



Before: Judge Francis Belle

Registry: New York

Registrar: Morten Michelsen, Officer-in-Charge

DRAGNEA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON REFERRAL TO MEDIATION**

Counsel for Applicant:

Michael Horn, Archer & Greiner, PC

Counsel for Respondent:

Yehuda Goor, AAS/ALD/OHR, UN Secretariat

Introduction

1. By application filed on 17 November 2021, the Applicant, a staff member of the United Nations Department for Safety and Security (“UNDSS”), contests:
 - a. The issuance to her of a notice of reprimand (“Notice”);
 - b. The placement of said notice in her file;
 - c. Her placement on a performance improvement plan (“PIP”); and
 - d. The outcome of the Management Evaluation Unit’s (“MEU”) review of the above decisions.
2. In her application, the Applicant requested, *inter alia*, an:
 - a. Order for production of all evidence including a copy of all reports, CCTV recordings and telephone recordings in connection with the 29 March 2021 incident supporting the issuance of the Notice; and
 - b. Oral hearing.
3. On 26 November 2021, the Respondent filed a motion requesting the Tribunal to determine receivability as a preliminary matter and suspend the deadline for the Respondent’s reply.
4. By email dated 29 November 2021, the Tribunal granted the Respondent’s request to suspend the deadline for his reply.
5. On 2 December 2021 and 10 December 2021, the Applicant filed her opposition and supplemental opposition to the Respondent’s motion to have receivability determined as a preliminary matter.
6. On 1 July 2022, the present case was assigned to the undersigned Judge.

7. By Order No. 61 (NY/2022) of 14 July 2022, the Tribunal granted in part the Respondent's motion to have receivability determined as a preliminary matter, on grounds that it does not have jurisdiction to consider appeals against the outcome of a review of the administrative decision by MEU and thus this aspect of the application is manifestly not receivable.

8. The Tribunal further instructed the Respondent to file his reply to the application, which he did on 15 August 2022.

9. By Order No. 76 (NY/2022) of 17 August 2022, the Tribunal instructed the Respondent to file the following materials on an *ex parte* basis:

a. The investigation report (including its annexes) into the incident of 29 March 2021; and

b. The CCTV recordings of the incident of 29 March 2021.

10. On 18 August 2022, the Respondent filed the above-mentioned materials on an *ex parte* basis.

11. By Order No. 77 (NY/2022) of 23 August 2022, the Tribunal rejected the Applicant's request for an oral hearing and instructed the Respondent to redact the investigation report and its annexes and refile them on an under-seal basis, excepting the excerpts of CCTV recordings and third parties' statements. The Tribunal further ordered the Applicant to file a rejoinder by 1 September 2022 and invited the Respondent to file his response to the Applicant's rejoinder by 9 September 2022.

12. On 31 August 2022, the Applicant filed her rejoinder.

13. On 9 September 2022, the Respondent filed his response to the Applicant's rejoinder.

14. Having reviewed the parties' submissions, the Tribunal decided to convoke the parties to a case management discussion ("CMD"), which took place, as scheduled, on 19 September 2022, with a view to explore the possibilities of referral of the case to mediation.

15. During the CMD, the Applicant expressed his consent to mediate the case whereas the Respondent's Counsel informed the Tribunal that he would have to seek approval from his senior management about entering into mediation. Moreover, the Respondent's Counsel again requested the Tribunal to determine receivability as a preliminary matter.

16. By Order No. 84 (NY/2022) of 20 September 2022, the Tribunal instructed the Respondent to inform the Tribunal about his position on whether he would like to engage in mediation of the case by 26 September 2022.

17. By Judgment *Dragnea* UNDT/2022/088, dated 23 September 2022, the Tribunal decided that the challenge against the decisions to issue the Applicant the Notice and to place it in her personnel file is receivable; and the challenge against the decision to place the Applicant on a PIP is not receivable.

18. On 25 September 2022, the Respondent informed the Tribunal of his agreement to mediate the present case.

Consideration

19. Noting that both parties have expressed their consent to mediation, pursuant to art. 15.2 of its Rules of Procedure, the Tribunal decides to refer the case to the Mediation Division in the United Nations Ombudsman and Mediation Services ("UNOMS") for consideration. Accordingly, the proceedings will be suspended during mediation under art. 15.4 of the Tribunal's Rules of Procedure.

20. In relation to the length of time for staying the proceedings, the Tribunal notes that art. 15.5 of its Rules of Procedure provides that "[t]he time limit for mediation normally shall not exceed three months". Having considered the circumstances of the present case as well as the parties' willingness to resolve the matter, the Tribunal finds it appropriate to suspend the proceedings for a period of two months.

21. In addition, the parties' attention is drawn to art. 15.7 of the Tribunal's Rules of Procedure, which provides that:

All documents prepared for and oral statements made during any informal conflict-resolution process or mediation are absolutely privileged and confidential and shall never be disclosed to the Dispute Tribunal. No mention shall be made of any mediation efforts in documents or written pleadings submitted to the Dispute Tribunal or in any oral arguments made before the Dispute Tribunal.

Conclusion

22. In view of the foregoing, it is ORDERED THAT:

- a. The matter is hereby referred to the Mediation Division in UNOMS for mediation pursuant to art. 15 of the Tribunal's Rules of Procedure;
- b. The proceedings before the Tribunal in this matter be suspended during the mediation process until **Monday, 28 November 2022**;
- c. By **Monday, 28 November 2022**, the Mediation Division and/or the parties shall inform the Tribunal as to whether the parties have reached a settlement;
- d. If a settlement agreement is reached within this period, the Applicant shall subsequently confirm to the Tribunal, in writing, that her application is withdrawn; or
- e. If no settlement is reached within the prescribed period, and in the absence of any leave granted for an extension of time, the Tribunal will resume proceedings in this matter and the parties shall file separate statements informing the Tribunal if additional written and/or oral evidence is requested to be produced and, if so, stating its relevance by **Thursday, 8 December 2022**.

(Signed)

Judge Francis Belle

Dated this 28th day of September 2022