



UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/NBI/2020/049
UNDT/NBI/2020/085
Order No.: 203 (UNDT/2021)
Date: 23 September 2021
Original: English

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

KUYA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON CASE MANAGEMENT

Counsel for the Applicant:

Roland Adjovi, *Etudes Vihodé*

Counsel for the Respondent:

Jacob van de Velden, AAS/ALD/OHR

Introduction and Procedural History

1. The Applicant is a Resident Auditor, with the Office of Internal Oversight Services (“OIOS”) at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), in Goma. He serves on a continuing appointment at the P-4 level.

2. The Applicant has two applications before this Tribunal, and they are registered as UNDT/NBI/2020/049 [Case#1] and 085[Case#2]. The Applicant has moved for these two matters to be joined and heard as one given that the facts in both overlap because the dispute stems from the same initial decision.

3. The Applicant’s challenge in Case #1 was towards the Respondent’s decisions of 13 January 2020 and 13 May 2020 [Case #2] to place him on Administrative Leave Without Pay (“ALWOP”) for periods of three months, or until the completion of an investigation into his conduct and any disciplinary process, whichever was earlier. The retroactive extension of the first decision from 13 April 2020 was the subject of Case #2.

4. It is the Respondent’s position that both decisions were lawfully made pursuant to staff rule 10.4(c) and section 11.4(b) of ST/AI/2017/1 (“Unsatisfactory conduct, investigations and the disciplinary process”).

Facts

5. On 10 December 2019, the Applicant was notified by OIOS that he was the subject of an investigation into possible misconduct; he was alleged to have interfered with an OIOS investigation into sexual assault by seeking to act as an intermediary between the complainant and the subject of the investigation. The Applicant was told

that he was being investigated for “assisting in, or contributing to, the commission of an act of misconduct”.

6. On 13 January 2020, the Under-Secretary General for Management, Strategy, Policy and Compliance (“USG-MSPC”), placed the Applicant on ALWOP for a period of three months pending completion of the investigation and any disciplinary process against the Applicant.

7. The Applicant sought management evaluation of the decision on 5 March 2020. The Management Evaluation Unit (“MEU”) upheld the decision on 23 April 2020.

8. On 15 May 2020, the Applicant received notification that the USG-MSPC had decided to extend his ALWOP for an additional period of three months retroactively from 13 April 2020, or until the completion of the disciplinary process, whichever comes earlier.

9. On 22 June 2020, the Assistant Secretary-General for Human Resources (“ASG/OHR”) revised the retroactive aspect of the decision to place the Applicant on ALWOP, and instructed that the Applicant be paid his salary for the period 13 April 2020 to 13 May 2020.

10. On 30 June 2020, the Applicant filed Case #1, a substantive application with the Dispute Tribunal to challenge the Respondent’s initial decision (January 2020) to place him on ALWOP.

11. On 10 July 2020, when the Applicant’s second period of ALWOP ended, the USG/OIOS decided to place him on administrative leave with pay (“ALWP”) instead of without pay from 16 July 2020. This was decided pursuant to Staff Rule 10.4 and section 11.3 of ST/AI/2017/1 (Unsatisfactory Conduct, Investigations and the Disciplinary Process). The ALWP was for an initial period of three months, pending a

review by the Department of Management Strategy, Policy and Compliance (“DMSPC”) of the OIOS investigation report into the Applicant’s conduct.

12. On 15 July 2020, the Applicant sought management evaluation of the ALWP decision. He thereafter filed an application to the Tribunal for suspension of action of the ALWP decision. The application was dismissed on 23 July 2020 by Order No 42. (NBI/2020). During those proceedings, the Respondent informed the Tribunal that the OIOS investigation report into the Applicant’s conduct had been referred to the ASG/OHR for consideration of whether a disciplinary process should be pursued under section 7.2 of ST/AI/2017/1.

13. Following the determinations in the aforementioned application, the application was docketed to the instant Judge on 1 September 2021 for determination on the merits. The Tribunal held a case management discussion (“CMD”) with the parties on 15 September 2021.

14. The Tribunal began by enquiring into whether the parties are amenable to *inter partes* settlement discussions. The Respondent informed the Tribunal that a sanction decision on the conduct of the Applicant is imminent, so that he was not in a position to engage in settlement discussions.

15. The Tribunal informed the parties that this matter will be adjudicated on the basis of their written submissions.

ORDER

16. Having heard the parties on their respective positions, the Tribunal made the following ORDERS:

- a) The Respondent **to disclose to the Applicant the tape/transcript of the interview and meetings which were discussed at the CMD by 20 September 2021.**

- b) Should the parties agree that these were admissible, a transcript was to be disclosed to the Tribunal by **27 September 2021**.
- c) Should the parties disagree, their submissions on admissibility are due on **27 September 2021**.
- d) The Tribunal will then rule on admissibility by **30 September 2021**.
- e) A schedule was also set for the filing of closing submissions as follows:
 - i. **13 October 2021** - Applicant to file
 - ii. **20 October 2021** - Respondent to file
 - iii. **27 October 2021** - Applicant's response to the Respondent's closing submissions.

(Signed)

Judge Eleanor Donaldson Honeywell

Dated this 23rd day of September 2021

Entered in the Register on this 23rd day of September 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi