



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

DESBOIS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:

Julia Kyung Min Lee, OSLA

Counsel for Respondent:

Lucienne Pierre, ALD/OHR, UN Secretariat

Romy Batrouni, ALD/OHR, UN Secretariat

Introduction

1. At the Tribunal's direction, on 17 May 2021, the parties submitted a jointly-signed statement setting out a consolidated list of the agreed and disputed facts. They each further filed submissions stating their requests for additional documentation and proposed witnesses.

Consideration

Request for oral testimony

2. The Applicant requests the testimony in direct evidence of one of the eyewitnesses of the incident for which she was sanctioned: EK. She further wishes to cross examine MK, the victim of the Applicant's misconduct, and the other eyewitness, SK. The Applicant contests the credibility of MK and SK's statements to OIOS and avers that EK will testify that she did not contradict herself during the investigation process and that she did not witness the Applicant slap MK.

3. The Applicant further wishes to cross-examine the lead investigator from the Office of Internal Oversight Service ("OIOS"), CZ, in the context of the Applicant's challenge to the manner in which the investigation was carried out in this case.

4. The Applicant further requests to provide her own testimony.

5. In light of the application and the subsequent submissions, the Tribunal finds that the testimonies of EK, MK, SK and CZ are relevant to the issues in dispute in this case and authorizes their testimony.

6. The Tribunal further accepts to hear the Applicant's own testimony.

7. The Applicant further notes that in the Respondent's 17 May 2021 submission, he filed audio recordings of OIOS' interviews with three individuals who were not mentioned in the OIOS report: EV, TK and SB. The Applicant avers that having had no prior notice of these interviews and without having had the chance to fully review the recordings, she is not in a position to assess the need to request their testimony in these proceedings.

8. The Tribunal laments the belated disclosure of the entirety of the relevant evidence which, as a matter of procedural fairness and efficiency, should have been submitted with the Respondent's reply.

9. The Respondent states that he does not wish to call any witnesses at this point. However, he states that he "reserves the right to amend this position, depending on any arguments the Applicant sets forth in [her] submission regarding the relevancy and veracity of the witnesses which may need to be rebutted, and depending on any evidence, other than what is already on record, the Dispute Tribunal may require in issuing a judgment in this action".

10. The Tribunal notes that the Respondent is in possession of the entire investigation file and that the Administration's duty during the investigation and disciplinary process is, among other matters, to assess the credibility of the individuals upon whose testimonies it elects to impose a disciplinary sanction.

11. Therefore, given that all of the witnesses proposed by the Applicant were involved in the investigation, the Respondent should require no additional witnesses or evidence to rebut their credibility at this point in the proceedings. Save for any exceptional circumstances which the Respondent may demonstrate, the Tribunal will not admit any further testimonial evidence from him at this stage of the proceedings.

Request for additional evidence

Transcript of EK's second interview

12. The Applicant requests the production of the record of EK's interview with OIOS on 1 February 2017 which has not been disclosed so far.

13. The Tribunal notes that there is no record of a 1 February 2017 interview with EK in the case file. As EK is a direct eyewitness to the disputed events, the Tribunal finds this piece of evidence relevant and orders its submission into the record.

Printout of OIOS log of evidence

14. The Applicant avers that the Respondent omitted to disclose some of the documents pertaining to the investigation, such as EK's second interview and did not disclose the full list of the witnesses interviewed by OIOS prior to May 2021. The Applicant further points to the fact that OIOS omitted to include in its investigation report the audio recording and synopsis of its interview with SDG, which is relevant in this case as she is one of the witnesses, who came with SK to the location of the incident right after it occurred.

15. The Applicant states that it is her understanding that as per its standard procedure, OIOS keeps a logging of all evidence gathered in the course of an investigation. She claims that without such list, she is in a disadvantaged position of being unable to know if any relevant evidence was withheld.

16. Part of the Tribunal's judicial review is to assess whether the Administration took into account all relevant matters before taking the contested disciplinary decision (*Sanwidi* 2011-UNAT-084). To do so, the Tribunal needs to be able to review the entirety of the evidence that was collected in the investigation and which formed the basis for the disciplinary process and eventual sanction.

17. As the record shows that the Respondent did not timely disclose the entirety of the investigation file, to ensure that the Applicant enjoys her right to a due process, the Tribunal grants the Applicant's request for production of OIOS evidence log.

Exhibits marked by witnesses during their interviews with OIOS

18. The Applicant avers that various witnesses were shown documents during their interviews with OIOS investigators that they were requested to comment on or mark as exhibits.

19. The Applicant states that some of these exhibits, such as floor plans of the location of the incident in dispute are relevant to properly understand the testimonial evidence. However, none of these exhibits were either mentioned in the investigation report or included in the case file.

20. The Tribunal notes that the exhibits shown or marked by the witnesses during their interviews with OIOS are relevant to the facts in dispute. The Tribunal therefore directs the Respondent to submit these exhibits into the case file.

Audio recording of the conversation between EK, AF and MM

21. The Applicant states that, in the synopsis of MM's interview with OIOS, she stated that she recorded a conversation with MK, the victim of the Applicant's misconduct, the day after the incident in dispute, in which they both discuss the events in dispute in this case, in the presence of a third staff member. During her interview, MM informed OIOS investigators that she had handed over the recording to UNEP's Chief of Administration. The Applicant believes this recording to be relevant for the assessment of MK's credibility.

22. The Tribunal notes that in the synopsis of MM's 31 January 2017 interview with OIOS, MM does indeed make reference to a conversation with MK which she

recorded. The Tribunal finds that this conversation, as described by MM in her interview with OIOS may have a bearing on MK's credibility and is directly relevant to the events in dispute in this case. Therefore, shall OIOS be in possession of this piece of evidence, Tribunal directs the Respondent to submit it into this case file.

Record of the witnesses interviewed during the investigation

23. The Respondent submitted audio recordings, transcripts or synopses of all the witnesses interviewed by OIOS in this case. The Tribunal admits these into evidence.

24. In light of the above,

IT IS ORDERED THAT:

25. The evidence submitted appended to the Respondent's 17 May 2021 filing is admitted into evidence;

26. The Tribunal will hear the testimony of the Applicant, EK, CZ, MK and SK;

27. The Tribunal grants the Applicant's request for additional evidence. By **4:00 p.m. on Monday, 7 June 2021**, the Respondent shall upload the evidence referred to in paras. 13, 17, 20 and 22 above into the Tribunal's eFiling portal;

28. By **4:00 p.m. on Monday, 21 June 2021**, the Applicant shall file a submission stating whether, in light of the Respondent's submission of new evidence as ordered herewith, she requires the production of further evidence;

29. The Tribunal will thereafter issue the relevant instructions on further case management.

(Signed)

Judge Joelle Adda

Dated this 25th day of May 2021