



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2022/037

Order No.: 074 (NY/2023)

Date: 22 August 2023

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

TEKSOZ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Miryoung An, DAS/ALD/OHR

Isavella Maria Vasilogeorgi, DAS/ALD/OHR

Introduction

1. On 15 July 2022, the Applicant, a staff member of the Office of the Special Adviser on Africa (“OSAA”), filed an application contesting the decision to impose on him the disciplinary measure of demotion with deferment, for two years, of eligibility for consideration for promotion, in accordance with staff rule 10.2(a)(vii).

2. On 31 July 2023, the Tribunal notified the parties that the United Nations Staff Union, acting through its then president, Mr. Arauz, had filed a motion requesting leave to file a friend-of-the-court brief with respect to the aforementioned case (the “Motion”). The Tribunal instructed the parties to file any objections that they may have regarding the Motion.

3. On 2 August 2023, the Counsel for the Applicant conveyed the Applicant’s support for the Motion.

4. On 3 August 2023, the Respondent filed a submission objecting to the Motion and requesting that the Tribunal reject the United Nations Staff Union’s request to file a friend-of-the-court brief.

Considerations

5. The Motion filed by the United Nations Staff Union states that “the Applicant is a registered member of the Staff Union and has sought its advice and support in pursuing recourse.” The Staff Union submits that it seeks to file an amicus brief providing factual background and reasoning in support of the application based on two grounds:

1) its interest in promoting the fairness of the disciplinary process, including investigations by OIOS and policies for preventing retaliation for engaging in protected activities, which affects all staff, and

2) its prior involvement in the issues surrounding the proposed reorganization of the reporting lines in the OSAA under the former [Under-Secretary-General] and its implications for the working

environment of the Office. This has direct relevance to the issues in dispute in this case.

6. The Respondent objects to the Motion submitted with respect to the first ground, that the Applicant's membership in the Staff Union does not represent sufficient grounds for allowing the filing of a friend-of-the-court brief, and with respect to the second ground, that the two reasonings provided by the Motion lack the minimum specifics and find no support.

7. The Tribunal notes that in accordance with art. 24 of the Dispute Tribunal's Rules of Procedure, a friend-of-the-court brief may be submitted by a staff association, following permission by the judge hearing the underlying case. Pursuant to art. 24(2) of the Dispute Tribunal's Rules of Procedure, permission may be granted only if the presiding judge considers that "the filing of the brief would assist the Dispute Tribunal in its deliberations."

8. In determining whether a friend-of-the-court brief would assist the Tribunal's deliberations, the Appeals Tribunal has stated in *Masri* 2010-UNAT-098 as follows:

"The purpose of a friend-of-the-court brief will generally be to address matters other than the law. The Appeals Tribunal is composed of experienced, professional Judges who are able to ensure that proper deliberations are held concerning the general principles of law that are applicable in the case with the benefit of the parties' submissions, the UNDT Judgment and the judicial work of the Tribunal itself, without the need for additional contributions from friends-of-the-court. If the issues in a case raise very specific or particular questions of law which are not generally within the expertise of counsel or the Judges, an application to file a friend-of-the-court brief may be granted. But in this case, the issues can be addressed based on the submissions, the case record and the judicial work carried out by the panel of Judges hearing the appeal".

9. Further, in *Terragnolo* 2014-UNAT-448 where the staff association was seeking to intervene in support of the applicant who was alleging that he had been retaliated against, the Appeals Tribunal held as follows:

“In the present case, the applicant, who is a former Chairperson of the Staff Council of the Organization’s Staff Union and who, it is noted, has no legal background, offers his assistance with respect to matters involving the facts, evidence and law of the case, mainly in relation to the alleged retaliation said to have tainted the relationship between the Administration and the staff member. With due respect to the view contained in the application, this kind of assistance would be no more than the expression of the opinion of a private person related to a party about how the issues involved in a lawsuit should be decided by the Court. This cannot be considered to be the real meaning and utility of a friend-of-the court submission.”

10. The Dispute Tribunal held in *Andrysek*, Order No. 6 (GVA/2020), that “the friend-of-the-court’s intervention is limited to file submissions in relation to legal issues of a complex nature related to the newly introduced [issue].”

11. Under guidance of the jurisprudence and upon review of the parties’ submissions, the Tribunal considers that the Motion fails to set out sufficiently the precise reasons why a filing of a brief by the Staff Union would assist the Dispute Tribunal in its deliberations in the present case. The Motion instead sets out general ambiguous references to the Staff Union’s potential involvement with issues in this case. The Tribunal considers it necessary for the Staff Union to file further submissions elaborating its precise involvement with the issues in dispute in this case so that the Tribunal may make a proper determination on whether permission maybe granted for the proposed friend-of-the-court brief. The Tribunal further takes note that since filing of the motion, Mr. Arauz has stepped down as president of the Staff Union. It is therefore necessary for the Tribunal to receive an update on whether Mr. Arauz remains authorized to represent the Staff Union in this matter.

12. Pursuant to art. 19 of the Rules of Procedure of the Dispute Tribunal,

IT IS ORDERED THAT:

13. By **4:00 p.m. on Friday, 8 September 2023**, the Staff Union is to file further submissions elaborating its precise involvement with the specific issues in dispute in

this case, together with an update on whether Mr. Arauz remains authorized to represent the Staff Union in this matter.

14. By **4:00 p.m. on Friday, 15 September 2023**, the Respondent may file a response, if any, to the Staff Union's 8 September 2023 filing.

15. Upon receipt of the above-referred submissions, the Tribunal will issue the relevant instructions for further case management.

(Signed)

Judge Joelle Adda

Dated this 22nd day of August 2023

Entered in the Register on this 22nd day of August 2023

(Signed)

Isaac Endeley, Registrar, New York