



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/017

Order No.: 71 (NY/2021)

Date: 5 August 2021

Original: English

Before: Duty Judge

Registry: New York

Registrar: Nerea Suero Fontecha

MINZER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:

Cristian Gimenez Corte

Counsel for Respondent:

Alan Gutman, ALD/OHR, UN Secretariat

Introduction

1. By application filed on 31 March 2021, the Applicant requested rescission of the decision taken by the Director of the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), Mexico Office not to transfer him to a different Unit or under a different supervisor.

2. By Order No. 46 (NY/2021) of 10 May 2021, at the parties' request, the Tribunal referred the matter to the Mediation Division of the Office of the Ombudsman ("Mediation Division") and suspended the proceedings until 19 July 2021.

3. By Order No. 67 (NY/2021) of 21 July 2021, at the request of the parties, the Tribunal granted a subsequent suspension of the proceedings until 3 August 2021.

4. On 5 July 2021, the Applicant filed a submission titled, "Violation of the Order to mediate and breach of the agreement to mediate". In this submission, the Applicant sought the Dispute Tribunal (a) "[t]o enforce the Order to Mediate and the Agreement to Mediate and order the immediate resumption of the mediation process in good faith, and (b) "[t]o further suspended the proceedings until the conclusion of the mediation process in good faith.

5. By email dated 3 August 2021, the Director of Mediation informed the Tribunal that "despite efforts by the parties to settle the matter, the case was not resolved in mediation".

Consideration

6. The proceedings in the present case were suspended according to art. 15.4 of the Dispute Tribunal's Rules of Procedure, but since the mediation efforts have failed, the suspension is now lifted and the proceedings before the Dispute Tribunal are therefore to be reinstated.

7. The Dispute Tribunal notes that when the proceedings in a case before it are suspended under art. 15.4 of the Rules of Procedure, it does not have the authority to entertain any procedural motions made by any of the parties. This can only be done if and when the suspension is lifted. In this regard, pursuant to its Statute and Rules of Procedure, the Dispute Tribunal is not, at its own initiative, bestowed with the power to lift a suspension of proceedings during a mediation process that is instituted under art. 15.4 of the Rules of Procedure.

8. It is noted that in the 5 July 2021 submission, rather than requesting the Dispute Tribunal to lift the suspension of the proceedings, the Applicant requested it to maintain this suspension. Accordingly, at that point, given that the judicial proceedings were suspended and the case remanded to the Mediation Division, the Dispute Tribunal was not in a position to consider any procedural motions from any of the party.

9. Appended to the 5 July 2021 submission, the Applicant, nevertheless, also filed a motion for interim measures. In this motion, the Applicant sought suspension of the contested decision “not to transfer [him], followed by retaliation and continued harassment”.

10. On 2 August 2021, the Respondent filed a response to the motion for interim measures. In this response, the Respondent requests the Dispute Tribunal to reject the motion as it was filed during the suspension of the proceedings and further submits that it is without merit.

11. Consequently, the Dispute Tribunal could not entertain the Applicant’s submission of 5 July 2021, including the motion for interim measures, since it was filed during the suspension of the proceedings. Now that these proceedings have been reinstated, if the Applicant still wishes to file a motion for interim measures, the Dispute Tribunal instructs him to (re)file it through its eFiling portal.

IT IS ORDERED THAT:

12. The proceedings of the present case are reinstated;

13. The Applicant's submission of 5 July 2021, including the motion for interim measures, is rejected. If the Applicant wishes to submit a motion for interim measures, he is to (re)file to the Dispute Tribunal through its eFiling portal.

(Signed)

Judge Joelle Adda

Dated this 5th day of August 2021