



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2017/008
Order No.: 33 (NY/2018)
Date: 9 February 2018
Original: English

Before: Judge Alexander W. Hunter, Jr.
Registry: New York
Registrar: Morten Albert Michelsen, Officer-in-Charge

NADASAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Ms. Miryoung An, ALS/OHRM, UN Secretariat
Ms. Susan Maddox, ALS/OHRM, UN Secretariat

Introduction

1. On 18 January 2017, the Applicant, a former Air Operations Assistant with the 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 sexually harassed Ms. X (name redacted), a staff member at the French Embassy in Liberia, and thereafter a staff member of the United Nations Children’s Fund (“UNICEF”) between the period January 2012 and October 2015.

3. On the same date (18 January 2017), the Registry acknowledged receipt of the application and, pursuant to art. 8.4 of the Rules of Procedure, transmitted it to the Respondent, instructing him to file a reply by 20 February 2017 in accordance with art. 10 of the Rules of Procedure.

4. On 20 February 2017, the Respondent filed a reply in which he contends that the application should be dismissed in its entirety. The Respondent submits, *inter alia*, that the grounds of the Applicant’s challenge to the disciplinary sanction are unclear in the application, and that the application itself clearly affirms the facts central to the case, namely that: (a) the Applicant knew that Ms. X did not want his advances; and (b) he continued his approaches, knowing that they would offend her. The Respondent further submits that the disciplinary measure imposed on the Applicant was proportionate and appropriate.

5. On 12 March 2017, the Applicant, without the leave of the Tribunal, filed two documents consisting of emails from the Applicant to unidentified staff members.

6. The present case was initially assigned to Judge Ebrahim-Carstens and it was reassigned to Judge Alexander W. Hunter, Jr. on 8 January 2018.

7. On 19 January 2018, by Order No. 8 (NY/2018), the Applicant was ordered to file a submission indicating the relevance of the documents filed by him on 12 March 2017 by 24 January 2018 and the Respondent was ordered to file a response to the Applicant's submission dated 24 January 2018 by 29 January 2018. The Tribunal further ordered the parties to confer to discuss whether a hearing should be held in this case by 1 February 2018, and file one of the following by 12 February 2018: (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 the period from 12 February to 2 March 2018.

8. On 24 January 2018, the Applicant filed a submission pursuant to Order No. 8 (NY/2018).

9. On 29 January 2018, the Respondent filed a submission pursuant to Order No. 8 (NY/2018).

10. On 9 February 2018, the Respondent filed a submission entitled "Motion for Case Management Discussion", informing the Tribunal that the parties have engaged in good-faith discussions as to whether this matter should be decided on the papers. During the discussions with the counsel for the Respondent, the Applicant stated that "he would agree that the matter be decided on the papers at the Dispute Tribunal, and that he would produce witnesses who were willing to testify for him at his possible appeal at the Appeals Tribunal in case the judgment at the Dispute Tribunal is not in his favor." The Respondent further informed the Tribunal that he advised the Applicant that he could avail himself of assistance from the Office of Staff Legal Assistance ("OSLA"), and that the Applicant could also reach out the Registry of the Tribunal for

any issues or questions about the proceedings. In these circumstances, the Respondent considers that the situation should be brought to the attention of the Tribunal for a fair and expeditious disposal of the case. On the basis of the foregoing, the Respondent requests that the Tribunal decide to hold a case management discussion (“CMD”) to elicit input directly from the Applicant as to whether the case should be decided on the papers or a hearing should be held. The Respondent also requests that the Tribunal reconsider paragraph 14 of Order No. 8 (NY/2018) by which the parties' submission(s) are ordered by 12 February 2018.

Case management

11. The Tribunal notes that the Applicant is self-represented and that information about the OSLA has been provided to him by the Respondent’s counsel. The Tribunal considers that the parties have had sufficient time to consider the directions of Order No. 8 (NY/2018) dated 19 January 2018. Should the Applicant need further time to avail himself of the benefit of legal representation, he is directed to submit a motion of extension of time for the 12 February 2018 deadline. In the circumstances presented to the Tribunal, there seems to be no need for a CMD on the issue.

IT IS ORDERED THAT:

12. The Respondent’s motion for a CMD is denied;

13. By **5:00 p.m., Monday, 12 February 2018**, the Applicant shall file a motion for extension of time in case he requires further time to avail himself of the benefit of legal representation;

14. If no request for extension of time is filed by the Applicant on Monday, 12 February 2018, the parties shall file one of the following by **5:00 p.m., Wednesday, 14 February 2018**:

- 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 the period from 19 February to 2 March 2018;
15. Thereafter, the Tribunal will issue further orders as it deems appropriate.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 9th day of February 2018