



Before: Agnieszka Klonowiecka-Milart, Duty Judge
Registry: Nairobi
Registrar: Abena Kwakye-Berko

KERDI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S
MOTION FOR DISCLOSURE,
EXTENSION OF TIME TO FILE AN
APPLICATION AND TO SUSPEND
THE TIME TO FILE AN
APPLICATION**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Steven Dietrich, CIRS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a former Field Security Assistant with the United Nations Interim Force in Lebanon (“UNIFIL”), based in Naqoura, Lebanon.
2. On 1 May 2023, he filed a motion for disclosure and extension of time to file an application against a decision imposing a disciplinary measure of separation from service with compensation *in lieu* of notice and without termination indemnity.¹
3. By Order No. 076 dated 3 May 2023, the Tribunal granted the Applicant an extension of time to file his substantive application until 14 June 2023 and also granted the Applicant’s motion for the production of documents.
4. By response dated 17 May 2023, the Respondent filed the documents and information as set out in paragraph 5 of the said Order.
5. On 23 May 2023, the Applicant filed a second motion for the production of documents related to a separate disciplinary matter involving another staff member and a 30-day extension of the deadline to file his substantive application to the UNDT.
6. The Respondent responded to the Applicant’s motion on 2 June 2023.
7. By email dated 5 June 2023, the Applicant requests leave of the Tribunal to file a rejoinder to the Respondent’s 2 June 2023 response by 7 June 2023.

Considerations

8. The Respondent provides the following as grounds for refusing the Applicant’s 23 May 2023 motion.
 - a. Article 18 of the UNDT Rules of Procedure provides for the production of evidence only during the proceedings before the UNDT. The Respondent

¹ Annex 2 to the Motion.

cites *Aslam*² where the UNDT did not process a staff member's motion to produce documents without a substantive application and argues that the Applicant's motion should be treated similarly and not be processed to ensure consistency in the application of the Rules.

b. The Respondent submits that the Applicant is not entitled to documents and information related to a separate disciplinary process involving another staff member. In essence, the Applicant seeks the disclosure of the disciplinary case file held by the Administrative Law Division ("ALD"), which was created following the initiation of a disciplinary case involving AH, the other staff member. ALD's file consists of, *inter alia*, the formal allegations against the staff member, his/her response, and confidential legal advice provided by the ALD to senior management.

c. Legal privilege and confidentiality apply to the case file. Further, the Applicant has already been provided with and is in possession of all the documents and information relied upon by the Administration in reviewing the disciplinary case against him, including the complete investigation report, and supporting documentation, and, of course, his own comments on the allegations of misconduct. Therefore, giving the Applicant another extension of time to submit his substantive application is unnecessary.

9. The Tribunal recalls that art. 18 of the UNDT Rules of Procedure provides that the Dispute Tribunal shall determine the admissibility of any evidence and 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. The Tribunal considers that incidental matter of disclosure necessary for the determination of the content of the application falls under the notion of proceedings. The Tribunal disagrees with the Respondent's broad reading of the *Aslam* filing direction, which does not

² Case No. UNDT/NBI/2023/017.

support such a generality.

10. Disclosure of the material before the filing of the application, however, may be warranted where the documents are indispensable for the filing of an application. The question is indeed about relevance. In the present case, the Applicant intends to challenge a decision on a disciplinary measure. The existence and content of the decision is obvious. The Applicant may appeal it on the following grounds:

- a. that the relevant facts were not established by clear and convincing evidence;
- b. that the established facts do not amount to misconduct;
- c. that due process was violated, and
- d. that the measure imposed is disproportionate.³

11. The documents demanded by the Applicant are not indispensable for a filing of an application, which may be based upon facts stipulated by the Applicant. The disclosure of the requested material may be considered at a later stage, after the pleadings are formulated and the Tribunal is in a better position to assess the relevance of the alleged facts, the propriety of proving them through the requested disclosure, the propriety of such a disclosure, if indeed privileged information is sought, and the conditions for it, if granted. Further delaying of the filing of the application would be, however, unreasonable.

ORDERS:

12. The Applicant's request to file a rejoinder to the Respondent's 2 June 2023 response is refused.

13. The Applicant's request for an extension of the deadline to file his application is partly granted. The application shall be filed by or before 5.00 p.m. (Nairobi time)

³ *Sanwidi* 2010-UNAT-084, para. 40 citing to *Mahdi* 2010-UNAT-018, para. 27.

on 20 June 2023.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 6th day of June 2023

Entered in the Register on this 6th day of June 2023

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi