



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/048
Order No.: 057 (NBI/2023)
Date: 1 March 2023
Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KOURA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON PRODUCTION OF
EVIDENCE AND CASE MANAGEMENT**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Nicole Wynn, AS/ALD/OHR, UN Secretariat
Fatuma Mninde-Silungwe, AS/ALD/OHR, UN Secretariat

Background

1. On 3 June 2022, the Applicant, a former P-3 Conduct and Discipline Officer with the African Union - United Nations Hybrid Operation in Darfur, (“UNAMID”), filed an application before the United Nations Dispute Tribunal contesting the following decisions: (1) his unreasonable early separation from UNAMID on 30 November 2021; (2) the decision not to allow him to use his annual leave days; and (3) the decision to ban the use of United Nations vehicles by the Applicant during the rainy season which affected his work environment and health.

2. The Respondent filed a reply to the application on 4 July 2022. In it, he argued that the decision not to allow him to use his annual leave days and the decision to ban the use of United Nations vehicles by the Applicant during the rainy season - which affected his work environment and health - are not receivable because they were not subject to management evaluation. In respect of the decision to separate him, the Respondent urged the Tribunal to find that the application has no merit because the Applicant held a fixed-term contract which ended by effluxion of time; the Respondent bore no obligation to “assist the applicant find alternative employment”¹.

3. The Tribunal held a hearing on the merits on 27 February 2023. At the hearing, the Applicant informed the Tribunal that contrary to the Respondent’s assertion that he had no obligation to assist him secure alternative employment, another similarly situated staff member from his Unit (“AM”), was laterally reassigned to the United Nations Headquarters (“UNHQ”) in New York on a P-3 Conduct and Discipline Team position in the Department of Operational Support (“DOS”). The Applicant requested the Tribunal to direct the Respondent to provide information on the procedure for AM’s reassignment from UNAMID to UNHQ/DOS.

¹ Reply, para. 3.

Considerations

Evidence

4. The Applicant's oral motion is supported by art. 18.3 of the UNDT Rules of Procedure which stipulates 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.

5. In *Icha*², a case concerning separation from service due to circumstances similar to those prevailing in the case at bar, the appellant argued that several of her similarly situated colleagues who were also in need of placement were found posts and remained in service, including a colleague who was initially identified along with her for separation. The appellant relied on the information supplied by the Respondent during the hearing to rebut the presumption of regularity that the Administration carried out the reassignment in compliance with the Organization's legal framework.³

6. By way of *obiter dicta*, Colgan J concurred with the majority decision allowing the appellant's appeal but exposed the information power imbalance between staff members and the Administration which renders it "difficult, if not impossible, to prove what one may be unaware of"⁴. He observed that the case before them (*Icha*), illustrated that,

... informed and detailed consideration needs to be given to whether a more just regime may be one in which adversarialism and strict rules of proof yield to one in which the UNDT's task it to ensure that all relevant information is gathered and assessed in a balanced way so that just outcomes can be achieved in cases and the current marked

² 2021-UNAT-1077.

³ Paragraphs 49-52.

⁴ Concurring opinion of Judge Graeme Colgan, at para. 3.

imbalance of power becomes less determinative of the outcome.⁵

7. The Tribunal considers that the information sought by the Applicant is relevant and appears to be necessary for a fair and expeditious disposal of this case.

ORDERS

8. The Respondent is directed to provide information on the procedure employed in the recruitment of AM from UNAMID to UNHQ/DOS by 3 March 2023.

9. The Applicant shall file his observations, if any, on the information provided by 8 March 2023.

10. The Respondent shall file his closing submissions by 10 March 2023.

11. The Applicant shall file his closing submissions by 14 March 2023.

12. The submissions at paras. 10 and 11 above shall not exceed five pages, in font Times New Roman, font size 12, line spacing of 1.5 lines.

13. All documents shall be filed in the UNDT's Court Case Management System.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 1st day of March 2023

Entered in the Register on this 1st day of March 2023

(Signed)

Eric Muli, Legal Officer, for

Abena Kwakye-Berko, Registrar, Nairobi

⁵ Concurring opinion of Judge Graeme Colgan, at para. 4.