



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/041
Order No.: 088 (NBI/2020)
Date: 11 May 2020
Original: English

Before: Judge Eleanor Donaldson-Honeywell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

RUBVUTA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

CASE MANAGEMENT ORDER

Counsel for the Applicant:
Sètondji Roland Adjovi

Counsel for the Respondent:
Elizabeth Gall, AAS/ALD/OHR

Introduction

1. The Applicant served as a Special Assistant, Political Affairs, at the P4/VI level with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”). He held a fixed term appointment and was based in Bangui, Central African Republic.

2. On 28 March 2018, the Applicant filed an application challenging the non-renewal of his appointment beyond 31 December 2017 following what he claims to be a flawed performance appraisal.

3. The Respondent filed a reply on 3 May 2018.

4. On 16 April 2020, the Tribunal issued Order No. 069 (NBI/2020) asking the parties to make joint submissions on the facts and issues in dispute and to indicate if they are amenable to having this matter settled without recourse to litigation.

5. The parties were unable to agree on a joint list of facts and issues, and filed separate submissions in response to Order No. 069 (NBI/2020).

6. The Applicant informed the Tribunal that he had submitted a settlement proposal to the Respondent. The Respondent’s filing indicated that he did not consider this matter suitable for alternative dispute resolution.

7. On 7 May 2020, the Tribunal held a case management discussion (“CMD”).

The Discussion

8. The Tribunal began by noting the parties’ respective positions on this matter being settled outside the adversarial process. The Tribunal strongly

encouraged the parties to give themselves a meaningful opportunity to settle this matter without recourse to further litigation.

9. The Tribunal proceeded to list the issues that it will consider, should settlement discussions fail.

10. The Tribunal stated that it considers this case to centre around the issue of the performance management process and the resultant non-renewal of the applicant's appointment.

11. In adjudicating this matter, the Tribunal will consider:

- a) Whether the Respondent followed the rules of the performance management process in respect of the application in the 2015-16 and 2016-17 performance cycles? Were the applicant's putative shortcomings correctly and fairly identified? Was the Applicant given a fair chance at rectifying those alleged shortcomings?
- b) The process by which the impugned decision was arrived at. Were relevant factors ignored and irrelevant issues considered? Was there procedural propriety and fairness; can the impugned decision be said to have been vitiated by bias?
- c) The establishment of the rebuttal panel, its constitution and whether they properly considered the issues surrounding the assignment of the applicant's first and second reporting officers? Was the email of 9 December 2016 before the rebuttal panel or was it otherwise brought to the Organization's attention, and if so, how it was considered?
- d) The manner in which the impugned decision was conveyed to the applicant. The fact that he was served his exit papers before being properly informed that his appointment was not being renewed.
- e) Remedies.

12. The Applicant believes that this matter can be determined on the basis of the parties written submissions if there is no dispute as to the evidence on the record. The Applicant has made available a performance evaluation that was

given to him when he served within a team outside of the Office of the Deputy Special Representative of the Secretary-General (“DSRSG”).

13. The Applicant is open to the prospect of this matter being settled without further litigation and have, to this end, submitted a proposal to the Respondent. The Respondent indicated that he is likewise open to considering a settlement that reflects a genuine compromise between the parties.

14. There was some discussion around the admissibility and weight of Mr Vysny’s email dated 9 December 2016. The Applicant told the Tribunal that the email was brought to his attention/came into his possession *after* the rebuttal proceedings. The Respondent indicated that he has concerns on how the email was obtained. The Tribunal asked that the parties address these concerns and issues in their written submissions.

15. In respect of moral damages, the Respondent took the position that the matter was never previously raised as a potential remedy and should not now be added to the Applicant’s list of remedies. The Applicant takes the position that the moral damages suffered by him would have been addressed in his testimony in chief should this matter have come to an oral hearing. However, the parties agreed that the issues concerning damages could be addressed subsequently if a Judgment is delivered for the Applicant.

ORDERS

16. The Tribunal makes the following Orders:

- a) The Applicant should file his submissions responding to: i) the issues raised in this Order, ii) the Respondent’s concerns on the probative value and provenance of Mr Vysny’s email, and providing information on the subsequent appraisal of the Applicant’s performance by **Friday, 15 May 2020**;

- b) The Respondent should file his response to the Applicant's submissions by **Friday, 22 May 2020;**
- c) The parties will jointly submit on the progress of their *inter partes* discussions by **Monday 1 June 2020.**

17. In the interest of efficient use of the Tribunal's resources and the expeditious conduct of proceedings, the Tribunal, pursuant to articles 10.3 of the UNDT Statute and 15.1 of the Rules of Procedure, and being mindful of paragraph 27 of General Assembly resolution 69/203 (Administration of justice at the United Nations), strongly urges the parties in this matter to consult and deliberate on having this matter informally resolved or mediated.¹ The Tribunal firmly believes that a settlement in good faith would be in both their interests.

18. The Tribunal commends the parties for their stated willingness to engage in settlement discussions.

19. The undersigned Judge reminds the parties that as her current term with the Dispute Tribunal in Nairobi is limited to three months, they must strictly adhere to the timelines that are set.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 11th day of May 2020

Entered in the Register on this 11th day of May 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

¹ Paragraph 27 states: "*Recalls* the emphasis placed by the General Assembly on the resolution of disputes, and requests the Secretary-General to report on the practice of proactive case management by the judges of the United Nations Dispute Tribunal in the promotion and successful settlement of disputes within the formal system in his next report".