



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/044/T
Order No.: 100 (NY/2021)
Date: 29 October 2021
Original: English

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

ELIEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Julia Kyung Min Lee, OSLA

Counsel for Respondent:
Elizabeth Brown, UNHCR
Francisco Navarro, UNHCR

Introduction

1. On 12 October 2020, the Applicant, a former staff member of the United Nations High Commissioner for Refugees (“UNHCR”), filed an application contesting the imposition of a disciplinary sanction of dismissal.
2. On 16 November 2020, the Respondent replied that the application is without merit.
3. The application was originally filed in the Nairobi Registry and transferred to the New York Registry on 20 October 2021.

Consideration

4. The Applicant challenges that the Administration failed to establish the facts on which the sanction was based to the applicable standard and that the sanction imposed was disproportionate.
5. The Respondent rejects these assertions and claims that the decision was lawful.
6. The Tribunal notes that arts. 16.1 and 2 of the Rules of Procedure provide that “[t]he judge hearing a case may hold oral hearings” and that “[a] hearing shall normally be held following an appeal against an administrative decision imposing a disciplinary measure”. Therefore, it is for the trier of fact to determine whether a hearing is necessary, which, in a disciplinary case like the present one, it normally will.
7. The Tribunal also notes that the very purpose of producing evidence—written or oral—is to substantiate the specific relevant facts on which the parties disagree. Accordingly, the production of additional evidence is only required in trial if a fact is relevant and disputed (in line herewith, see *Abdellaoui* 2019-UNAT-929, para. 29, and *El-Awar* 2019-UNAT-931, para. 27).

8. In light of the above, should the Applicant wish to request the production of further evidence, he shall specifically identify the relevant documentation/witness and clearly indicate which of the facts he disputes the requested evidence intends to support. In this regard, the Tribunal notes that the Appeals Tribunal has prohibited a so-called “fishing expedition”, whereby one party requests the other party to produce evidence in “the most general terms” (see, for instance, *Rangel* Order No. 256 (2016)). A party requesting certain evidence must therefore be able to provide a certain degree of specificity to her/his request.

9. Should the Applicant request the submission of additional evidence, the Tribunal will hear the Respondent’s views on the request.

10. In light of the above,

IT IS ORDERED THAT:

11. By **4:00 p.m. on Monday, 15 November 2021**, the Applicant shall submit his request for production of any additional evidence, and if so, state:

a. What additional documentation he requests to be disclosed, also indicating what fact(s) such evidence is intended to substantiate; and/or

b. The identity of the witness(es), who the Applicant wishes to call, and what disputed fact(s) each of these witnesses would testify about.

12. By **4:00 p.m. on Friday, 3 December 2021**, the Respondent may submit his response to the Applicant’s submission on production of evidence.

13. Upon receipt of the above-referred submissions, the Tribunal will issue further instructions on case management.

(Signed)

Judge Joelle Adda

Dated this 29th day of October 2021