



UNITED NATIONS DISPUTE TRIBUNAL

Cases Nos.: UNDT/NY/2020/042
UNDT/NY/2021/026
UNDT/NY/2021/038
Order No.: 90 (NY/2021)
Date: 8 October 2021
Original: English

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

ARVIZU TREVINO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALD/OHR
Clémentine Foizel, ALD/OHR, UN Secretariat

Introduction

1. On 29 September 2020, the Applicant, a former Chief Executive Officer of the United Nations Joint Staff Pension Fund (“UNJSPF”), filed an application in which he contests the United Nations Controller’s decision of 17 July 2020 “to deny him a compensation claim under Appendix D of the Staff Regulations and Rules” (Case No. UNDT/NY/2020/042).
2. On 30 September 2020, the Respondent filed a motion to request the Applicant to file an application limited to 10 pages instead of 14 pages (exclusive the frontpage).
3. On 1 October 2020, the Applicant filed a response to the Respondent’s 30 September 2020 motion in which he requested the Tribunal to reject this motion.
4. On 7 October 2020, the Applicant filed a motion to consolidate Cases Nos. UNDT/NY/2019/035 and UNDT/NY/2020/042.
5. On 8 October 2020, the Applicant requested an “updated medical report” to be admitted into evidence and that the “strictest confidentiality” would be maintained regarding its content, which should only be used in connection with “any appeal” not be made “publicly available”.
6. On 9 October 2020, the Applicant filed a motion for summary judgment (Case No. UNDT/NY/2020/042).
7. On 10 December 2020, the Dispute Tribunal issued Judgment No UNDT/2020/208 by which the Applicant’s application in Case No. UNDT/NY/2019/035 was found “moot” and “dismissed in its entirety”.

8. On 30 October 2020, the Respondent filed the reply (Case No. UNDT/NY/2020/042) in which he contends that the application is moot, and in any event, without merit.

9. On 18 December 2020, the Applicant filed a motion requesting this case to be considered by a three-judge panel (Case No. UNDT/NY/2020/042).

10. On 23 December 2020, the Applicant filed a motion for production of evidence (Case No. UNDT/NY/2020/042).

11. On 17 June 2021, the Applicant filed a second application in which he contests the United Nations Controller's decision "to deny [his] claim for compensation for total disability" of 30 December 2020 as per art. 3.2 of Appendix D of the Staff Regulations and Rules (Case No. UNDT/NY/2021/026).

12. On 19 July 2021, the Respondent filed the reply (Case No. UNDT/NY/2021/026) in which he contends that the application is not receivable, because the Applicant has "already challenged the outcome of his request for compensation under Appendix D in Case No. UNDT/NY/2020/042 (Arvizu Trevino)," and the Application "is therefore barred by the doctrine of *lis pendens*". In any event, the Respondent submits that the application is without merit.

13. On 8 September 2021, the Applicant filed a third application in which he contests the acting United Nations Medical Doctor's decision to deny the Applicant's "request to establish a medical board" of 6 April 2021 (Case No. UNDT/NY/2021/038).

14. On 16 September 2021, the Respondent filed a motion to determine receivability as a preliminary matter in Case No. UNDT/NY/2021/038 by which he also requested the deadline for filing the reply to be suspended. In the motion, the Respondent contends that (a) "[a]n Applicant may not file two applications

concerning the same subject matter and the same cause of action between the same parties where there is in substance one administrative decision” (*lis pendens*), and (b) the Applicant “has already contested the outcome of his request for compensation under Appendix D in the pending Cases Nos. UNDT/NY/2020/042 and No. UNDT/NY/2021/026”.

15. By Order No. 86 (NY/2021) dated 20 September 2021, the Duty Judge of the Dispute Tribunal in New York granted the Respondent’s 16 September 2021 motion in Case No. UNDT/NY/2021/038. She therefore ordered that the issue of receivability was to be determined as a preliminary matter once the case is assigned to a Judge of the Dispute Tribunal for adjudication, the deadline for submitting the reply was suspended until further notice, and the Applicant could file his observations in response to the Respondent’s contentions of non-receivability by 4 October 2021.

Consideration

16. The Tribunal notes that in Case No. UNDT/NY/2020/042, the Respondent contends that the application is “moot” as the Controller has “rescinded the contested decision and remanded the Applicant’s case back to the Advisory Board on Compensation Claims for consideration under Appendix D”. In both Cases Nos. UNDT/NY/2021/026 and UNDT/NY/2021/038, the Respondent then contends that the application is not receivable with reference to it already being under review in Case No. UNDT/NY/2020/042 and the notion of *lis pendens* (in Case No. UNDT/NY/2021/038, he further refers to Case No. UNDT/NY/2021/026).

17. The questions of the receivability of each of the three applications are therefore interconnected. Before reviewing the merits of any of the applications and the Applicant’s various motions in Case No. UNDT/NY/2020/042, the Tribunal will therefore first determine the receivability of each of these applications.

18. In this regard, the Tribunal finds that the further handling of these questions would benefit from the Respondent filing updated submissions on receivability in Cases Nos. UNDT/NY/2020/042 and UNDT/NY/2021/026 in light of the Applicant's subsequent application(s). As in Case No. UNDT/NY/2021/038, the Applicant will then be allowed to file his observations thereon. The Tribunal will thereafter determine the question of receivability in all three cases on the papers on record.

IT IS ORDERED THAT:

19. By **4:00 p.m. on Thursday, 21 October 2021**, the Respondent is to file his updated submissions on receivability in separate filings in Cases Nos. UNDT/NY/2020/042 and UNDT/NY/2021/026. Each filing shall not exceed five pages, using Times New Roman, font 12 and 1.5 line spacing;

20. By **4:00 p.m. on Thursday, 4 November 2021**, the Applicant may file his observations in separate filings in Cases Nos. UNDT/NY/2020/042 and UNDT/NY/2021/026 in response to the Respondent's updated contentions of non-receivability. Each filing shall not exceed five pages, using Times New Roman, font 12 and 1.5 line spacing.

(Signed)

Judge Joelle Adda

Dated this 8th day of October 2021