UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NY/2020/047
Order No.:	025 (NY/2022)
Date:	7 March 2022
Original:	English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

BLYTHE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
George G. Irving

Counsel for Respondent:
Yehuda Goor, ALD/OHR, UN Secretariat

Introduction

1. On 22 December 2020, the Applicant, a staff member in the Department of Management, Strategy, Policy and Compliance ("DMSPC"), appealed (a) the rejection of his candidature for the post of Secretary of the Board of the United Nations Joint Staff ("UNJSPF"), and (b) his subsequent reassignment to a temporary post in DMSPC.

2. On 21 January 2021, the Respondent replied stating that the application is partly non-receivable and, in any event, without merit.

3. By Order No. 64 (NY/2021) of 14 July 2021, at the parties' request, the Tribunal referred the present case to the Mediation Division, and the proceedings were suspended. The suspension of proceedings was extended at the parties' requests until 18 February 2022.

4. By email of 15 February 2022, the Mediation Division informed the Tribunal that the parties were unable to resolve the case and therefore the case is referred back to the Tribunal.

Consideration

5. The Tribunal notes that, following the failure of the settlement discussions, the present case is reinstated, and the Tribunal will proceed with case management.

6. The Tribunal further 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.

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 parties wish to request the production of further evidence, they shall specifically identify the relevant documentation/witness and clearly indicate which of the facts they dispute the requested evidence intends to support. In this regard, the Tribunal recalls 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. In light of the above,

IT IS ORDERED THAT:

10. By **4:00 p.m. on Tuesday, 22 March 2022**, each party shall submit whether they request the production of any additional evidence, and if so, state:

a. What additional documentation they request to be disclosed, also indicating what fact(s) such evidence is intended to substantiate;

b. The identity of the witness(es) the party wishes to call, and what disputed fact(s) each of these witnesses would testify about, also setting out the proposed witness's testimony in writing. This written witness statement may also be adopted as the examination-in-chief at a potential hearing if the party leading the witness should wish to do so;

c. If no witnesses are requested to be called, if any of the parties wishes a hearing to be held for them to present their case in person to the Tribunal.

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

(Signed)

Judge Joelle Adda

Dated this 7th day of March 2022