



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

HUTCHINSON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER
ON CASE MANAGEMENT

Counsel for Applicant:
Robbie Leighton, OSLA

Counsel for Respondent:
Jonathan Croft, ALD/OHR, UN Secretariat
Miryoung An, ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a staff member with the Department for General Assembly and Conference Management (“DGACM”) in New York, contests the Administration’s decision to impose the disciplinary measure of separation from service, with compensation in lieu of notice and with termination indemnity, in accordance with staff rule 10.2(a)(viii).

Consideration

2. By submission dated 17 October 2019, which was filed prior to the submission of the Respondent’s reply, the Applicant requested leave to adduce additional evidence, that is, several medical documents dated 2016 and 2018 concerning his medical condition, which were attached to the submission. Having reviewed the attached medical documentation, to which the Respondent commented in the reply, the Tribunal finds that the documents are potentially relevant to the matter under determination and therefore will allow them.

3. By submission dated 29 May 2020, the Applicant further requested disclosure of a report from the Director of the Medical Services Division (“MSD”) to the Assistant Secretary-General for Human Resources (“ASG/OHR”) and internal communications regarding his case in 2020. The Applicant submits that, following his separation, he engaged MSD in a further review of his medical situation during the relevant time period and submitted medical reports to the Director of MSD, who discussed the matter with ASG/OHR and was requested to provide her report to ASG/OHR.

4. The Applicant submits that these documents could be relevant to the responsibility of the Applicant in failing to seek medical attention during the relevant

time period and to the reasonableness of the investigation and initial MSD review. The Applicant submits that these documents could be relevant as to whether the Applicant's behavior amounts to misconduct and the sanction is proportionate to the offense.

5. On 22 September 2020, the Respondent filed a submission in response to the Applicant's motion. The Respondent submits that any communications or reports from the Director of MSD to ASG/OHR made after the contested decision was rendered are irrelevant as they had not been before the decision-maker when considering the decision to sanction the Applicant.

6. The Tribunal agrees that the requested documents are not relevant to determine the lawfulness of the contested decision as they post-date the contested decision. However, the Tribunal considers that the Applicant's medical reports submitted to the Director of MSD and his medical condition at the relevant time period could be potentially relevant and therefore allows the Applicant to submit medical reports to the Tribunal, if not already filed previously.

7. Having examined the case record on file, the Tribunal is of the view that the matter can be determined without holding a hearing.

8. However, the Tribunal is mindful of art. 16.2 of its Rules of Procedure which provides that a "hearing shall normally be held following an appeal against an administrative decision imposing a disciplinary measure". The Tribunal will therefore allow the parties to present their views as to whether they agree that the case can be decided on the papers or to provide detailed reasons if they consider that an oral hearing is necessary.

IT IS ORDERED THAT:

9. The Applicant's leave to adduce additional evidence dated 17 October 2019 is granted.
10. The Applicant's motion for order on disclosure dated 29 May 2020 is rejected. The Applicant is allowed to submit further medical reports as described in para. 6 above by **4:00 p.m. on Tuesday, 29 September 2020**.
11. By **4:00 p.m. on Friday, 2 October 2020**, the parties shall file:
 - a) their views concerning a judgment being rendered on the papers without an oral hearing providing detailed reasons if they think that an oral hearing is necessary; and
 - b) a submission stating if they request to produce, or request the opposing party to produce, any other written evidence, stating the relevance thereof.
12. The Tribunal will thereafter consider the information provided and give further case management directions.

(Signed)

Judge Joelle Adda

Dated this 22nd day of September 2020