



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2015/035
UNDT/NY/2015/062
Order No.: 226 (NY/2016)
Date: 28 September 2016
Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Hafida Lahiouel

AUDA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON APPLICANT'S MOTION DATED
27 SEPTEMBER 2016**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant has two separate but related applications registered under Case No. UNDT/NY/2015/035 and Case No. UNDT/NY/2015/062. By Order No. 213 (NY/2016) dated 8 September 2016, the two cases were consolidated into a combined proceeding.

Applicant's motion of 27 September 2016

2. On 27 September 2016, the Applicant filed a motion stating *inter alia* that, “[u]pon information and belief,” the second Fact-Finding Panel was constituted improperly as it comprised of two consultants who were not members of the Department of General Assembly and Conference Management (“DGACM”). The Applicant stated that one of the Panel members was also not listed on the Office of Human Resources Management (“OHRM”) roster of those who successfully completed the prerequisite training in investigating allegations of prohibited conduct.

3. By way of relief, the Applicant requested the Dispute Tribunal to find that:

a. The second fact-finding investigation was fraught with significant procedural irregularities and conducted in a manner that violated explicit provisions in ST/SGB/2008/5; and

b. The report prepared by the second Panel and its findings are inadmissible.

Thus,

c. Rescind the decision of Mr. Gettu to close out the investigation; and

d. Remand the case to DGACM to establish a new fact-finding panel in accordance with ST/SGB/2008/5.

Respondent's response of 28 September 2016

4. On 28 September 2016, the Respondent replied to the Applicant's motion of 27 September 2016. The Respondent stated that the Applicant was informed of the composition of the Second Fact-Finding Panel on 27 March 2015 and did not contest it at that time nor subsequently in his request for management evaluation. The Respondent submitted that it is unreasonable for the Applicant to raise this issue at this stage of the proceedings.

5. The Respondent further submitted that the Applicant's claim is without merit. The Panel was convened under sec. 5.14 of ST/SGB/008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority), which provides that a fact-finding panel may include members of OHRM roster who are not part of DGACM. In this case, as no DGACM investigators were available, two members of the OHRM roster were appointed. The Respondent submitted that both panel members successfully completed relevant investigative training. The Respondent attached, on an *ex parte* basis, a copy of the OHRM roster with the names of rostered investigators and their personal contact information. The roster is dated "as of 3 October 2014." It includes the names of both members of the Second Fact-Finding Panel and states that they were both trained in investigations.

6. The Respondent also included a signed statement by Ms. Abigail Loregnard, Special Assistant to the Under-Secretary-General, DGACM, explaining the process by which the two investigators were appointed to the Second Fact-Finding Panel.

Consideration

7. The Applicant's motion is denied, with reasons to follow in due course. No further motions shall be filed without prior leave of the Tribunal.
8. The parties are reminded of the terms of Order no. 225 (NY/2016), issued in preparation for a substantive hearing on 6 October 2016.

IT IS ORDERED THAT:

9. The Applicant's motion of 27 September 2016 is denied. A reasoned decision will be issued in due course.
10. No further motions shall be filed without prior leave of the Tribunal.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 28th day of September 2016