



Before: Judge Sean Wallace
Registry: Nairobi
Registrar: René M. Vargas M., Officer-in-Charge

TERRINE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON CASE MANAGEMENT

Counsel for Applicant:

Stéphanie Zurawski

Counsel for Respondent:

Charlotte Servant-l'Heureux, UNHCR
Jan Schrankel, UNHCR

Introduction

1. On 20 December 2022, the Applicant, who serves as Assistant Representative (Administration), P-5 level, at the Office of the United Nations High Commissioner for Refugees (“UNHCR”) in Lebanon, filed an application contesting three decisions relating to her applications for vacancies in Lebanon and Geneva.
2. After extensive litigation, and several delays for translations, the parties filed closing submissions on 30 May 2024.
3. On the same day, the Applicant filed a motion seeking an order to refer the case to mediation pursuant to art. 15 of the Tribunal’s Rules of Procedure.
4. In response to the Tribunal’s directions, the Respondent filed on 12 June 2024 his comments on the Applicant’s 30 May 2024 motion.
5. On 15 June 2024, the Applicant filed a motion seeking the translation to French of two Respondent’s submissions.

Consideration

The Applicant’s 30 May 2024 motion

6. In support of her 30 May 2024 motion, the Applicant states that, in August 2023, she raised the issue of mediation with the Respondent, and that “mediation was refused by the UNHCR”. However, she alleges that “the Organization now informs ... that it would never have been opposed to mediation”.
7. In his comments on the above motion, the Respondent “strongly refutes the Applicant’s assertion” and says he has documentary evidence to support his version of the events.

8. Specifically, the Respondent states that, in August 2023, Counsel for the parties agreed to attempt settlement through direct discussion. As to mediation with the Office of the Ombudsman, the Respondent says he never refused mediation. “It was counsel for the Applicant who subsequently refused the possibility of suspending the proceedings pending informal dispute resolution”. The Respondent further states that “there is no reasonable prospect of an informal resolution” and thus he “does not consent to a referral for mediation at this stage of the proceedings”.

9. The Respondent also registers concern about misrepresentations by the Applicant’s Counsel and that he deems the Applicant’s motion to be a waiver of the confidentiality accorded to settlement discussions.

10. Rather than wade into the thicket of confidentiality, waiver, and assessment of the credibility of Counsel, the Tribunal will treat the vast difference in representations by Counsel as a matter of miscommunication. Instead it will address the legal merits of the Applicant’s request.

11. Article 15 provides that the Dispute Tribunal may propose mediation to the parties and where “the parties consent to mediation, the Dispute Tribunal shall send the case to the Mediation Division of the Office of the Ombudsman for consideration”. It further provides that proceedings before the Tribunal will be suspended while mediation takes place.

12. Referral to mediation requires the consent of the parties. Since the Respondent does not consent to mediation, the Tribunal may not make the referral. Furthermore, the Tribunal finds that mediation is unlikely to be productive under these circumstances.

13. Nonetheless, the Tribunal notes that, since the Applicant’s closing submission was filed in French (as is her right), it has been sent for translation into English for consideration by the undersigned judge. The Tribunal has been advised that this

translation will take two months at a minimum. Thus, the Tribunal will not be ruling on this case until at least August.

14. The Tribunal always encourages settlement of claims if possible. Although the Respondent indicates that settlement is unlikely, if the parties wish to engage in direct settlement discussions while the Applicant's closing submission is being translated, they are free to do so.

15. If a settlement is reached, the parties are to advise the Tribunal immediately so that the time and money involved in translation, judicial consideration and judgment drafting may be avoided.

The Applicant's 15 June 2024 motion

16. In this motion, the Applicant requests the translation to French of the Respondent's 30 May 2024 closing submission and his 12 June 2024 comments on the Applicant's 30 May 2024 motion.

17. The Tribunal will grant the Applicant's motion and will make the translations available through its Court Case Management System upon their receipt.

Conclusion

18. In light of the foregoing, it is ORDERED that:

- a. The Applicant's 30 May 2024 motion is denied; and
- b. The Applicant's 15 June 2024 motion is granted.

(Signed)

Judge Sean Wallace

Dated this 20th day of June 2024

Case No. UNDT/NBI/2022/123

Order No. 72 (NBI/2024)

Entered in the Register on this 20th day of June 2024

(Signed)

René M. Vargas M., Officer-in-Charge, Nairobi