Original: English

Before: Judge Eleanor Donaldson-Honeywell
Registry: Nairobi
Registrar: Abena Kwakye-Berko

HOSSAIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON CASE MANAGEMENT

Counsel for the Applicant:
George Irving

Counsel for the Respondent:
Miryoungh An, AAS/ALD/OHR, UN Secretariat
Elizabeth Gall, AAS/ALD/OHR, UN Secretariat

Introduction and Procedural History

1. At the time of the application, the Applicant served as a Security Coordination Officer at the United Nations Mission in Iraq (“UNAMI”). He held a fixed term appointment at the P-4 level and was based in Kirkuk.

2. On 14 December 2018, the Applicant challenged the Respondent’s decision to separate him from service with compensation *in lieu* of notice without termination indemnity in accordance with staff rule 10.2(a)(viii). It is the Applicant’s case that the impugned decision should be rescinded on grounds that the investigation and ensuing report was flawed. He also moves the court to order his reinstatement with retroactive payment of his wages and entitlements from 17 September 2017.

3. The Respondent filed his reply to the application on 25 January 2019.

4. The Respondent submits that the impugned decision was based on clear and convincing evidence that the Applicant’s conduct amounted to serious misconduct in violation of staff regulation 1.2(b), (f) and (q) and staff rules 1.2(c) and (g).

5. The Tribunal issued Order No. 074 (NBI/2020) setting this matter down for a case management discussion (CMD). The CMD took place on 30 April 2020, with counsel for both parties in attendance.

The Discussion

6. Both parties informed the Tribunal that they are amenable to this matter being resolved *inter partes*. The Tribunal encouraged the parties to embark on settlement discussions in good faith and reminded them that it would be in the interest of both the Applicant and the Organization for this matter to be resolved without recourse to litigation.

7. The Applicant reminded the Tribunal of the indication in his initial application that it had been filed quickly and that he would be applying to supplement the application. At the CMD, the Applicant therefore sought leave to file a rejoinder to his application, which will address matters not canvassed in the original application, including the quantum of damages sought. The Tribunal granted this motion and stated that the Respondent will be allowed time to respond to the joinder.

8. There was some discussion on whether an oral hearing would be necessary and the mechanics of holding a hearing under the present circumstances of Covid 19 Pandemic travel restrictions. The Presiding Judge is of the opinion that this dispute is unsuitable for a virtual hearing based on the likely number of witnesses and the extensive documentation to be reviewed during the hearing. The Judge also stated that decisions will have to be made as to whether, if the matter cannot be determined on the papers, it should be transferred to a different seat of the Tribunal whether for hearing by herself or a different Judge.

9. The Applicant expressed the view that an oral hearing may not be necessary. The Respondent agreed. The Respondent is of the view that this matter can be decided on the papers as the Applicant is not seeking to adduce new evidence.

10. However, based on points raised in the discussion the Respondent suggested that if the Tribunal decides an oral hearing is required, they have identified five witnesses. These witnesses will be called to testify in the event that this matter is not resolved, and proceeds to an oral hearing.

11. The Tribunal reminded the parties that the timelines set in this case must be strictly adhered to given the length of the undersigned Judge's deployment.

Orders

12. The Tribunal makes the following Orders:

- a. The parties will jointly advise the Tribunal on the status of their settlement discussions by **Friday, 15 May 2020**;

- b. The Applicant will file his rejoinder to the Respondent's reply, which is to include the additional evidence and amplification proposed in his initial application as well as a list of any witnesses deemed necessary to be heard at an oral hearing by **Thursday, 21 May 2020;**
- c. The Respondent's response to the Applicant's rejoinder is due on **Thursday, 11 June 2020.**

13. The Tribunal commends the parties for their willingness to engage in discussions for resolution of this matter outside of the adversarial process.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 4th day of May 2020

Entered in the Register on this 4th day of May 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi