



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/041
Order No.: 099 (NBI/2020)
Date: 26 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:
Sètonджи Roland Adjovi

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

Introduction

1. The Applicant held a fixed term appointment 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”) in Bangui, Central African Republic. He is challenging the non-renewal of his appointment beyond 31 December 2017 following what he claims to be a flawed performance appraisal.

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

3. On 11 May 2020, the Tribunal issued Order No. 088 (NBI/2020) recording the contents of the case management discussion that was held. The Tribunal listed the issues it will consider in adjudicating the matter and issued pointed directions for further submissions from the parties.

4. On 22 May 2020, the Respondent filed his submissions in response to Order No. 088 (NBI/2020). The Respondent’s filing included new evidence and four additional witness statements for inclusion into the record of proceedings.

5. The Applicant filed submissions strongly objecting to the Respondent’s submissions.

Considerations

6. Having clearly delineated the issues for adjudication in this matter, the Tribunal’s direction in paragraph 19(b) of Order No. 088 (NBI/2020) was clear. The Tribunal required the Respondent to *respond to the Applicant’s submissions* of 15 May 2020.

7. The Respondent has exceeded the scope of the Tribunal's Order and filed evidence seeking to explain what has already been on the record since 2018. This additional evidence/submissions goes well beyond the scope of what was ordered.

8. In this matter, there had already been approximately seven sets of submissions by the parties. The Respondent knew of the email at least two years ago, and is now seeking to dispute the provenance and admissibility of it while simultaneously seeking to explain what it "actually meant".

9. The Tribunal finds that this is neither fair to the Applicant; nor is it good use of the Tribunal's time to now allow the Respondent to file a statement from Mr Vysny to explain what he meant when he wrote that email.

10. What is clear from the Respondent's latest submission is that the Respondent is not denying that the email existed, but merely questioning how the Applicant got hold of it.

11. The Tribunal asked for submissions on the probative value and provenance of the email. The Respondent cannot be allowed now to supplement what they could have said before.

12. The Respondent's implied request to admit the additional evidence, and to have these four witnesses attend a hearing to give oral testimony in relation to the new evidence filed, is therefore denied.

13. The Tribunal encourages the parties to continue with their settlement discussions constructively and in good faith. The Tribunal looks forward to receiving the parties' joint submission on 1 June 2020. As indicated in the case management discussion, the Tribunal is inclined to grant the parties more time to continue with their discussions should there be a real prospect of a settlement between them. This leniency, must however, be read together with the undersigned Judge's limited term of deployment.

14. Should the parties indicate that settlement discussions have failed, the Tribunal will proceed to adjudicate this matter on the basis of the written submissions before it.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 26th day of May 2020

Entered in the Register on this 26th day of May 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi