



Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

ROLLI

v.

SECRETARY-GENERAL
OF THE WORLD METEOROLOGICAL
ORGANIZATION

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Robbie Leighton, OSLA

Counsel for Respondent:
Daniel Trup, WMO

Introduction

1. By Order No. 88 (NY/2021) dated 24 September 2021, the Tribunal ordered the parties:

a. By 8 October 2021, the parties to file a jointly-signed statement in which they were to set out the agreed and contested facts, provide a list of the legal provisions upon which the contested decision was based, and indicate whether they would be willing to enter into negotiations on resolving the case amicably;

b. By 8 October 2021, the Applicant to submit the identity of the witnesses that he wished to call, indicate what disputed fact(s) each of these witnesses was to give testimony about, and provide a brief statement or summary of the issue and/or disputed fact(s) to be addressed by each witness. If the Applicant did not wish to call any witnesses but maintained his request for an oral hearing, he should provide reasons for holding this hearing. Also, the Applicant was to state what additional written documentation he requested the Respondent to disclose, including by indicating what disputed fact(s) such documentation was intended to support.

c. The Respondent to file his response to the Applicant's submission by 13 October 2021.

2. On 15 October 2021, following a request for time extension by the Applicant, the parties filed their jointly-signed statement and the Applicant filed his submission in accordance with Order No. 88 (NY/2021).

3. On 18 October 2021, the Respondent filed his response to the Applicant's submission.

Consideration

4. In the Applicant's 15 October 2021 submissions, he notes that his case is "twofold". He explains that, on the one hand, "the absence of an investigation, interview with the Applicant, opportunity to respond to allegations of misconduct etc. represent such fundamental breaches of due process that the summary dismissal decision cannot be found to have been taken on a proper basis and is vitiated". He submits that "these breaches of due process are evident on the papers and do not require that witness evidence be heard in order to adjudicate this element of the case". This leads him to state that "[s]hould the Tribunal agree that these due process violations are so grave as to render the decision unlawful then the Applicant would state no oral hearing is necessary".

5. In response, the Respondent notes that the Applicant "essentially directed the Tribunal to consider these issues as a preliminary matter before considering whether a trial should take place". He therefore "seeks permission from the Tribunal to adduce submissions to respond directly to the issues of due process".

6. As also reflected in Order No. 88 (NY/2021), the Tribunal agrees with the parties that, in essence, the Applicant contends that the contested decision is unlawful on two basic grounds, namely (a) that the decision was vitiated by various major due process irregularities and (b) that the factual and legal grounds for the contested decision were not properly established.

7. The Tribunal further agrees with the Respondent, as stated in the jointly-signed statement, that "the established framework for reviewing decisions regarding misconduct should apply". According to the Respondent, this means that the judicial test is: "a. Whether the facts on which the sanction is based have been established; b. Whether the established facts qualify as misconduct; and c. Whether the sanction is proportionate to the offence" (see, for instance, the Appeals Tribunal in *Turkey* 2019-UNAT-955).

8. In addition to these three points, the Tribunal notes that as a fourth prong of the judicial test, the Appeals Tribunal has held that the Dispute Tribunal is to examine “whether the staff member’s due process rights were respected” (see para. 28 in *Siddiq* 2019-UNAT-913, affirmed in, for instance, *Nadasan* 2019-UNAT-918).

9. Accordingly, for the sake of judicial economy and efficiency, the Tribunal will order the parties to file closing arguments on the issue of due process. The Tribunal will thereafter review whether any, or the accumulation of, the alleged irregularities were of such character that it/they would render the contested decision unlawful and lead to its rescission. Regarding the Applicant’s request for additional written documentation, the Tribunal notes that the Respondent effectively states that all relevant documentation is already on file.

10. Should the Tribunal answer the above question in the affirmative, it will issue a judgment with reasons thereon and will not examine the other prongs of the judicial test. The Tribunal will thereafter allow the parties to file submissions on the question of compensation in light of the Tribunal’s judgment.

11. On the contrary, should the Tribunal find that no due process irregularity occurred or none were so grave that they substantively impacted the contested decision (in line herewith, the Appeals Tribunal has adopted the “no difference” principle in, for instance, *Kallon* 2017-UNAT-742, *Allen* 2019-UNAT-951, *Ladu* 2019-UNAT-956 and *Thiombiano* 2020-UNAT-978), the Tribunal will issue an order thereon and proceed with its review of whether the factual and legal grounds of the contested decision were appropriately established. As the Applicant’s request for a hearing is only related to this basic issue, this request will only be considered if the Tribunal is to proceed to this review.

12. Finally, the Tribunal notes that in the jointly-signed statement, the parties state that they “remain open to mediation through the Office of the Ombudsman and Mediation Service to explore all avenues to avoid lengthy litigation and ensure a

satisfactory outcome for both sides”. The Tribunal encourages the parties to seek an amicable solution to the present case and, upon their request, stands ready to suspend to proceedings in accordance with art. 15 of its Rules of Procedure.

13. In light thereof,

IT IS ORDERED THAT:

14. The Applicant’s request for additional written documentation is rejected;

15. By **4:00 p.m. on Thursday, 4 November 2021**, the Applicant is to file his closing statement limited to the issue of due process, which is to be five pages maximum, using Times New Roman, font 12 and 1.5 line spacing. The closing statement is solely to be based on previously filed pleadings and evidence, and no new pleadings or evidence are allowed at this stage;

16. By **4:00 p.m. on Thursday, 11 November 2021**, the Respondent is to file his closing statement responding to the Applicant’s closing statement at a maximum length of five pages, using Times New Roman, font 12 and 1.5 line spacing. The closing statement is solely to be based on previously filed pleadings and evidence, and no new pleadings or evidence are allowed at this stage;

17. By **4:00 p.m. on Thursday, 18 November 2021**, the Applicant may file a statement of any final observations responding to the Respondent’s closing statement. This statement of final observations by the Applicant must be a maximum of two pages, using Times New Roman, font 12 and 1.5 line spacing. It must be solely based on previously filed pleadings and evidence, and no new pleadings or evidence are allowed at this stage;

18. After the abovementioned submissions have been filed, the Tribunal will consider the further handling of the proceedings, including if a Judgment on the issue of due process and rescission of the contested decision is to be issued.

(Signed)

Judge Joelle Adda

Dated this 21st day of October 2021