



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

YAMEOGO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER
ON CASE MANAGEMENT

Counsel for Applicant:
Emmanuel Yonli

Counsel for Respondent:
Matthias Schuster, UNICEF
Kevin Browning, UNICEF

Introduction

1. On 8 January 2021, the Applicant, a former staff member of the United Nations Children’s Fund (“UNICEF”), filed an application contesting the decision to impose on him the disciplinary sanction of dismissal.
2. On 1 March 2021, the Respondent replied that the application is without merit.
3. The case was originally filed with the Nairobi Registry and transferred to the New York Registry on 20 October 2021.

Consideration

4. As a preliminary matter, the Tribunal notes that on 31 March 2021, the Applicant filed a rejoinder to the Respondent’s reply and submitted additional evidence.
5. On 8 April 2021, the Respondent requested the rejoinder to be stricken from the record because it had been filed without prior authorization from the Tribunal.
6. The Tribunal notes that in the 31 March 2021 rejoinder, the Applicant mainly rehashes the arguments laid out in the application and annexes, his three most recent performance evaluation reports and a certificate of “Human of UNICEF” which, having been issued by the Organization itself, were already known to the Respondent.
7. The Tribunal further notes that in his motion to strike the rejoinder, the Respondent had the opportunity to respond to the rejoinder.
8. Accordingly, the Tribunal finds that the submission of the rejoinder, if unsolicited, is not prejudicial to the Respondent. The Tribunal therefore decides to

accept both the 31 March 2021 rejoinder and the Respondent's 8 April 2021 submission.

9. With respect to the merits of the case, the Tribunal notes that the Applicant's main contention in this case is that the facts underlying the disciplinary sanction were not established by clear and convincing evidence.

10. In terms of case management, the Tribunal recalls 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.

11. 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).

12. In light of the above, the Tribunal will grant the Applicant the opportunity to indicate whether he requests the production of further evidence and, if so, to specifically identify the relevant documentation/witness requested, identifying which of the issues he disputes the requested evidence is intended 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.

13. Once the Applicant has identified the requested evidence, the Tribunal will hear the Respondent's views on the request.

14. In light of the above,

IT IS ORDERED THAT:

15. The Applicant's 31 March 2021 rejoinder and the Respondent's submissions laid out in his 8 April 2021 motion are admitted into the record;

16. By **4:00 p.m. on Monday, 6 December 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.

17. By **4:00 p.m. on Monday, 20 December 2021**, the Respondent may submit his response to the Applicant's submission on production of evidence.

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

(Signed)

Judge Joelle Adda

Dated this 22nd day of November 2021