



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Hafida Lahiouel

BERTRAND

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:

Nicole Washienko, OSLA

Mariam Munang, OSLA

Counsel for Respondent:

Jonathan Croft, ALS/OHRM, UN Secretariat

Cristiano Papile, ALS/OHRM, UN Secretariat

Introduction

1. On 12 May 2016, the Applicant, a former Security Officer, Security Operations Unit, United Nations Stabilization Mission in Haiti (“MINUSTAH”), filed an application contesting the imposition of a disciplinary sanction consisting of separation from service with compensation in lieu of notice and with termination indemnity, under staff rule 10.2(a)(viii).

2. The sanction was based on a finding that the Applicant had engaged in misconduct on 14 September 2015, when he left a hand-held radio and a Heckler & Koch MP5 9 mm submachine gun with two magazines and approximately 60 rounds of ammunition unattended in a UN vehicle that he had been operating, and these items were stolen when an unknown person or persons broke into that vehicle while the Applicant waited in a restaurant for a take-out meal.

3. The Applicant submits that the sole issue for determination in this case is whether the imposed disciplinary measure was proportionate to the misconduct. The Applicant states that he does not dispute that the facts on which the disciplinary measure was based have been established or whether the established facts legally amount to misconduct. The Applicant submits that the sanction imposed on him was unduly harsh, absurd and disproportionate because the Administration failed to properly consider relevant mitigating factors. The Applicant requests retroactive reinstatement and that the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity be replaced with a written censure. In the alternative, the Applicant requests one year’s net base salary.

4. On 7 June 2016, the Respondent filed a reply to the application. The Respondent submits, *inter alia*, that the Organization considered relevant

mitigating factors when making the contested decision and that the disciplinary measure imposed on the Applicant was proportionate and appropriate.

5. This case was assigned to the undersigned Judge on 14 July 2016.

Case management

6. By Order No. 184 (NY/2016) dated 28 July 2016, the Tribunal directed the parties to file, by 18 August 2016, one of the following:

- a. if the parties agree that this matter should be decided on the papers, they shall file their respective closing submissions; or
- b. if either or both parties request a hearing, they shall file a joint submission listing the witnesses they intend to call, summarizing the oral evidence they intend to introduce, and proposing hearing date (or dates) in September 2016.

7. On 9 August 2016, the parties filed a joint submission in response to Order No. 184 (NY/2016). The Applicant requested that the Tribunal hold a hearing on the issue of the proportionality of the imposed disciplinary sanction. The Respondent submitted that the hearing was not necessary as the issue of proportionality was a question of law that could be decided by the Tribunal on the papers before it. However, in view of the Applicant's request to hold a hearing on the issue of proportionality of the disciplinary sanction, the parties proposed that the hearing be held on 30 September 2016.

8. Subsequently, the New York Registry requested the parties to provide a date other than 30 September 2016.

9. On 17 August 2016, the parties filed a joint submission proposing that the hearing be held on 20 and/or 21 September 2016.

Hearing preparations

Scheduling of the hearing

10. Article 16.2 of the Tribunal's Rules of Procedure states that "[a] hearing shall normally be held following an appeal against an administrative decision imposing a disciplinary measure."

11. Having considered the parties' joint submission of 9 August 2016, and in view of art. 16.2 of the Rules of Procedure, the Tribunal finds it appropriate for the fair and expeditious disposal of the case and to do justice to the parties to hold a hearing on the issue of the proportionality of the imposed sanction, as requested by the Applicant.

12. Although it appears that one day would be sufficient to hear the evidence of the three proposed witnesses, the Tribunal will set this case down for two days in the event of any technical difficulties.

Witnesses

13. The Applicant submits that he will provide his own testimony in relation to his prior service and the difficult and stressful working conditions he was under in MINUSTAH at the time of the events in question. The Applicant will also call Mr. IR, former Security Officer of MINUSTAH, who is expected to present oral evidence on the difficult and stressful working conditions in MINUSTAH, understaffed security teams, the pressures faced by security personnel, and the practice on the ground amongst security personnel regarding the carrying of weapons. The Applicant submits that these facts are relevant to the issue of proportionality.

14. The Respondent has proposed one witness, Mr. JR, Supervisor, MINUSTAH Close Protection Unit. Mr. JR is expected to testify that at

the material time, the Applicant worked under his supervision in the Close Protection Unit; that the weapons handling practices that Mr. IR described as applying in the Operational Response Unit did not apply in the Close Protection Unit; and that on the infrequent occasions when a member of the Close Protection Unit brought his or her firearm home, he or she was not permitted to leave it unattended.

15. It is noted that, in the joint submission of 9 August 2016, the Respondent objected to Mr. IR being called as a witness. The parties may make or respond to any motions regarding the relevance and admissibility of oral evidence at the outset of the hearing.

16. Accordingly, in view of the above,

IT IS ORDERED THAT:

17. This case shall be heard on **Tuesday, 20 September 2016**, continuing if necessary on **Wednesday, 21 September 2016**. The hearing shall commence at **10:00 a.m.**

18. By **5:00 p.m., Tuesday, 13 September 2016**, the parties shall file a joint submission with an agreed order of appearance of their witnesses, confirming whether the witnesses will appear in person and providing their contact information to the Tribunal.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 18th day of August 2016