



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2018/078
Order No.: 93 (NY/2020)
Date: 21 May 2020
Original: English

Before: Judge Joelle Adda
Registry: New York
Registrar: Nerea Suero Fontecha

MALLICK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER
ON CASE MANAGEMENT

Counsel for Applicant:
Shubha Naik, OSLA

Counsel for Respondent:
Angela Arroyo, UNDP

Introduction

1. On 27 November 2018, the Applicant, a former staff member of the United Nations Development Programme (“UNDP”) based in Georgetown, Guyana, filed an application contesting the Administration’s decision not to renew her fixed-term appointment beyond the expiration date of 16 August 2018.

2. On 22 April 2020, by way of Order No. 78 (NY/2020) the Tribunal directed the Parties to file their closing submissions. The Applicant was directed to file her closing submission by 6 May 2020. The Respondent was directed to file his closing submission by 13 May 2020. The Applicant was given leave to file a final submission responding to the Respondent’s closing statement by 18 May 2020.

3. On 1 May 2020, the Applicant filed a motion in which she requested an oral hearing to hear the testimonies of three staff members. The proposed witnesses are the former Director of Bureau for Latin America and the Caribbean (“RBLAC”), the former Deputy Director, RBLAC and the UNDP Deputy Director and Chief of Human Resource Management, Office of Human Resources. The Applicant further requested leave to file new evidence in the form of three audio recordings of conversations she had recorded with the proposed witnesses without their consent during the course of 2017.

4. On 6 May 2020, the Respondent filed a submission requesting leave to file a response to the Applicant’s motion and to the evidence submitted.

5. On 6 May 2020, by way of Order No. 84 (NY/2020) the Tribunal granted the Respondent request to file a response to the Applicant’s motion and vacated the deadlines in Order No. 78 (NY/2020) until further order.

6. On 12 May 2020, the Respondent filed a response to the Applicant’s motion dated 1 May 2020, submitting, *inter alia*, an objection to the Applicant’s request for an oral hearing. The Respondent contends that the Applicant’s justification for the

hearing, and the information that she indicates the new witnesses could testify to, is outside of the scope of what is properly before the Tribunal. The Respondent further objects to the Applicant's request to file the three recordings on the basis that they are not relevant or probative to the facts at issue and violate the privacy rights of the staff members on the recordings.

Consideration

7. Article 18.5 of the Dispute Tribunal's Rules of Procedure provides that the Tribunal "may exclude evidence which it considers irrelevant, frivolous or lacking in probative value. The Dispute Tribunal may also limit oral testimony as it deems appropriate".

8. The Tribunal notes that the Applicant's case concerns the decision not to renew her fixed-term appointment. In her application, the Applicant submitted two grounds for unlawfulness of the decision: (1) the Respondent failed to provide the Applicant with the reasons for the non-renewal decision; and (2) there were improper motives underlying the decision. In terms of the improper motives, the Applicant cited three grounds in her application. First, that the Applicant's post was advertised mid-way through her appointment to the position. Second, her non-selection for the re-advertised position. Third, the failure of the Administration to confirm that the Applicant's successor will be transferred to the post on a permanent basis.

9. In determining the pleaded issues in this case, the Tribunal considers that it will be not assisted by the oral testimonies proposed by the Applicant as they are not within the scope of the above grounds pleaded in the Applicant's application. The Applicant states that the proposed testimonies each have information pertaining to the decision to transfer the Applicant out of her UNDP Guyana based on her request and the decision to withdraw the offer of the UNDP Jordan post. These matters are irrelevant to the issues in the case. The Tribunal notes that they were not raised either in the Applicant's request for management evaluation dated 19 July 2018 or in her application. It is not

permissible for the Applicant to raise additional grounds to her case at this late stage in the proceedings.

10. As the Tribunal has determined that the proposed testimonies are not within the scope of the issues in this case, it follows that the Applicant's request to file new evidence in the form of three audio recordings of conversations she had recorded with the proposed witnesses without their consent during the course of 2017 must also be denied. The Dispute Tribunal has determined that in order for secret recordings to be permissible as evidence the recordings must meet a five-fold criteria (see *Chhikara* Order No. 172 (NBI/2016)). The criteria include whether the evidence is relevant and probative of one or more of the issues in the case. The Tribunal finds, for the reasons stated above, that the proposed evidence is not relevant and probative for one or more of the issues in the case.

11. Pursuant to arts. 18 and 19 of the Dispute Tribunal's Rules of Procedure,

IT IS ORDERED THAT:

12. The Applicant's requests for a hearing in order to hear testimony of three witnesses and to file additional evidence are denied;

13. By **4:00 p.m., on Friday, 5 June 2020**, the Applicant is to file her closing statement, which should include a response to the contentions raised in the Respondent's reply.

14. By **4:00 p.m., on Friday, 12 June 2020**, the Respondent is to file his closing statement.

15. By **4:00 p.m., on Friday, 19 June 2020**, the Applicant may file a final submission responding to the Respondent's closing statement.

16. Each party's closing statements are to be five pages maximum, using Times New Roman, font 12 and 1.5 line spacing. The closing statements are solely to be based

on previously filed pleadings and evidence, and no new pleadings or evidence are allowed at this stage.

17. The Tribunal is fully briefed of the issues in this case and no further submissions are permitted at this stage.

(Signed)

Judge Joelle Adda

Dated this 21st day of May 2020