



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

KENNEDY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Lucienne Pierre, ALD/OHR, UN Secretariat

Isavella Vasilogeorgi, ALD/OHR, UN Secretariat

Introduction

1. By Order No. 174 (NY/2020) dated 6 November 2020, the Tribunal provided the following orders (paras. 13 and 14):

... By **4:00 p.m. on Tuesday, 10 November 2020**, the Applicant is to file a submission in which:

- a. He clarifies, and possibly amends, his submissions regarding the confidential nature of the lost documents;
- b. He states whether he wishes to call Mr. KR as a witness on the limited question of confidentiality;
- c. He indicates whether he wants 30 minutes to present his legal submissions to the Tribunal at a hearing.

... In case the Applicant wishes a hearing to take place, by **4:00 p.m. on Thursday, 12 November 2020**, the parties are to propose a date and time for a hearing of a maximum of 2½ hours to take place either from 11:00 a.m. to 1:30 p.m. or 1:00 to 2:30 p.m. during the week of 16 to 20 November 2020 except for 19 November.

... On 4 November 2020, the Respondent filed his response in which he requests the Tribunal to deny the Applicant's requests for a hearing and for the written witness statements to be admitted into evidence. The Respondent, in essence, argues that all provided information is irrelevant to the case.

2. On 10 November 2020, the Applicant filed his submission as per Order No. 174 (NY/2020) in which he:

- a. Submits that “he disputes the categorization by the Respondent ... of ‘confidential [United Nations]’ that was used to justify the finding of misconduct and the disciplinary penalty imposed”;
- b. Requests that Mr. KR be allowed to testify concerning “the nature of the material as it has direct relevance to the question of whether losing the printed material can be categorized as an act of misconduct (unauthorized disclosure of confidential documents to the media) and whether the sanction imposed was justified and proportionate”;

c. Requests that, following Mr. KR's testimony he would have an opportunity "to present briefly his legal arguments to the Tribunal on whether his actions have been correctly described so as to entail misconduct and whether the sanction imposed for the alleged misconduct is proportionate".

3. By a jointly-signed filing dated 12 November 2020, the parties proposed the hearing to take place on 20 November 2020 from 11:00 a.m. to 1:30 p.m.

Consideration

4. With reference to its previous orders and the mentioned submissions of the Applicant and the parties dated 10 and 12 November 2020, respectively, the Tribunal will call for a virtual hearing on 20 November 2020 from 11:00 a.m. to 1:30 p.m. at which (a) Mr. KR will give testimony on the limited issue of the alleged confidentiality of the documents that the Applicant misplaced, and (b) the parties will be provided with 30 minutes at maximum to present their cases in person to the Tribunal, following which they will be ordered to submit a summary of their final submissions in writing.

5. As for the documents that the Respondent contends were confidential and whose misplacement led to the imposition of the impugned disciplinary sanction, the Tribunal has closely perused annex 3 to the reply, labelled as the investigation report, to identify these documents. Annex 3 is, however, 738 pages long, and due to lack of organization of the file uploaded in the eFiling portal, it is not possible to precisely ascertain what the relevant documents are.

6. As part of the Applicant's trial bundle, he is therefore to provide a copy of those documents, which he submits constitute the documents based on which the impugned disciplinary sanction was taken. If the Respondent disagrees therewith, he is to make a written submission thereon before the hearing, and as relevant, submit copies of any additional documents. Any disagreement is to be resolved at the outset of the hearing.

IT IS ORDERED THAT:

7. The parties shall attend a hearing on **Friday, 20 November 2020 from 11:00 a.m. to 1:30 p.m.** at which Mr. KR is to give his testimony on the limited issue of the nature of the documents that the Applicant misplaced and on which the impugned disciplinary sanction was based, following which the parties will be provided with 30 minutes at maximum to present their cases in person. All practical arrangements for the organization of the hearing will be coordinated by the New York Registry of the Dispute Tribunal.

8. In the event that either party intends to refer to any document during the hearing, that party shall submit, by **4:00 p.m. on Tuesday, 17 November 2020**, a paginated bundle of these documents. Specifically, the Applicant shall submit all those documents, which he submits constitute the relevant misplaced documents. If the Respondent disagrees therewith, he is to make a written submission thereon, and as relevant, submit copies of any additional documents, by **4:00 p.m. on Thursday, 19 November 2020**.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 12th day of November 2020