



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/108
Order No.: 212 (NBI/2020)
Date: 28 October 2020
Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

VALME

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S
MOTION FOR PRODUCTION OF
DOCUMENTS**

Counsel for the Applicant:

Sètondji, Roland Adjovi

Counsel for the Respondent:

Miryoung An, AAS/ALD/OHR

Nicola Esti Caon, AAS/ALD/OHR

Background

1. On 17 July 2019, the Applicant filed an application contesting the decision of the Under-Secretary-General for Management Strategy, Policy and Compliance to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity (“the contested decision”).

2. The Respondent replied to the application on 15 August 2019.

3. The Tribunal held a Case Management Discussion (“CMD”) on 13 October 2020.

4. On 16 October 2020, the Applicant filed a motion for production of documents. In the said motion, the Applicant seeks the production of all documents related to the disciplinary sanction imposed on three other staff members investigated in connection with the Applicant’s case “in order to reassess what is alleged against him, for his defence”. The Applicant further submits that he needs to know whether anyone else among those interviewed in his case has faced a disciplinary case in connection to his case.

5. The Respondent responded to the motion on 20 October 2020 and urges the Tribunal to reject it for the following reasons:

a. the Applicant’s request for “all documentation” should be rejected because it is overly broad and constitutes a fishing expedition.

b. to the extent that the motion requests production of the “allegations, the response, the final decision and any settlement reached with the three individuals”, the documentation and information requested is irrelevant to and not probative of the issues before the Dispute Tribunal concerning the lawfulness of the contested decision; and

- c. the requested documentation is confidential and its production would violate the rights of individuals who are not party to the present proceedings.

Deliberations

6. Pursuant to art 9.1 of the UNDT Statute, the UNDT may “order production of documents or such other evidence as it deems necessary”. According to art. 18.2 of the UNDT Rules of Procedure, the UNDT “may order the production of evidence for either party at any time and may require any person to disclose any document or provide any information that appears to the Dispute Tribunal to be necessary for a fair and expeditious disposal of the proceedings”. Article 18.3 of the UNDT Rules of Procedure provides that “[a] party wishing to submit evidence that is in the possession of the opposing party or of any other entity may, in the initial application or at any stage of the proceedings, request the Dispute Tribunal to order the production of the evidence”.

7. These provisions indicate that the UNDT may act inquisitorially to ensure that the evidentiary questions presented by the pleadings are properly ventilated in any hearing held to decide an application.¹ In determining whether it ought to grant the Applicant’s request for production of the documents, the Tribunal is guided by whether the documents in question are material, whether they exist or whether they are deemed confidential under the relevant provisions of the Organization.²

8. The present case concerns the imposition of a disciplinary sanction on the Applicant. As is well established in UNAT jurisprudence, judicial review of a disciplinary case requires the Dispute Tribunal to examine:

- a. whether the facts on which the sanction is based have been established;

¹ *He* 2016-UNAT-686, para. 46.

² *Calvani* 2010-UNAT-032, para. 8.

- b. whether the established facts qualify as misconduct under the Staff Regulations and Rules;
- c. whether there was a substantive or procedural irregularity, and
- d. whether the sanction is proportionate to the offence.

Part of the test in reviewing decisions imposing sanctions is whether due process rights were observed.³

9. The documents sought by the Applicant need to address the evidentiary questions set out at paragraph eight above. In other words, the documents sought by the Applicant need to be material in answering those questions. Having reviewed the parties' pleadings in this case, the Tribunal is satisfied that it has before it the necessary documentation required to undertake a judicial review of the contested decision. The Applicant's pleadings and the documents supporting his application may be better explained by additional oral evidence of witnesses the Tribunal considers relevant and which will be the subject of another Order. The Administration's actions vis-à-vis the allegations against the other staff members may be related but do not go to the gravamen of the Applicant's challenge of the contested decision and to the legal questions that the Tribunal must address for a fair and expeditious disposal of these proceedings.

ORDER

10. The Applicant's request for production of all documents related to the disciplinary sanction imposed on three other staff members investigated in connection with his case is refused.

³ *Applicant* 2012-UNAT-209, para. 36.

(Signed)

Judge Margaret Tibulya

Dated this 28th day of October 2020

Entered in the Register on this 28th day of October 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi